Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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59 Crescent St., Brooklyn, NY 11208
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[Sample of individualized letter sent to each member of the Policy Committee; GC:viii]

March 1, 2010

Roy L. Reardon, Esq.
Chair, Departmental Disciplinary Committee — tel. (212)401-0800; fax (212)287-1045
NYS Supreme Court Appellate Div., 1st Judicial Dept.
61 Broadway, 2nd Floor, New York, NY 10006

Dear Mr. Reardon,

This is a misconduct complaint against the named attorneys. (GC:1 infra). It summarizes the evidence of misconduct found in close to 5,000 pages of court records (CD attached to back cover) accumulated in three related federal bankruptcy cases, two of which went all the way to the Supreme Court on petition for a writ of certiorari to the Court of Appeals for the 2nd Circuit[1].

The Complaint Overview (3) describes the attorneys' key violations of the law and the Rules of Professional Conduct and their interrelationship. The Statement of Facts (14) begins with two attorneys repeatedly attempting to suborn perjury at an evidentiary hearing and a judge tolerating their doing so. The transcript (Tr:1) officially recorded their egregious misconduct and is attached at the back hereto because the whole of it consists of a series of acts of misconduct in open court that defies imagination and shocks the conscience[2]. Each of these three file components helps understand what creates the opportunity for the attorneys to engage in misconduct: When a judge leads the way into misconduct, the attorneys and court staff that can benefit from following him will do so. They are allowed as insiders into biased proceedings. The Statement tracks their misconduct steps through the three cases: *Premier* (17), *Pfuntner* (21), and *DeLano* (41). In them they appear acting in coordination under the two most insidious and corruptive motive and means: the enormous amount of money at stake in the thousands of bankruptcy cases that they have concentrated in their hands and the strongest power to break the law, i.e., that which also ensures immunity. They have coordinated their misconduct into a bankruptcy fraud scheme.

The attorneys and their scheme pose a systemic present danger to the public, not just to one complainant, for they deprive of property people with whom they do not even deal directly and deny them economic and due process rights. This calls for your investigation of this complaint to be resolute and in-depth. It can be pinpointed and expedited by the Demand for Information and Evidence. (GCd:1) In turn, great pressure will be brought to bear upon you to stop the investigation or conduct it merely pro-forma. Here is where your enlightened self-interest comes into play.

Your courageous investigative and expository actions can put you at the center of attention far beyond the local scene because the complained-against attorneys and other court officers have engaged in misconduct in the federal bankruptcy system and judiciary, whose scopes are national. No amount of money can trump doing the right thing or buy as much publicity as defending millions of debtors, creditors, and the collaterally affected during their worst financial predicament –in FY09 1,402,816 cases were filed in the U.S. Bankruptcy Courts[3]– almost all of whom stand no chance against entrenched insiders wielding corrupt power[4]. For them, the Committee as a whole or its most principled and ambitious members can become Champions of Justice[5]. In a Congressional elections year, their gratitude can lay the foundation for a bid for national office to tackle a national problem, which those who knew did nothing about[6]. In the process, you can become our generation's Senator Sam Ervin of Watergate fame. (61§A) Hence, I respectfully request (68§B) that you investigate this complaint and keep me informed thereof. Thus, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero, Esq.

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March 1, 2010

COMPLAINT

to the Departmental Disciplinary Committee
of the NYS Supreme Court, Appellate Division, 1st Judicial Department
against attorneys engaged in misconduct contrary to law and/or
the New York State Unified Court System, Part 1200 -
Rules of Professional Conduct[7]

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Adobe Reader 7 or higher is needed to open the pdf's; download it for free from http://get.adobe.com/reader/

[1] http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCt_petition_3oct8.pdf
http://Judicial-Discipline-Reform.org/docs/DrCordero_petition_to_SCt_20jan5.pdf

[2] See the analysis of the transcript (fn. 19 infra; Pst:1255§E)

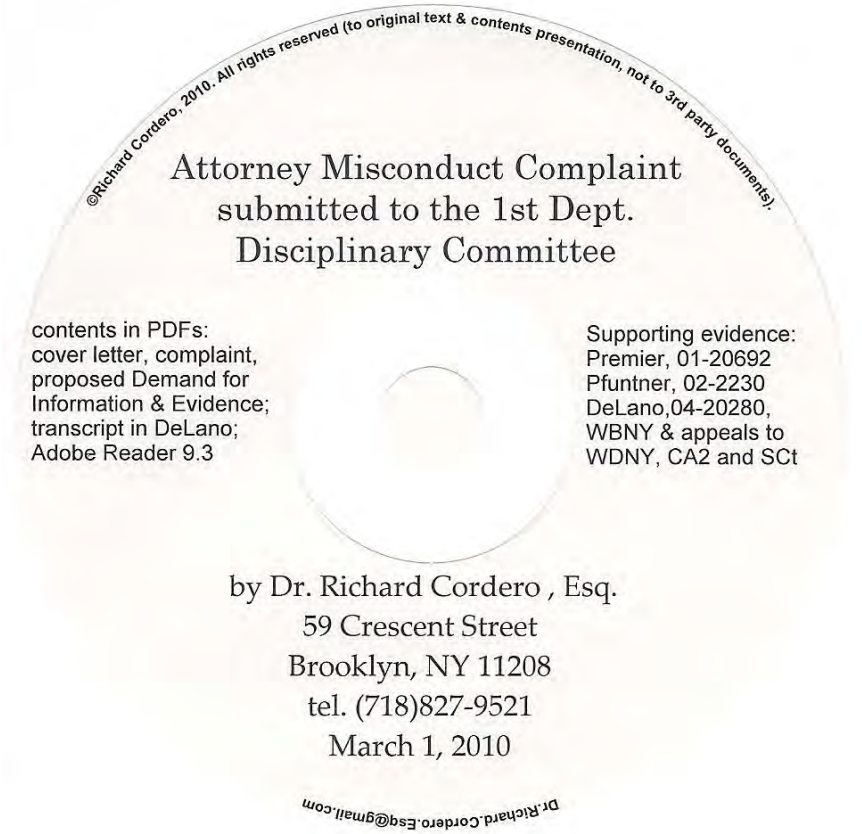
[3] http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx and fn. 10 infra

[4] http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf >¶4

[5] http://Judicial-Discipline-Reform.org/Follow_money/Champion_of_Justice.pdf

[6] http://Judicial-Discipline-Reform.org/SCt_nominee/Senate/DrRCordero-SenCSchumer.pdf

[7] 22 NYCRR Part 1200; http://www.courts.state.ny.us/rules/jointappellate/index.shtml; with enhanced bookmarks to facilitate navigation also at http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf. Hereinafter referred to as the Rules or Rule #.



IX. Links to Download the Files Submitted on a CD-ROM to each Member of the Policy Committee

The transcript(§VII supra) was printed and the CD-ROM burned and both were submitted to the nine members of the Policy Committee(Gi:170fn11) together with a hardcopy of the complaint.

The CD is available on request by sending an email to Dr.Richard.Cordero.Esq@gmail.com; its contents are downloadable, as noted below.

1. Cover letter and complaint of March 1, 2010 (now including the petition for reconsideration of May 4, 2010)

http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Disciplinary_Com.pdf

2. Proposed Demand for Information and Evidence

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/2DrRCordero-DisCom_infoDem.doc

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/2DrRCordero-DisCom_infoDemand.pdf

3. Transcript of the evidentiary hearing in *re David and Mary Ann DeLano*

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/3transcript DeLano_1mar5.pdf

4. Table of Exhibits in *James Pfuntner v. Trustee Kenneth Gordon et al.*

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/4Pfuntner_Table_Exhibits.pdf

5. Exhibits in *Pfuntner*

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/5Pfuntner record A1-2229.pdf

6. Exhibits in *DeLano* volume 1 = D:1-CA:2090

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/6DeLano_D1-CA2090.pdf

7. Exhibits in *DeLano* volume 2 = CA:2091-US:2547

http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/7DeLano_CA2091-US2547.pdf

To download Adobe Reader 9.3 for free, go to http://get.adobe.com/reader/

X. Service List

The complaint of March 1, 2010, to the Departmental Disciplinary Committee was sent under individualized cover letter to each of the members of its Policy Committee to the address below:

1. Roy L. Reardon, Esq., Chair
2. Alan W. Friedberg, Esq., Chief Counsel
3. Haliburton Fales, 2d, Esq., Special Counsel
4. Charlotte Moses Fischman, Esq., Special Counsel
5. Martin R. Gold, Esq., Special Counsel
6. Robert L. Haig, Esq., Special Counsel
7. Myron Kirschbaum, Esq., Special Counsel
8. William Francis Kuntz, II, Esq., Special Counsel
9. Stephen L. Weiner, Esq., Special Counsel

Departmental Disciplinary Committee
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I. List of Attorneys Complained-Against

And Judges Who Are The Subject Of A Demand For Information[8]

1. Ms. Diana G. Adams
   U.S. Trustee for Region 2
2. Ms. Deirdre A. Martini and
3. Ms. Carolyn S. Schwartz
   Former U.S. Trustees for Region 2
   Office of the United States Trustee
   33 Whitehall Street, 21st Floor
   New York, NY 10004
   tel. (212)510-0500; fax (212)668-2255
   http://www.justice.gov/ust/r02/

4. Kenneth W. Gordon, Esq.
   Chapter 7 Trustee (in *In re Premier, 01-20692, WBNY* and *Pfuntner v. Gordon et al.*, 02-2230, WBNY)
   Gordon & Schaal, LLP
   1039 Monroe Avenue
   Rochester, NY 14620
   tel. (585)244-1070; fax (585)244-1085
   kengor@rochester.rr.com
   http://www.gordonandschaal.com/aboutus.html

5. David D. MacKnight, Esq. (for James Pfuntner in *Pfuntner v. Gordon et al., 02-2230,* WBNY)
   Lacy, Katzen, Ryen & Mittleman, LLP
   The Granite Building, 2nd Floor
   130 East Main Street
   Rochester, NY 14604-1686
   tel. (585)324-5724; fax (585)269-3047
   dmacknight@lacykatzen.com
   http://lacykatzen.com/bio-dmacknight.aspx

6. George Max Reiber
   Chapter 13 Trustee (in *In re DeLano,* 04-20280, WBNY)
7. James W. Weidman, Esq.
   Attorney for Trustee George Reiber
   Winton Court, 3136 Winton Road S., Ste. 206
   Rochester, NY 14623-2928
   tel. (585)427-7225; fax (585)427-7804
   trustee13@roch13.com

8. Christopher K. Werner, Esq., and (for Debtors David Gene and Mary Ann DeLano in *In re DeLano,* 04-20280,WBNY)
9. Devin Lawton Palmer, Esq.
   Boylan, Brown, Code, Vigdor & Wilson, LLP
   2400 Chase Square
   Rochester, NY 14604
   tel. (585)232-5300; fax (585)232-3528
   http://www.boylanbrown.com/attorneys.aspxn
   cwerner@boylanbrown.com
   dpalmer@boylanbrown.com

10. Michael J. Beyma, Esq. (for M&T Bank and Officer David Gene DeLano in *Pfuntner v. Gordon et al*, 02-2230, WBNY)
    Underberg & Kessler, LLP
    300 Bausch & Lomb Place
    Rochester, NY 14604
    tel. (585)258-2890; fax (585)258-2821;
    mbeyma@underbergkessler.com, &
    assistant breed@underbergkessler.com
    http://www.underbergkessler.com/Attorneys/Detail/?ID=30

11. Kathleen Dunivin Schmitt, Esq.
    Assistant United States Trustee
    Office of the United States Trustee
    100 State Street, Room 609
    Rochester, NY 14614
    tel. (585)263-5812, fax (585)263-5862
    http://www.justice.gov/ust/r02/rochester.htm

12. Paul R. Warren, Esq.
    Clerk of Court
    U.S. Bankruptcy Court
    1220 U.S. Courthouse
    100 State Street
    Rochester, NY 14614
    tel. (585)613-4200;
    http://www.nywb.uscourts.gov/

13. Bankruptcy Judge John C. Ninfo, II[8]
    U. S. Bankruptcy Court
    1400 U.S. Courthouse, 100 State Street
    Rochester, NY 14614
    tel. (585)613-4200;
    http://www.nywb.uscourts.gov/;
    http://www.nywb.uscourts.gov/about_judge_ninfo_46.php;
    http://www.nywb.uscourts.gov/rochester_court_directory_11004.php.

14. District Judge David Larimer (ret.)[8]
    U.S. District Court, Western District of New York, WDNY
    Federal Building
    100 State Street, Rochester, NY 14614
    tel. (585)613-4000
    http://www.nywd.uscourts.gov/mambo/

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II. Complaint Overview

Key Elements of the Attorneys' Misconduct and Their Opportunity and Motive For Engaging In Coordinated Misconduct

1. The attorneys engaged in misconduct in this complaint have developed among themselves and with the judges the same harmful and corrupt relation that Congress found and tried to eliminate by adopting FRBP 2013.[9] The Advisory Committee on Rules of Practice and Procedure of the Judicial Conference of the U.S. summarized the Congressional findings in its note in 1979 to that rule (at that time titled Rule 2005) thus:

> A basic purpose of the rule is to prevent what Congress has defined as "cronyism." Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.
>
> Subdivision (b) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were **frequent appointments of the same person**, contacts developed between the bankruptcy bar and the courts, and **an unusually close relationship between the bar and the judges** developed over the years. A major purpose of the new statute is **to dilute these practices and instill greater public confidence in the system**. Rule 2005 implements that laudatory purpose. (emphasis added)

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[8] Under Rule 8.3(b), the Committee is authorized to demand information from "A lawyer who possesses knowledge or evidence concerning…a judge [and] the lawyer…shall not fail to respond", regardless of whatever authority that the Committee may have to impose disciplinary measures on, or take any other action regarding, such judge.

[9] Federal Rules of Bankruptcy Procedure, FRBP, with the Notes of the Advisory Committee, http://www.law.cornell.edu/rules/frbp/rules.htm; and also with added navigational bookmarks at http://Judicial-Discipline-Reform.org/docs/FRBkrP_1dec9.pdf. The official version but without the Notes is at http://www.uscourts.gov/rules/index.html >Rules and Forms in Effect, Federal Rules of Bankruptcy Procedure.

Keep in mind, however, that those files contain the current Rules as amended. To determine whether a rule has been amended since those in force at the time of the facts stated here, go to http://uscode.house.gov/download/downloadPDF.shtml >choose and click on a year >click on the equivalent of 2008usc11a.pdf for the chosen year; or consult even *Bankruptcy Code, Rules and Forms*, *2010 ed.,* published by West Thomson, which provides information on amendment and applicability dates; http://west.thomson.com/productdetail/160035/22035157/productdetail.aspx?promcode=600582C43556&promtype=internal. See also fn. 16 infra.

www.uscourts.gov/rules/Reports/ST09-1979.pdf >Rule 2005
http://www.law.cornell.edu/rules/frbp/nrule2013.htm
http://Judicial-Discipline-Reform.org/docs/FRBP_Rules_Com_79.pdf
>Rule 2005

2. The complained-against attorneys together with judges and court staffers are insiders of the bankruptcy and legal systems. As such they have the opportunity, when handling petitions for bankruptcy, to engage in misconduct as well as the most enticing motive to do so: riskless enormous benefits. The benefits may be material, for federal bankruptcy judges rule on $10s of billions every year[10], or they may be moral, that is, avoidance of being shunned as treacherous pariahs for abiding by their duty of filing complaints against blameworthy colleagues[11], and gain of the valuable interpersonal relations of camaraderie, complicit confidentiality, and reciprocal support from grateful colleagues whose misconduct they have willfully ignored, tolerated, or covered up. Judicial power provides the means for engaging in misconduct risklessly. In the first instance, it is exercised by U.S. Bankruptcy Judge John C. Ninfo, II, WBNY.[12] In his court, the misconducting attorneys are fixtures, who benefit from the extension to them of the de facto impunity that he enjoys as a federal judge and the appointee under 28 U.S.C. §152(a)[13] of the Court of Appeals for the Second Circuit (CA2). Indeed, the number of cases that, according to PACER[14], they have brought before Judge Ninfo allows for the development of "an unusually close relationship between the[m]". (¶1 quoted text, supra)
3. **Att. Kenneth W. Gordon**[15] is the standing 11 U.S.C. Chapter 7[16] Trustee[17], who out of his

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[10] Cf. "November 25, 2009 — Bankruptcy cases filed in federal courts for fiscal year 2009 totaled 1,402,816, up 34.5 percent over the 1,042,993 filings reported for the 12-month period ending September 30, 2008, according to statistics released today by the Administrative Office of the U.S. Courts." These statistics are collected, with links to their source, at: http://Judicial-Discipline-Reform.org/statistics&tables/bkr_stats/Bkr_filings_25nov9.pdf.

[11] E.g., Rule 8.3(a) on Reporting Professional Misconduct; and 18 U.S.C. §3057(a) on Requesting Bankruptcy Investigations, http://Judicial-Discipline-Reform.org/docs/18usc3057.pdf

[12] Bankruptcy Judge John C. Ninfo, II, U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614; tel. (585)613-4200; http://www.nywb.uscourts.gov/; http://www.nywb.uscourts.gov/about_judge_ninfo_46.php; http://www.nywb.uscourts.gov/rochester_court_directory_11004.php.

[13] http://Judicial-Discipline-Reform.org/docs/28usc151-159_bkr_judges.pdf

[14] http://www.pacer.uscourts.gov/index.html

[15] Kenneth W. Gordon, Esq., Chapter 7 Trustee, Gordon & Schaal, LLP, 1039 Monroe Avenue, Rochester, NY 14620-1730; tel. (585)244-1070; fax (585)244-1085; formerly at 1099 Monroe Avenue, Suite 2, Rochester, NY 14620-1730; and before that at 100 Meridian Centre Blvd., Suite 120, Rochester, NY 14618; kengor@rochester.rr.com;

3,383 cases had 3,382 before Judge Ninfo, as of June 26, 2004[18], [19]. By comparison, a judicial emergency is defined as "any vacancy in a district court where weighted filings are in excess of 600 per judgeship"[20]. Trustee Gordon was appointed to liquidate the moving and storage company Premier Van Lines, Inc.,[21] owned by David J. Palmer,[22] who had filed for voluntary bankruptcy in *In re Premier Van Lines, Inc.*, 01-20692, WBNY, (docket at A:565-578a; *Premier*)[23], which came before Judge Ninfo. The Trustee first declared *Premier* to be a case with

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http://www.gordonandschaal.com/aboutus.html.

[16] Taking into account the caveat at fn. 9 supra, the most current digital version on the Internet of title 11 of the U.S. Code, that is, the Bankruptcy Code, is downloadable from http://uscode.house.gov/pdf/2008/2008usc11.pdf and is also found at http://Judicial-Discipline-Reform.org/docs/11usc_Bkr-Code_08.pdf, where useful navigational bookmarks have been added.

For earlier editions of the Code go to http://uscode.house.gov/download/downloadPDF.shtml >choose and click on a year >click on the equivalent of 2008usc11.pdf for the chosen year.

For the 2010 edition of the Code printed by West Thomson, see fn. 9 supra.

[17] http://www.justice.gov/ust/r02/rochester/ch7-trustees.htm

[18] http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf; (Add:891§III)…

[19] …the references bearing the format D:#, Add:#, Pst:#, SApp:#, CA:#, and US:# lead to pages # of the *DeLano* file; from D:1 to US:2547 all numbers are consecutive. The A:# references point pages # in the *Pfuntner* file, from A:1 to A:2229. If followed by §§#,# = sections #, #, or ¶¶#,# = paragraphs #, #, page # is the page where the first section or paragraph appears.

[20] "Beginning in December 2001, the definition of a judicial emergency [is] any vacancy in a district court where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, or any court with more than one authorized judgeship and only one active judge." Federal Judicial Caseload, Recent Developments, 2001, prepared by the Office of Human Resources and Statistics of the Administrative Office of the U.S. Courts (AO), p. 13, fn. 15; http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics.aspx > Federal Judicial Caseload: Recent Trends 2001; also at http://Judicial-Discipline-Reform.org/docs/FedJud_Caseload_2001.pdf >p. 13, fn.15.

Cf. 2008 Annual Report of the AO Director, p. 38; http://www.uscourts.gov/library/annualreports.htm >Director's Annual Report, 2008; also at http://Judicial-Discipline-Reform.org/docs/AO_Dir_Report_08.pdf.

[21] Premier Van Lines, Inc., Tax ID: 16-1542181, c/o 1829 Middle Road, Rush, NY 14543 (A:431); it was doing business from space rented in the warehouse at 900 Jefferson Road, Rochester, NY, 14623, which is owned and/or operated by Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607. Before that, Premier was doing business from 10 Thruway Park Drive, West Henrietta, NY 14586. (A:51)

[22] David J. Palmer (A:432/3), 1829 Middle Road, Rush, NY 14543; tel. (585)292-9530; owner of Premier Van Lines, Inc.

[23] The docket of *Premier* indicates that Trudy Nowak, U.S. Trustee, was in office at least

assets to distribute to the creditors. Dr. Richard Cordero, Esq., a Premier creditor, charged him with going about that liquidation in a negligent and reckless manner. Thereupon the Trustee filed a report that there were no assets to distribute, even though he had just applied to hire Auctioneer Roy Teitsworth[24] to auction Premier"s assets and Judge Ninfo had approved his application. Then no more entries were made on the *Premier* docket concerning either those assets or anything else until the entries stating that the case had been closed and that Trustee Gordon had been paid a fee.[25] In this matter, he was abetted by the following insider and court staffer.

4. **Paul R. Warren, Esq.**, Clerk of Court, WBNY,[26] is charged with the duty under FRBP 5003(a) to keep the docket of cases and under FRBP 2013(a) with maintaining a public record of fees paid. Clerk Warren failed to provide the information on fees paid to Trustee Gordon and Auctioneer Teitsworth requested by Dr. Cordero. Revealingly enough, after Dr. Cordero charged with fraud Mr. Palmer and the latter failed to appear or defend, Dr. Cordero applied under FRBP 7055, which makes FRCP 55 applicable[27], for default judgment against him. However, Clerk

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during the early part of *Premier* bankruptcy proceedings. (A:565/15, 28/ 29, 52, 77, 83.

[24] Auctioneer Roy Teitsworth; (A:431, 576/97; 834, 835¶B.5); 6502 Barber Hill Road, Geneseo, NY 14454; tel. (585)243-1563, fax (585)243-3311; http://www.auctionzip.com/NY-Auctioneers/13102.html; www.teitsworth.com.

[25] Sources of information about Trustee Gordon's handling of *Premier* are:

a) his attorney, William E. Brueckner, Esq.; (A:431, 573/72; 834, 835¶B.4);
   i) at the time at Ernstrom & Dreste, LLP, 2000 Winton Road South, Building One, Suite 300, Rochester, NY 14618-3922; tel. (585)473-3100, toll-free (800)650-9009, fax (585)473-3113; http://www.ernstromdreste.com/;
   ii) now at Underberg & Kessler, 300 Bausch & Lomb Place, Rochester, NY 14604; tel. (585)258-2892, fax (585)258-2821; wbrueckner@underbergkessler.com; http://www.underberg-kessler.com/Attorneys/Detail/?ID=78. (cf. ¶10 infra)

b) the accounting firm Bonadio & Co. LLP; (A:431, 567/16, 22, 26, 27, 29, 30, 39, 40, 44, 49; 834, 835¶B.6);
   Corporate Crossings, 171 Sully's Trail, Suite 201, Pittsford, NY 14534-4557; tel. (585)381-1000; fax (585)381-3131; http://www.bonadio.com/Profile/Locations/.

[26] Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, WBNY, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614 (585)613-4200; http://www.nywb.uscourts.gov/rochester_court_directory_11004.php.

[27] FRCP: http://www.law.cornell.edu/rules/frcp/ (with access to the Advisory Committee Notes, as of December 1, 2009); the official edition without the Notes is at http://www.uscourts.gov/rules/index.html >Rules and Forms in Effect, Federal Rules of Civil Procedure.

Cf. fn. 9 supra. For earlier editions of the FRCP, go to http://uscode.house.gov/download/downloadPDF.shtml >choose and click on a year >click on the equivalent of 2008usc28a.pdfhttp://uscode.house.gov/pdf/2008/2008usc11a.pdf for the chosen year.

Warren failed to enter his default, that is, to certify the fact of Mr. Palmer"s non-appearance and failure to file any paper. When the Clerk finally entered it at Dr. Cordero"s instigation, Judge Ninfo would not summon Mr. Palmer to court and recommended to the District Court, WDNY,[28] that Dr. Cordero"s application not be granted. The totality of these circumstances show that none of them could risk giving cause to Mr. Palmer to disclose what had happened with Premier"s assets or the proceeds from the auction. In how many of Trustee Gordon"s 3,382 cases before Judge Ninfo have assets disappeared and undisclosed fees paid? How many thousands of creditors have been harmed by assets not being distributed to cover at least partially their debts and, as a result, how many others have been injured collaterally? (See also ¶15 infra.)

5. **Att. David D. MacKnight**[29] had appeared before Judge Ninfo in 442 out of 559 cases, as of June 6, 2005[30]. He commenced *James Pfuntner v. Trustee Kenneth Gordon et al*., 02-2230, WBNY, (docket at A:548-564i; *Pfuntner*) for his client, James Pfuntner,[31] as an adversary proceeding spun by *Premier*. On his behalf, he sought from Judge Ninfo two orders only to disobey them with impunity, while Dr. Cordero had to comply with them to his detriment. What is more, Mr. MacKnight engaged in ex-parte conversations with Judge Ninfo to get one of the orders modified for Mr. Pfuntner"s benefit. By so doing, he disregarded what the Advisory Committee on Bankruptcy Rules considered self-evident:

> 1979 note on FRBP 9003. Prohibition of Ex Parte Contacts
>
> > This rule [then titled Rule 5001] should be unnecessary because there should not be ex parte communications with a bankruptcy judge by any party in interest including a trustee or his attorney or the debtor or his attorney, in a chapter 7, 9, 11, or 13 case.…[It] is included to make clear that no party in interest, person representing a party in interest, or employee of a party in interest should have ex parte communications with a bankruptcy judge about the case.
> >
> > Contacts and relationships exist between the bankruptcy courts and the bar which are problems that the new law seeks to solve. **The system should not only operate fairly but it must appear to operate fairly.** H.

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[28] U.S. District Court for the Western District of NY, WDNY, Federal Building, 100 State Street, Rochester, NY 14614; tel. (585)613-4000; http://www.nywd.uscourts.gov/mambo/

[29] David D. MacKnight, Esq., Lacy, Katzen, Ryen & Mittleman, LLP, The Granite Building, 130 East Main Street, Rochester, NY 14604-1686; tel. (585)324-5724; fax (585)269-3047; dmacknight@lacykatzen.com; http://lacykatzen.com/bio-dmacknight.aspx.

[30] http://Judicial-Discipline-Reform.org/docs/MacKnight_442_before_JNinfo.pdf

[31] James Pfuntner, tel. (585)738-3105, fax (585)538-9858, owner of the warehouse at 2140, Sackett Road, Avon, NY 14414; also officer of Western Empire Truck Sale, 2926 West Main Street, Caledonia, NY 14423, tel. (585)538-2200.

Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977). [emphasis added] www.uscourts.gov/rules/Reports/ST09-1979.pdf; also at http://Judicial-Discipline-Reform.org/docs/FRBP_Rules_Com_79.pdf

6. Dr. Cordero raised motions for sanctions against Att. MacKnight and Mr. Pfuntner, but Judge Ninfo disregarded them. Thus, Att. MacKnight was the beneficiary of the bias of the Judge, who takes care of his own at the expense of outsiders, such as Dr. Cordero. What do attorneys have to do in their cases before Judge Ninfo to contribute to corrupting "Equal Justice Under Law" so as to become such beneficiaries and what is in it for Judge Ninfo? Their conduct, described in greater detail in the Statement of Facts (GC:14§III infra), begs that question recurrently.
7. **Att. George Max Reiber**[32], the standing 11 U.S.C. Chapter 13 Trustee[33], had before Judge Ninfo 3,907 cases out of the Trustee"s 3,909 *open* cases, as of April 2, 2004[34]. He was the trustee for another insider and party to *Pfuntner*, Mr. David Gene DeLano.[35]The latter had already spent 39 years in the financing and banking industries when he, together with his wife, Xerox Technician Mary Ann DeLano, filed for bankruptcy relief under Chapter 13 in *In re DeLano*, 04-20280, WBNY, (docket at D:496-508j; *DeLano*). In fact, he was precisely a bankruptcy officer of a major financial institution, M&T Bank.[36] He kept working in that capacity since, after all, he was „only" exploiting his insider knowledge and connections to prepare his exit from work light of debt into a golden retirement. One of those connections was Trustee Reiber, whose duty as trustee is to inform himself about the assets of the estate so as to collect and distribute them to the creditors. Yet, Trustee Reiber had not requested, let alone reviewed, a single document to corroborate the DeLanos" self-serving declarations, made in the schedules and statements that are required of all debtors in bankruptcy, by the day the Trustee was going to submit to Judge Ninfo for confirmation the proposed plan, drawn up by the DeLanos themselves, for repaying

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[32] George Max Reiber, Esq., Chapter 13 Trustee, Winton Court, 3136 Winton Road South, Suite 206, Rochester, NY 14623-2928; tel. (585)427-7225; fax (585)427-7804; trustee13@roch13.com.

[33] http://www.justice.gov/ust/r02/rochester/ch13-trustees.htm

[34] http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith through time-consuming, statutorily required investigation of their financial affairs. (A:1083¶IX)

[35] http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§II

[36] Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604, tel. (585)258-8207, fax (585)325-5105; Customer Service tel. (800)724-2440; locations http://mandtbank.spatialpoint.com/PrxInput.aspx. See also fn. 41 infra.

their creditors only 22¢ on the dollar. Dr. Cordero, also a party to *Pfuntner* and to *DeLano*, where he had been named by the DeLanos among their creditors, objected and Judge Ninfo had no choice but to suspend the confirmation of their plan. Dr. Cordero requested that Trustee Reiber discharge with respect to the DeLanos his duty to investigate the financial affairs of debtors, but the Trustee would not request them to produce their bank account statements. Yet, such statements are obviously critically important to establish the state of the debtors‟ financial affairs and tracking their assets. Then Judge Ninfo denied Dr. Cordero‟s motion to remove the Trustee or order him to obtain and produce those documents. As a result, Trustee Reiber and Judge Ninfo allowed the DeLanos to sprightly walk away into a very comfortable retirement after being discharged of their debt burden but while carrying with them at least $673,657. That was the value of unaccounted-for assets that Dr. Cordero had been able to show, to the indifference of the Trustee, the Judge, and other similarly situated insiders, that the DeLanos had earned, according to their own schedules and statements, or otherwise received. In how many of his 3,907 cases before Judge Ninfo has Trustee Reiber conveniently relied on the say-so of debtors to allow them not to account for even considerable amounts of money? Who are the beneficiaries of the Trustee‟s misconduct, whether insiders or others willing to share their unaccounted-for assets with insiders so as to avoid paying them to outsiders, and how many creditors and collaterals has the Trustee injured by his dereliction of duty?

8. **Att. Christopher K. Werner**[37] had brought 525 cases before Judge Ninfo, as of February 28, 2005[38]. He was the bankruptcy attorney for Insider DeLano and his wife. Since they had named Dr. Cordero among their creditors, Att. Werner treated him as such for six months while pretending to be looking for the documents that Dr. Cordero requested to corroborate the declarations that the DeLanos had made and the Attorney had signed off on in their bankruptcy petition‟s schedules and statements. Dr. Cordero analyzed the trickle of documents produced and showed that they disproved those declarations and pointed to bankruptcy fraud through concealment of assets. Only then did Att. Werner come up with the artifice of a motion to disallow Dr. Cordero‟s claim as a creditor. Judge Ninfo took the initiative to call an evidentiary

[37] Christopher K. Werner, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604; tel. (585)232-5300, ext. 254; fax (585)238-9054; cwerner@boylanbrown.com; http://www.boylanbrown.com/attorneys/Christopher%20K.%20Werner.aspx.

[38] http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf

hearing on the motion and ordered discovery therefor. Att. Werner denied Dr. Cordero *every single document* that he requested from the DeLanos, thus showing contempt for his duty to comply with the order or abide by his duty to provide discovery. Dr. Cordero moved for an order of compel production, but Judge Ninfo denied him *every single document* that he requested, thus showing that his initial order of discovery had been a sham. So was the evidentiary hearing, at the end of which the Judge explicitly disregarded as "confused" Mr. DeLano"s testimony that confirmed Dr. Cordero"s claim, disallowed that claim, and deprived Dr. Cordero of standing in the case. Thereby he achieved Mr. Werner"s objective: To strip Dr. Cordero of the right to request documents that would incriminate both his clients in bankruptcy fraud and him in aiding and abetting it. So Att. Werner, in coordination with Judge Ninfo, with whom he had ex-parte contact, engaged successfully in abuse of process in furtherance of a cover-up. Such connivance is shown by his egregious and undeniable misconduct at the evidentiary hearing, captured in its transcript attached hereto (Tr:1 infra) and described in the next section. (GC:14§A infra)

9. **Att. Devin Lawton Palmer**[39] took over, as appellate attorney, from Mr. Werner in *DeLano*, and participated in the cover-up of the DeLanos" bankruptcy fraud. (CA:1804, 1895)
10. **Michael J. Beyma, Esq.**,[40] is the attorney for M&T Bank and its Bankruptcy Officer DeLano in *Pfuntner*. M&T "had over $65 billion in assets as of December 31, 2007, and is one of the 20 largest commercial bank holding companies headquartered in the U.S"[41]. Att. Beyma is also a partner in Underberg & Kessler[42], the same law firm in which Judge Ninfo was a partner at the time of his appointment by CA2 to his first 14-year term as bankruptcy judge in 1992.[43] Att. Beyma "was a founding partner of Boylan, Brown LLP in 1974" [44], the law firm[45] in which Att.

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[39] Devin Lawton Palmer, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604; tel. (585)232-5300, ext. 212; fax (585)238-9012; dpalmer@boylanbrown.com; http://www.boylanbrown.com/attorneys/Devin%20L.%20Palmer.aspx.

[40] Michael J. Beyma, Esq., Underberg & Kessler, LLP, 300 Bausch & Lomb Place, Rochester, NY 14604; tel. (585)258-2890; fax (585)258-2821; mbeyma@underbergkessler.com and (assistant's) breed@underbergkessler.com; http://www.underbergkessler.com/Attorneys/Detail/?ID=30.

[41] http://Judicial-Discipline-Reform.org/docs/M&TBank_2007.pdf; for a current description of M&T, see https://www.mtb.com/aboutus/Pages/WhoIsMT.aspx. See also fn. 36 supra.

[42] http://www.underberg-kessler.com/

[43] http://www.nywb.uscourts.gov/about_judge_ninfo_46.php

[44] http://www.underberg-kessler.com/Attorneys/Detail/?ID=30

[45] Boylan, Brown, Code, Vigdor & Wilson, LLP; http://www.boylanbrown.com/

Werner was a partner and is currently of counsel[46]. Att. Beyma engaged, just as Att. Werner did, in egregious, undeniable misconduct, at the evidentiary hearing, reported in the attached transcript (Tr:1 infra) and described below. (GC:14§A infra) Judge Ninfo allowed them to do so, for after all, they were all defending their own interests and those of M&T Bank, without doubt one of their largest clients. None was deterred by their duty to avoid conflict of interests and the appearance of impropriety. On the contrary, they benefit from impunity through the abuse of judicial power and the self-preservation interest of those complicitly in the know by ensuring that everybody involved in misconduct is „in the family" of insiders.

11. **Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee**[47]is in the family too. Her office is just above Judge Ninfo's chambers and courtroom in the same small federal building in Rochester, NY. It is a little, cozy place where they can meet day in and day out in the parking lot, the lobby, the corridors, the elevators, the food areas, and, of course, their more private office and chambers. What a propitious setting for professional and personal relationships to intertwine tightly enough until they become a web of confidences about misconduct and its benefits that nurture the coordination of riskless misconduct. Tangible, daily, immediate contacts among physical insiders of such a place suffocate abstract, legal relationships to outsiders, particularly those in faraway places, such as Dr. Cordero, who resides in NY City, who initially are nothing but a blot of ink on a piece of paper and subsequently become nothing more than a one-time pro se party, deemed too blurred a figment of law to have the necessary consistency to be a credible match for the concreteness of face-to-face contacts. Repeated improper contacts give rise to the exchange of information about past and on-going misconduct so that they produce actual knowledge and impute knowledge in those whose duty it is to find out but who indulge in willful ignorance. The heat of self-interest that they generate burns away any sense of duty, objectivity, and impartiality. It energizes the process of coordination that fuses officers of the court into a family of misconducting insiders with a warm operational home in a little, cozy federal building.
12. Trustee Schmitt plays a key role in keeping a small, closely-knit family. She participates in selecting standing trustees and is the direct supervisor of Trustees Reiber and Gordon. She has allowed them to amass their unmanageable number of thousands and thousands of cases despite

[46] http://www.boylanbrown.com/attorneys/Christopher%20K.%20Werner.aspx

[47] Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee, U.S. Department of Justice, 100 State Street, Suite 609, Rochester, NY 14614; tel. (585)263-5812, fax (585)263-5862; http://www.justice.gov/ust/r02/rochester.htm.

the evidence that such heavy burden impairs their performance and is not justified by budgetary considerations since standing trustees are not government employees on a fixed salary, but rather private agents that work for a per case fee and on commission. Hence, the more cases, the more money. (¶131 infra) By the First Rule of Misconduct Coordination, it is easier, safer, and more beneficial to engage in misconduct with the smallest number of people, except to grow the „business", so that when it comes to dividing the pie each should get a bigger slice, such as when…

13. **James W. Weidman, Esq.**,[48] the attorney for Trustee Reiber, was allowed by Trustee Schmitt to conduct the meetings of creditors, including that of the DeLanos, in her own office even though a trustee is required to conduct such meetings personally. This requirement is so important that failure to comply with it is one of the causes under 28 C.F.R. §58.6(a)(1) and (11)[49] for removing a trustee from office. In perfect coordination, at that same time Trustee Reiber was downstairs using Judge Ninfo"s courtroom to conduct his own business with other debtors. (GC:45§2) So well coordinated was Att. Weidman with the other insiders of the family that he only allowed Dr. Cordero to ask of the DeLanos two questions before terminating the meeting abruptly because Dr. Cordero would not answer Att. Weidman"s unjustifiable question to state how much he knew about the DeLanos having committed bankruptcy fraud. That meeting was officially tape-recorded by Trustee Reiber and Att. Weidman, and the tapes were kept by Trustee Schmitt, as they are supposed to. However, when Dr. Cordero exercised his right to request a copy of them, Trustee Schmitt manipulated the tape to remove the part recording the DeLanos" meeting. So she engaged in tampering with the evidence of Att. Weidman"s triggering of the cover-up of the DeLanos" bankruptcy fraud.

14. **Former U.S. Trustees for Region 2, Carolyn S. Schwartz and Deirdre A. Martini, and current incumbent Diana G. Adams**[50] were or are responsible for supervising Trustee Schmitt and, through her, Trustees Reiber and Gordon. They have been informed of these trustees" misconduct and being served by Dr. Cordero with his papers in both *Pfuntner* and *DeLano*. (e.g. A:101; D:77; SApp:1512, respectively) Nevertheless, instead of investigating the evidence of misconduct, they have either tried to prevent any investigation or deliberately ignored the facts

[48] James W. Weidman, Esq., Winton Court, 3136 Winton Road South, Suite 206, Rochester, NY 14623-2928; tel. (585)427-7225.

[49] http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf

[50] http://www.justice.gov/ust/r02/

by never once responding to his communications.[51] Their attitude is in line with the findings on which Congress justified the need for adopting the Bankruptcy Abuse Prevention and Consumer Protection Act of April 20, 2005, Pub. L. 109-8, 119 Stat. 23, "Representing the most comprehensive set of reforms in more than 25 years". Congress stated that:

> The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system…[to] respond to…**the absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings. (emphasis added) HR Report 109-31
> http://Judicial-Discipline-Reform.org/docs/BAPCPA_HR_109-31.pdf

15. **Paul R. Warren, Esq.**, (fn. 26 supra) owes his clerkship to the bankruptcy judges, WBNY, who appoint the clerk under 28 U.S.C. §156(b)[52]. Among them is Judge Ninfo, who was the chief judge from January 1, 2000 to December 31, 2006 (fn. 43 supra), and thus at the time of the commencement of *Premier*, *Pfuntner,* and *DeLano,* and for years thereafter. Presumably the bankruptcy judges can also remove Clerk Warren, just as under 28 U.S.C. §751(a), "[e]ach district court may appoint a clerk who shall be subject to removal by the court". He repeatedly disregarded objectively unambiguous provisions of law, whether to avoid providing Dr. Cordero public information on the fee paid a trustee and an auctioneer (¶4 supra); to deprive him of the right to have default judgment entered against Premier Owner Palmer (id.); or to prevent him from obtaining transcripts incriminating insiders in blatant disregard for the law and the facts and other forms of misconduct. Clerk Warren"s disregard for his duties worked consistently in line with Judge Ninfo's unlawful support of the insiders and only to the detriment of Outsider Dr. Cordero. (in *Pfuntner*, A:334, 337, 290, 303, 343, 872, 1011, 1012; in *DeLano*: D:106, 232§I, 397§1, 416§F; Add:692, cf. 695; 831, cf. 836; 839, 922§III, 1084§II; Pst:1264¶22; CA:2072¶¶142-150; see also ¶4 supra)

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[51] Cf. Table of officers that have disregarded their statutory duty to investigate the DeLano Debtors (SApp:1609)

[52] http://Judicial-Discipline-Reform.org/docs/28usc151-159_bkr_judges.pdf

III. Statement of Facts In Support of the Complaint

A. The officially recorded subornation of perjury by Attorneys Werner and Beyma and its egregious disregard by Judge Ninfo illustrate how judicial power is the means that enables overconfident insiders to coordinate their misconduct to run a bankruptcy fraud scheme

16. The irrefutable evidence of attorney misconduct bears an official imprimatur, for it consists of the transcript by the Bankruptcy Court Reporter, Mary Dianetti[53], of the evidentiary hearing called by Judge Ninfo at his own initiative and held before him in *In re DeLano*, 04-20280, WBNY, (docket at D:496-508j) on March 1, 2005. It is attached hereto at the back (Tr:#) and included in the accompanying CD.

17. At that evidentiary hearing, Mr. DeLano[54] was on the witness stand, to Judge Ninfo"s left, while being examined by Dr. Cordero, who remained seated at his table. At the other table, five feet to Dr. Cordero"s right, was Insider Werner, appearing as bankruptcy attorney for Mr. DeLano, who was in front of Mr. Werner. In the first bench behind the bar and to Mr. Werner"s right, was Att. Beyma, appearing as Mr. DeLano"s attorney in *Pfuntner*. So they were positioned thus:

		Judge Ninfo		**Mr. DeLano**
Law Clerk	**Court Attendant**	**Court Reporter**		
Megan E. Dorr	Lorraine Parkhurst	Mary Dianetti[55]		
	Dr Cordero		**Att. Werner**	
				Att. Beyma

18. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look away from him and toward his attorneys and as Dr. Cordero looked at them he caught one or the other waving their arms to signal answers to Mr. DeLano! (in the *DeLano* file: Transcript, page 28, line 13 to page 29 line 4 = Tr.28/13-29/4: Beyma; 75/8-76/3: Beyma; 141/20-143/16: Werner)[56]

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[53] Bankruptcy Court Reporter Mary Dianetti, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392. See the description of her own pattern of misconduct in http://Judicial-Discipline-Reform.org/docs/DrCordero_to_JConf_CtReporter_28jul5.pdf.

[54] http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§II

[55] Judicial Assistant Andrea Siderakis was there also and Dr. Cordero spoke with her when he asked Reporter Dianetti to tell him the number of folds and packs of stenographic paper that she had used to record the evidentiary hearing. (Add:846) While the Reporter counted them, Dr. Cordero asked and Mrs. Siderakis told him that her last name was Greek, from her Greek husband.

[56] Court Reporter Dianetti wrote a substandard transcript in which all people appear to be speaking Pidgin English. She did likewise when she prepared the transcript of the

19. Dr. Cordero protested to Judge Ninfo such utterly censurable conduct: a blatant attempt to suborn perjury. Yet, the Judge found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything. Nevertheless, from his higher seat on the bench only a few feet from the tables, he had an unobstructed view of the two insiders and Dr. Cordero, all of whom were in the Judge"s central field of vision. So it was impossible for him not to catch the distraction of either of them flailing their arms at Mr. DeLano. On the contrary, from the vantage point of his bench, the normal reaction of an impartial person would have been an incredulous exclamation of *'What are you talking about?! They are in front of my eyes and I saw them do no such thing!'* Now imagine the outburst of such an impartial judge the third time Dr. Cordero had protested opposing counsel" signaling that the judge had seen not to have taken place at all. Judge Ninfo had no such outburst because he could not flatly deny the occurrence of what the other people in the courtroom had so undeniably seen occur. So he covered up for the other insiders by pretending that he had not seen them flail their arms at Mr. DeLano.
20. Equally telling is the counter-expected reaction of Atts. Beyma and Werner: Neither of them had the normal, reflexive reaction of people accused of doing something liable to cause their being held in contempt, that is, to blurt an indignant denial, and all the louder if they were innocent. Instead, both remained silent. These insiders felt no need to defend themselves given that they had the best possible defender: Fellow Insider Judge Ninfo. Hence, they were not even asked the question that an impartial person in authority would have asked who had received a complaint about the contemptuous conduct of other persons in his presence: Did you do it? The Judge did not want to find out either. So Insiders Werner and Beyma were not warned not to signal answers with their arms to Mr. DeLano, which implicitly encouraged them to repeat their perjury-suborning conduct despite Dr. Cordero"s outraged protest. Thereby Judge Ninfo showed that he would allow anything to go, however violative of due process, so long as it went in favor of the insiders. In what court where the judge and all the parties were unrelated would the attorneys for one party ever dare do something so dishonest and risky even once, let alone several times? Since Atts. Beyma and Werner were allowed to do so in open court and for the record, what

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evidentiary hearing in *DeLano*, at which the participating parties, including Dr. Cordero were present in the courtroom. On the significance of the acceptance of such perfunctory work, see Dr. Cordero' appeal to the Judicial Conference of the U.S. for the investigation and replacement of the Reporter.
http://Judicial-Discipline-Reform.org/docs/DrCordero_to_JConf_CtReporter_28jul5.pdf

would they not feel confident to do with Judge Ninfo‟s approval in private elsewhere in that little, cozy federal building (¶11 supra) and beyond?

21. The fact is that the Insiders did not incur any risk at all. So much so that the official transcript shows that Judge Ninfo abandoned his duty to impartially take in evidence and behaved as Chief Advocate for Mr. DeLano, while his lawyers adopted the subservient attitude of second chairs. Who ever heard that neither of two lawyers for a party went through an evidentiary hearing that lasted more than five hours without ever raising a single objection? They did not have to because Judge Ninfo went so far to protect their common clients -namely, Mr. DeLano, on the bench, and his employer, the wealthy M&T Bank, represented by Att. Beyma- as to coach Mr. DeLano how to answer Dr. Cordero‟s questions. So the Judge‟s disingenuous denials that he had not seen the reprehensible signaling that occurred several times right before his eyes cast an insidious meaning on his emphatic admonition to Mr. DeLano that „you are not listening to Dr. Cordero‟s questions and you have to "think about the answer". (Tr.97/17-98/12, 114/9-115/2). What is more likely: to have to think a truthful answer or to "think" how to fabricate a lie for an answer?

22. The hearing was a sham. The insiders had to win it at all cost, which they did. Why? Why did they behave with such blatant disregard for their duties as officers of the court? It is time now to state the facts from the beginning of *Premier, Pfuntner,* and *DeLano*, for they evince a series of acts so blatantly contemptuous of the law and the facts and so consistently in favor of the insiders and injurious to the outsider, that is, Dr. Cordero, the one-case, pro se party who lives in the far off City of New York, as to form a pattern of non-coincidental, intentional, and coordinated misconduct from which a reasonable person informed of the facts can realize what their driving force was: the running of a bankruptcy fraud scheme.[57] (D:392§I)

[57] On how a bankruptcy fraud scheme works and generates lots money, see A:1146§V, 1666§1; and http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf.

B. The *Premier* Case: reckless liquidation leads to the disappearance of assets and non-disclosure of fees paid

1) In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and avoids a review of his performance and fitness to serve by filing false and defamatory statements about Dr. Cordero with Judge Ninfo and his supervisor, Trustee Schmitt

23. Dr. Richard Cordero, Esq., who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a moving and storage company in Rochester, NY, in August 1993, and from then on paid it storage and insurance fees. Early in January 2002, he contacted Mr. David Palmer (fn. 22 supra), the owner of the company storing his property, Premier Van Lines, Inc. (fn. 21 supra), to inquire about it. Mr. Palmer and his attorney, Raymond Stillwell, Esq.[58], assured him that his property was safe and in his warehouse at Jefferson Henrietta Associates in Rochester[59], which was owned and managed by Mr. David Dworkin[60]. (A:18) Only months later, after Mr. Palmer had disappeared, did his assurances reveal themselves as lies: As far back as March 5, 2001, he had filed for bankruptcy -*In re Premier Van Lines, Inc.*, 01-20692, WBNY (dkt. at A:565-578a; *Premier*)-, a fact that he kept from Dr. Cordero just as he hid the fact that in December 2001 Kenneth W. Gordon, Esq., the standing Chapter 7 Trustee (¶3 supra), had been appointed to liquidate Premier. What is more, Mr. Palmer had negligently handled Dr. Cordero"s property, for it was eventually determined not to be in Mr.

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[58] Raymond C. Stilwell, Esq., Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, (A:18); now known as Adair Law Firm, LLP; tel. (585)419-9000, fax (585)248-4961; http://www.adairlaw.com; rcstilwell@adairlaw.com.

[59] Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607; tel. (585)442-8820; fax (585)473-3555.

[60] David Dworkin, manager of the warehouse of Jefferson Henrietta Associates in Rochester, NY, and of Simply Storage, tel. (585)442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax (716)647-3555. From the Jefferson Henrietta warehouse Mr. Palmer operated Premier at some point in time. Mr. Dworkin lied to Dr. Cordero about his property being safe and in his warehouse, even billed him for storage fees (A:91-93), and concealed from him the fact that Premier was not only in bankruptcy, but also in liquidation. However, it turned out that Dr. Cordero's property was never at Mr. Dworkin's warehouse because it had been abandoned by Mr. Palmer at Mr. Pfuntner's warehouse. (A:79, 81, 88, 90-92)

The attorney for both Mr. Dworkin and Jefferson Henrietta at the pre-trial conference and still today is Karl S. Essler, Esq., Principal at Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450; tel. (585)641-8000, ext. 242; fax (585)641-2702; kessler@fixspin.com; http://fixspin.com/attorneys/karl-s-essler/; http://fixspin.com/.

Dworkin's Jefferson Henrietta warehouse. Nobody knew the property‟s whereabouts.

24. As he kept searching for his property, Dr. Cordero was referred to Trustee Gordon. (A:2) He did not know the Trustee because the latter had failed, just as Mr. Palmer had, to give him notice of the liquidation. Yet, Dr. Cordero was a creditor of Premier as a client of that company, which had custody of his property and the contractual responsibility for its safekeeping. Worse still, the Trustee did not provide Dr. Cordero any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him. (A:16, 17)
25. Eventually Dr. Cordero found out from third parties (A:48, 49; 109, fn. 5-8; 352) that Mr. Palmer had abandoned Dr. Cordero‟s property at a warehouse in Avon, NY, owned by Mr. James Pfuntner (fn. 31 supra). However, the latter refused to release his property lest Trustee Gordon sue him; he too referred Dr. Cordero to the Trustee. When Dr. Cordero contacted him again, not only did the Trustee fail to provide any information or assistance in retrieving his property, but also enjoined Dr. Cordero not to contact him or his office anymore. (A:1, 2)
26. As Chapter 7 trustee, Trustee Gordon is charged with collecting the assets of the debtor's estate in order to distribute them to its creditors and thereby liquidate the estate. (11 U.S.C. §704(a)(1)) (fn. 16 supra) To share in the distribution, the creditors need to be notified thereof by the debtor so that they may file a claim or the debtor may file it for them under 11 U.S.C. §501(c). Since Mr. Palmer failed to do either, it fell to Trustee Gordon to file under that section Dr. Cordero‟s claim as creditor of Premier; otherwise, he would be discriminating against Dr. Cordero by ignoring his claim and either giving away his share in the distribution to other creditors, leaving it with the debtor, or disposing of it to benefit somebody else.
27. Trustee Gordon failed to make a filing on behalf of Dr. Cordero. Actually, his performance in liquidating Premier was so negligent and reckless that he failed to realize from the docket of *Premier*, the very case to which he had been appointed as trustee, that Premier Owner Palmer had stored his clients‟ property, such as Dr. Cordero‟s, in a warehouse owned by Mr. Pfuntner (A:433 entry 17 =A:433/17; 434/19, 21, and 23; 437/52) Nor did he examine Premier's business records, to which he had the right to access under 11 U.S.C. §521(a)(4) (¶103 quoted text infra) as well as actual access (A:45,46 [earlier A:48,49]; 109, fn. 5-8; 352). As a result, he failed to discover the income-producing storage contracts that belonged to the estate. (A:442/94 and 95) But if Trustee Gordon did become aware of the existence of such contracts by asking pertinent questions of Debtor Palmer or reviewing Premier's bank accounts and records, which would have

shown that Dr. Cordero was still paying Premier its monthly storage and insurance fees, then the Trustee intentionally failed to notify Dr. Cordero of Premier‟s bankruptcy and his liquidation of it and to act timely upon such information by filing a claim on his behalf.

28. Dr. Cordero found out who was the judge in charge of the Premier bankruptcy case, namely, U.S. Bankruptcy Judge John C. Ninfo, II, WBNY. (fn. 12 supra) He applied for the Judge to review Trustee Gordon‟s performance and fitness to serve. (A:7, 8) Since a judge can remove a trustee for cause under 11 U.S.C. §324(a), it is obvious that the judge can review a statement of such cause regardless of what the U.S. trustee may have to say on the subject. Nevertheless, Judge Ninfo pretended that he could not do so at the time and merely passed the complaint on to his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt (¶11 supra), whose office is upstairs in the same small federal building as the Judge‟s courtroom and chambers. (id.; A:29)
29. Dr. Cordero had copied Trustee Gordon on his application to Judge Ninfo to review his performance as Premier‟s trustee. (A:11) The Trustee submitted to the Judge false statements and statements defamatory of Dr. Cordero to persuade the Judge that “Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero‟s application". (A:19; 38) Dr. Cordero sent his rejoinder to Trustee Schmitt. (A:30, 37) All she did in response was a substandard investigation based on a “quick contact” (¶78 infra) with Trustee Gordon followed by a letter to Dr. Cordero that was as superficial as it was severely flawed. (A:53) That „quick contact‟ was all Trustee Schmitt needed to do to dispose of the matter, for she had been the one who had moved to have *Premier* converted to a liquidation case under Chapter 7 (A:572/53, 60) more than 9 months after Owner Palmer had voluntarily filed it as a reorganization case under Chapter 11. Yet, Mr. Palmer repeatedly failed to comply with his legal obligations during all those months. His manifest disrespect for such obligations should have alerted Trustee Schmitt and led her to make sure that Mr. Palmer had listed all his creditors or to file those claims herself to protect their interests. Moreover, Trustee Gordon had by now worked on the case for 10 months under her supervision. Had Trustee Schmitt found that Trustee Gordon had failed to notify all creditors or file claims on their behalf and negligently and recklessly gone about liquidating Premier, Trustee Schmitt would also have indicted her own performance as trustee and supervisor. Did she in self-interest pervert her judgment in deciding Dr. Cordero‟s complaint against Trustee Gordon in order to exonerate herself from any blame? (Cf. ¶35 infra et seq.)
30. Dr. Cordero showed how Trustee Schmitt‟s decision was plagued with mistakes of fact and

inadequate coverage of the issues raised by analyzing it in detail in his appeal to her supervisor, U.S. Trustee for Region 2 Carolyn S. Schwartz. (¶14 supra; A:101, 102; 551/19) It was all to no avail because Trustee Schwartz would not investigate the performance of Trustee Gordon, let alone remove him as Premier"s trustee. (Cf. GC:36§7). By remaining on the case, Trustee Gordon was able to participate in the disappearance of Premier assets and benefit from the failure of the Clerk of Court, Paul R. Warren (¶4 supra), to state fees paid, as the discussion of the *Pfuntner* case will show. (GC:21§C infra)

C. The *Pfuntner* Case: Coordinated misconduct to protect Trustee Gordon and Premier Owner Palmer from being implicated in the disappearance of assets in *Premier* and exposing the bankruptcy fraud scheme

1) The commencement of *Pfuntner* led to cross-claims for negligence and reckless trusteeship of Premier against Trustee Gordon, who again made false representations in his motion for dismissal and Judge Ninfo again disregarded them as he did the absence of discovery and the applicable standard of genuine issues of material facts when granting the motion

31. Mr. Pfuntner too found Trustee Gordon‟s performance objectionable. Through his attorney, David D. MacKnight, Esq., (¶5 supra), he filed adversary proceeding *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY (dkt. at A:548-564i; *Pfuntner*). (A:21, 22, 56) That case too landed before Judge Ninfo. Moreover, Mr. Pfuntner had been unable to collect fees from his client, Mr. Palmer, who had sought the benefit of the stay on his creditors‟ collections concomitant with his filing for bankruptcy relief. So Mr. MacKnight tried to recoup those fees from Mr. Palmer‟s clients. Hence, he also sued them, including Dr. Cordero, never mind that there was no privity of contract between them and Mr. Pfuntner whatsoever and that at least Dr. Cordero had paid his fees to Mr. Palmer. In fact, Att. MacKnight was so negligent in his filing that before conducting "an inquiry reasonable under the circumstances", as required under FRBP 9011(b), he named Rochester Americans Hockey Club, Inc., among the defendants even though that Club had never stored anything in Mr. Pfuntner‟s warehouse, whether directly or through Mr. Palmer. (A:364; 401§IV; A:514¶19)

32. In answering the claims in *Pfuntner* against Dr. Cordero, the latter cross-claimed against Trustee Gordon. (A:70, 83, 88) So the Trustee moved to dismiss the cross-claims summarily. (A:133, 135) Dr. Cordero applied for Judge Ninfo to defer his decision until trial (A:142, 143) on the strength of a sound reason: Although *Pfuntner* had been commenced two and a half months earlier, neither the required meeting of the parties nor disclosure –except by Dr. Cordero, who disclosed numerous documents (A:11, 13, 15, 34, 45, 63, 68, 90)- let alone any discovery, had taken place. Consequently, the record had not been developed factually. This prevented the summary disposition of the cross-claims given the genuine issues of material facts raised by Dr. Cordero concerning the Trustee‟s negligence and recklessness in liquidating Premier. (A:148) Moreover, the Trustee‟s claim of immunity was wrong as matter of law given that "The trustee in a case under this title has capacity to sue and be sued". (11 U.S.C. §323(b)) Since "[t]he

trustee in a case under this title is the representative of the estate", (§323(a)), which is collected for the purpose of distributing it to the creditors in order to satisfy their claims on the debtor, the trustee represents the interests of the creditors and parties with an interest in such estate distribution. Hence, the trustee is liable for the wrongful representation of the estate, the creditors, and parties in interest.

33. At the hearing, Judge Ninfo blatantly disregarded the legal standard applicable to a dismissal motion and the need for fact-finding before determining whether the Trustee had performed his trusteeship negligently and recklessly. He did likewise as to the issue whether the Trustee had made false and defamatory representations to the court in violation of FRBP 9011(b)(3). Far from showing any concern for the integrity and fairness of judicial process, he even excused the Trustee's statements as merely "part of the Trustee just trying to resolve these issues". (A:275) Thereby he condoned the Trustee's use of falsehood, astonishingly acknowledging in open court his acceptance of unethical behavior, and showing gross indifference to its injurious effect on Outsider Dr. Cordero. The transcript shows that Judge Ninfo reached the predetermined decision to dismiss the cross-claims summarily, the law and the facts notwithstanding. His subsequent conduct and the efforts by other insiders to suppress that transcript confirm it.

2) Trustee Gordon declared *Premier* to be a case with assets for the creditors, hired an auctioneer with Judge Ninfo's approval, and then declared the case with no assets; the docket has no explanation for the disappearance of assets; and Clerk Warren failed to disclose the amount of the Trustee's or the auctioneer's fees

34. Right there at the hearing, Dr. Cordero, appearing by phone, gave notice that he would appeal Judge Ninfo's decision in *Pfuntner* to dismiss his cross-claims against Trustee Gordon. (A:281/13-16) That very day "Trustee's report of no assets (KST)[61] ([was] Entered: 12/18/2002)" on the *Premier* docket. (A:577/107)
35. It was Trustee Schmitt who a year earlier had moved to convert, rather than dismiss, *Premier* from a Chapter 11 Reorganization to a Chapter 7 Liquidation of assets case. (A:572/55, 60) Presumably, by her choice of motion she had indicated that there were assets. In fact, by that time, the record of the bankruptcy of *Premier* had been built for more than nine months. Trustee

[61] KST are the initials of WBNY Case Administrator Karen S. Tacy; http://www.nywb.uscourts.gov/rochester_court_directory_11004.php

Schmitt knew that there were, not just assets, but also a business to sell and to buy. (A:571/50, 55) Then Trustee Gordon was appointed. (A:572/63) To be sure, the docket shows that before and after his appointment there were assets for Premier to sell and for a buyer to buy. (A:571/50, 52, 55, 58; 572/70; 573/71, 575/89 [note the reference to "titled vehicles"]; 575/90, 94, 95) After holding a meeting of creditors (11 U.S.C. §§341, 343; FRBP 2004; A:572/63), the Trustee stated officially "This is an asset case". (A:572/70) In the same vein, the following allegation in Plaintiff Pfuntner‟s complaint pointed to the existence of assets:

> "17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002." (A:24)

36. To begin with, this allegation clearly raised a genuine issue of material fact relating to the negligent and reckless performance of Trustee Gordon, as charged in Dr. Cordero‟s cross-claims against him, and established the need to resolve it only after discovery. Consequently, it highlights how arbitrary and unlawful it was for Judge Ninfo to disregard discovery together with the standard for deciding Trustee Gordon‟s motion to dismiss those cross-claims summarily.
37. The allegation also contains a reference to the fact that seven months after the meeting of creditors there were enough assets for an "Order [97-1], To employ Auctioneer Roy Teitsworth" to be entered after Trustee Gordon‟s application for his employment was approved by Judge Ninfo. (A:576/97) But then no entry was ever made concerning Auctioneer Teitsworth‟s auction of Premier assets, any proceeds, and their disposition, or how much he was paid for his auctioning or for his readiness to perform under any auction contract or agreement with the hiring Trustee. More telling yet, after the entry of the Trustee‟s no-assets report, no other entry reports on any activity conducted by either Trustee Gordon or Trustee Schmitt even though the case was not closed in the following 10 months. (A:577/below 107) Nor is there an entry concerning how Trustee Gordon disposed of the assets previously identified or what event triggered the closing of the case and the payment of his fee. (A:578/above 108) Nevertheless, it is reasonable to assume that the Trustee did not simply sit back to watch how the *Premier* case wound itself up.
38. Therefore, when Trustee Gordon‟s no-assets report was filed (A:577/107), Trustee Schmitt had to inquire what Trustee Gordon had been doing for a whole year. Her cause for investigating him

was all the stronger because his own asset case declaration and consonant acts during that year contradicted his unexpected no-assets report. These circumstances only rendered even more compelling the reason to inquire whether he had discharged this specific duty:

> U.S. Trustee Manual §2-2.1.
>
> > [T]the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**". (emphasis added).
> >
> > http://www.usdoj.gov/ust/r05/pdfs/Ch_7_Case_Admin_Manual.pdf

39. Similarly, his hiring of Auctioneer Teitsworth purportedly to auction assets that then disappeared opened another line of inquiry in connection with this other duty:

> Chapter 7 Case Administrative Manual
>
> 2-2.1. A chapter 7 case should be administered to maximize and expedite dividends to creditors and facilitate a fresh start for the debtors entitled to a discharge. A trustee should not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. Id.

40. Trustee Schmitt had an independent obligation as his supervisor to investigate why Trustee Gordon had hired Auctioneer Teitsworth and whether either or both had unduly benefited therefrom and, if so, to what extent. She also owed it to the creditors to investigate whether the Trustee had wasted the estate by hiring the Auctioneer or by not distributing to them the proceeds of the auction.

> Chapter 7 Case Administration Manual §2.2.1.
>
> > Pursuant to 28 U.S.C. §586(a), the United States Trustee must supervise the actions of trustees in the performance of their responsibilities. The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. The trustee is a fiduciary charged with protecting the interests of the various parties in the estate. Id.

41. The missing information about Premier asset disposition and absence of docket entries were suspicious enough as to provide further causes for Trustee Schmitt to investigate Trustee Gordon. The suspicion arose from a solid source, namely, regulatory provisions,[62] of which she

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[62] Since circa October 17, 2005, a statutory provision furthers the public interest in information and thereby in eliminating bankruptcy misconduct by insiders thus:

> 28 U.S.C. 589b. Bankruptcy data
>
> (b) Reports. –Each report referred to in subsection (a) [trustee's final and periodic reports] shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation

had to be aware well before Dr. Cordero ever found out.

42. Indeed, Dr. Cordero requested specific information about these matters from the Bankruptcy Clerk, Paul R. Warren, Esq., (¶¶4, 15 supra), and Deputy Todd Stickle. They alleged that such information could not be produced because Dr. Cordero had not provided the docket entry number. (A:834, 836, 872, 1011-1022) However, the docket itself (A:548-564i) patently shows that not all entries have numbers, yet some entries make reference to documents. The latter should have been entered on the docket or a public record pursuant to either FRBP 5003 Records Kept By the Clerk, (a) Bankruptcy dockets, or:

> FRBP 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals
>
> (a) Record to be kept.
>
> The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the firm individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.
>
> FRBP 6005. Appraisers and Auctioneers
>
> The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employment of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer.…

43. The Advisory Committee Notes on this rule is illustrative of the type of conduct that judges engaged in before the rule, namely, favoritism, and in which they may still engage even if now the beneficiaries of favoritism are "a small select group of [non-Judiciary and non-DoJ] individuals" (¶1 quoted text, supra):

> FRBP 6005 Advisory Committee Notes:
>
> …The second sentence of the former rule is retained to continue to safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration.

> of data and **maximum possible access of the public**, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media. (emphasis added)

44. It follows that Trustee Schmitt‟s failure to investigate Trustee Gordon upon not just Dr. Cordero‟s initial request (A:37, 38), but also the Trustee‟s questionable conduct, warranted in turn her being investigated either for favoritism or worse yet, for participating in the cover-up of his and her own misconduct. This is particularly so because the misconduct of other insiders warranted their being investigated too. Was there a common motive and activity? Let‟s see.

3) The efforts of Trustee Gordon, Clerk Warren, Judge Ninfo, and other court officers to prevent at all cost an administrative investigation and appellate review of *Premier* and their role in the liquidation of the assets

45. Clerk Warren issued on December 30, 2002, Judge Ninfo‟s order dismissing at the December 18 hearing Dr. Cordero‟s cross-claims against Trustee Gordon. (A:151) When it arrived in New York City after the New Year‟s holiday, Dr. Cordero mailed to the Bankruptcy Court, as required, the notice of appeal to the District Court the next Thursday, January 9, timely under FRBP 8002(a). (A:153) It was filed in the Bankruptcy Court the following Monday, January 13. (A:1381) Trustee Gordon moved to dismiss it as untimely filed (A:156), even though under FRBP 9006(e) "notice by mail is complete on mailing". (A:164§II; 247§A).
46. Nevertheless, Dr. Cordero moved under FRBP 8002(c)(2) to extend time to file the notice. The Trustee himself acknowledged in his brief in opposition that the motion to extend had been filed timely on January 29. (A:235) No doubt, he had checked the docket to see whether he could resort to the same technicality of untimeliness to escape again liability for his negligent and reckless performance as Premier‟s trustee, just as when he had claimed that the notice of appeal had been filed untimely on January 13. (A:1245¶c) He would not have volunteered, much less simply assumed, that the motion to extend had been filed timely unless he had convinced himself that it was so. Nevertheless, Judge Ninfo disregarded the law and the facts once more and arbitrarily stated that it had been filed untimely on January 30 (A:241). Thereby the Judge conjured up an excuse for sustaining his dismissal of Dr. Cordero's cross-claims against Trustee Gordon. The latter kept silent and thus joined in, and benefited from, a travesty of justice by Judge Ninfo and the manipulation of the docket by Clerk Warren and his deputies[63].
47. In so doing, Trustee Gordon and Clerk Warren violated their duty under the NYS Unified Court

[63] On the manipulation of the docket by Clerk Warren and his deputies, see below and also A:684§1, 702§F, 1244§II, and 1372¶¶141-150. Cf. A:261-262, 283, 288.

System, Part 1200, Rules of Professional Conduct, which provides thus:

> RULE 8.4: Misconduct
>
> A lawyer or law firm shall not: (emphasis added)
>
> (a) violate or attempt to violate the Rules of Professional Conduct, ***knowingly assist*** or induce another to do so, or do so ***through the acts of another***;
>
> (b) engage in illegal conduct that adversely reflects on the lawyer"s honesty, trustworthiness or fitness as a lawyer;
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) engage in conduct that is prejudicial to the administration of justice;
>
> (f) ***knowingly assist a judge*** or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
>
> (g) [discrimination]
>
> (h) engage in any other conduct that adversely reflects on the lawyer"s fitness as a lawyer.

48. Trustee Gordon unwittingly revealed his motive for having handled Premier"s liquidation negligently and recklessly when in his "Memorandum of Law in Opposition to Cordero"s Motion to Extend Time to Appeal" he stated: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00."[64] (A:238-239) What the Trustee was implicitly saying was that he had no financial incentive to do his job and did not recognize that his "fiduciary"s obligation is to render loyal and disinterested service which his position of trust has imposed upon him".[65]

49. But why did Trustee Gordon ever think that arguing how little he would earn from liquidating Premier would in Judge Ninfo"s eyes excuse his having done a hack job? After having brought thousands of cases before the Judge (fn. 12 supra), the Trustee knew that the Judge condoned his attitude of working as trustee only for the money and lacking any sense of fiduciary

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[64] This statement, based on 11 U.S.C. §330(b), does not exclude the application under subsection (a)(1)(A) and (B) for "reasonable compensation for actual, necessary services rendered by the trustee…and reimbursement for actual, necessary expenses". Consequently, the question of how much Trustee Gordon was paid under any concept for his work as trustee for Premier is valid and still remains unanswered. If such application was made, it had to comply with Appendix A to Part 58 [28 C.F.R.]-Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330. These Guidelines provide that "(a)(2) The United Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994". 61 FR 24890, May 17, 1996. The text of the Appendix is found in the Bankruptcy Code by West, fn. 16 supra.

[65] Revision note to 11 U.S.C. §330. Compensation of officers, in the 1978 Senate Report 95-989. http://uscode.house.gov/pdf/2008/2008usc11.pdf

responsibility toward those for whose benefit he was supposed to act, namely, the creditors and parties in interest. Bound by a complicit relationship, neither deemed that they owed a duty of trust to all parties, including One-time, Pro se Outsider Dr. Cordero. They only understood their common motive: money. What they owed to each other was what all insiders still do among themselves, to wit, to protect each other, for if one falls, he or she can bring down the others. That is why Premier Owner Palmer, who knew how and for whose benefit his company's assets had been disposed of, had to be protected from any liability and any risk thereof. Consequently, all the insiders had to do their part in keeping him away from the court. (Cf. fn. 88 infra)

4) Clerk Warren and his Case Administrator disregarded their duties in handling Dr. Cordero's application for default judgment against Premier Owner Palmer

50. Mr. Palmer lied to Dr. Cordero about the safety and whereabouts of his property, which he had abandoned at Mr. Pfuntner's warehouse, even though he continued to take in his storage and insurance fees. So Dr. Cordero impleaded him in *Pfuntner* as third party defendant. (A70, 78§A, 87§§A-B) As debtor in *Premier* (A:433/13, 12), Mr. Palmer was already under the bankruptcy court's jurisdiction. What is more, he had filed a voluntary bankruptcy petition, which means that he had been the one to subject himself to the court's jurisdiction in order to receive its protection from creditors. Yet, he never answered the summons or a single paper served on either him or his attorney, Mr. Raymond Stilwell[66], by Dr. Cordero, and never appeared in court, whether in person or through an attorney. As a result, Dr. Cordero timely applied on December 26, 2002, under FRCP 55, applicable under FRBP 7055, for default judgment for a sum certain. (A:290-296) (A:294, 1392)
51. Under Rule 55, Bankruptcy Clerk Paul Warren, an attorney,[67] had an unconditional obligation upon receiving such an application: "the clerk **shall** enter the party's default". (emphasis added; ¶4 supra) Yet, he failed to do so. Nor was any communication sent from either his office or any other to Dr. Cordero concerning his application. So he called both the District and the Bankruptcy Courts. In the latter, Case Administrator Karen Tacy[68] told him that his application

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[67] http://www.nywb.uscourts.gov/rochester_court_directory_11004.php

[68] Id.

was just in the chambers of Judge Ninfo, who had not taken action on it because he considered the issue of damages premature. It should be noted that the issue of damages does not alter in any way whatsoever the clerk‟s unconditional duty to enter default, for the duty flows from the failure of the summoned party to appear and answer the summons. Entry of default simply certifies that fact. So, why did Clerk Warren and Case Administration Tacy even show Judge Ninfo Dr. Cordero‟s application for defaulting Mr. Palmer?

52. Dr. Cordero wrote to Judge Ninfo stating the grounds why the application should be granted and requesting that to effectuate such grant he make the corresponding recommendation and transmit it to the District Court, which was the one with the authority to enter default judgment. (A:302) Indeed, it was not for Judge Ninfo to become the advocate of Mr. Palmer, who had shown contempt for judicial process –that is, when it did not protect him from his creditors- by ignoring the summons, the complaint, and every other paper served on him or his attorney. Rather, if after being defaulted Mr. Palmer wanted to contest damages on any grounds, then he had to do what any other person dealing at arm‟s lengths with all the other parties before an unbiased court would have to do: appear and defend himself. But that was precisely what Judge Ninfo, Clerk Warren, and the other insiders could not allow to happen; so they protected Mr. Palmer.

53. It was only on February 4, that Clerk Warren entered default against Mr. Palmer. (A:303) That was 41 days after Dr. Cordero had applied for it. (A:290) The Clerk lacked any legal justification for his delay (A:335, 337)…but not a motive, for it was not by chance that he entered default on that date. It was on February 4, that Judge Ninfo made his recommendation to District Judge Larimer, his Colleague upstairs in the same little, cozy federal building (¶11 supra), not to enter default judgment against Mr. Palmer. (A:304) This showed that Clerk Warren was taking orders from Judge Ninfo in disregard of his duty under law.

54. Likewise, Clerk Warren‟s deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero‟s application upon receiving it. Where did she keep it until entering it out of sequence on “EOD 02/04/03” (A:553/51; 554/46, 49, 50, 52, 53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer. The arbitrary placement, numbering, and untimeliness of docket entries are evidence that these officers of the court engaged in docket manipulation that served the same purpose as Judge Ninfo‟s recommendation to Judge Larimer, that is, to deny Dr. Cordero‟s default judgment application and thereby protect Mr. Palmer and themselves. The insiders were acting

intentionally; they had coordinated their misconduct. (A:640§§K, L; 1370§D) [69]

5) District Judge Larimer joined the insiders' coordinated misconduct to protect themselves by denying the application for default judgment against a party that could involve them in the disappearance of assets and the non-publication of questionable fees

55. Judge Larimer accepted Judge Ninfo"s recommendation not to enter default judgment against Premier Owner Palmer based on Judge Ninfo"s astonishing prejudgment that upon inspection of Dr. Cordero"s property that had been stored by Premier "it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993". (A:306) To make this statement Judge Ninfo disregarded the only available evidence concerning the condition of the property and which led to the reasonable conclusion that it had sustained damage or loss. (A:324¶¶46-50)
56. Dr. Cordero raised a motion (A:314) to request that Judge Larimer disregard Judge Ninfo"s imposition of the arbitrary requirement to establish damage or loss sustained by his property and his prejudgment of the property"s condition, and abide by the law by entering default judgment. In his letter accompanying his motion, he reproduced the warning in bold letters written across the face of the summons (A:311):

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE THIRD-PARTY COMPLAINT.

PAUL R. WARREN
Clerk of the Bankruptcy Court

57. Judge Larimer did not even acknowledge either the motion or the letter. Instead, he stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest". (A:339-340) The District Judge did not cite any authority at all for anything, let alone for disregarding the plain language of FRCP 55 and imposing a requirement not only not contained therein, but also contrary to the rationale for default judgment, namely, that the defendant

[69] See also Clerk Warren's pattern of disregard for his duties and unlawful attempt to deprive Dr. Cordero of transcripts, GC:48§6) infra.

received notice of judicial process against him, ignored it by neither timely appearing and defending it, and thereby consented by his inaction to satisfy the claim against him.

58. Worse yet, Judge Larimer compounded his rubberstamping of Judge Ninfo‟s recommendation by basing his own March 11 order denying entry of default judgment on a gross mistake of fact, to wit, that the application for default judgment did not involve a sum certain. (A:339) To make that mistake, he disregarded five papers stating that the application did involve a sum certain:
    a. the Affidavit of Amount Due (A:294);
    b. the Order to Transmit Record and Recommendation (A:304);
    c. the Attachment to the Recommendation (A:306);
    d. Dr. Cordero‟s March 2 motion to enter default judgment (A:314, 327¶¶57-58), and
    e. his March 19 motion for rehearing re implied denial of his earlier motion (A:342, 344§6).
59. Dr. Cordero moved the District Court for a rehearing (A:342) of his unanswered motion, denied by implication, so that Judge Larimer could correct his outcome-determinative mistake of fact and acknowledge that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement was perfected pursuant to the plain language of FRCP 55. In addition, he pointed out that Judge Ninfo could not provide the "proper forum" to conduct any such "inquest" precisely because he had prejudged its outcome in disregard of the only evidence available pointing to the loss and damage of his property.
60. All reasoning was to naught, for Judge Larimer dashed off a no-reason, "in all respects" denial of the motion. (A:350) His role was to support the insiders by protecting Mr. Palmer. Why?
61. The insiders had and still have to prevent Mr. Palmer from being investigated. If he were deposed or examined under oath, he would be asked about what he told Trustee Gordon about his clients or what the Trustee revealed that he knew about them. Those clients had contractually entrusted their property for storage and paid storage and insurance fees to him. They could legally file claims against Mr. Palmer as creditors in his own bankruptcy of Premier, either because he had failed to maintain such property under the safety conditions provided for in the contract or because he had abandoned it, as in the case of Dr. Cordero‟s. Mr. Palmer‟s testimony could support the charge that the Trustee had performed negligently and recklessly to the detriment of Mr. Palmer‟s clients, to whom the Trustee owed a fiduciary duty as creditors or parties in interest.
62. Even more risky from the insiders‟ point of view, Mr. Palmer could tell what happened between

the Trustee‟s surprising "no-assets report" entered on December 18 (A:577/107), and the next entry over 10 months later concerning the Trustee‟s "Report of No Distribution", the closure of the case, and even the "fee" or other compensation that the Trustee was paid (A:577/below 107). In particular, Mr. Palmer could testify to what happened with the assets of Premier, their auction by Auctioneer Roy Teitsworth, and the proceeds thereof. He could take the 5th Amendment in order not to incriminate himself in the crime under 18 U.S.C.§152(5-7) of „knowingly and fraudulently receiving, transferring, or concealing any of the property involved in a case under title 11 or obtaining a benefit for acting or forbearing to act in such case‟; or he could confess to having split the proceeds of the auction or being allowed to keep the assets in exchange for payment to insiders. In either case, he would trigger a criminal investigation. It would start with him, but would not stop there, for he could engage in plea bargaining in order to secure a measure of immunity (11 U.S.C. §344 and 18 U.S.C. §6001 et seq.) or leniency in exchange for testifying against „bigger fish‟ coordinating their misconduct as insiders of the legal and bankruptcy systems in thousands of cases involving a huge aggregate dollar value to further a common motive: to benefit unlawfully from a bankruptcy fraud scheme.(fn. 57 supra)

63. The investigation of such scheme, not to mention incrimination in it, could have devastating rippling consequences. It could lead to the reopening of *Premier* due to fraud (11 U.S.C. §350(b)) and the removal of Trustee Gordon not just from that case, but automatically also from all his thousands of cases. (11 U.S.C. §324; 28 C.F.R. §58.6(a)(1) and (11)[70]) Any insider could deem it in his or her interest to cut a deal with the authorities to implicate yet „bigger fish‟ in the scheme. "Bigger fish" could include, not just Judge Ninfo[71] and Judge Larimer (A:1332§7; Add:1007§V), but also the circuit judges who have protected them from any investigation and disciplinary action and who reappointed Judge Ninfo in 2005 despite compelling evidence of his bias, arbitrariness, and abuse of power in *Premier*, *Pfuntner*, and *DeLano* to participate in the scheme or his toleration of it[72]. The much "bigger fish" could be, as discussed below, Former Circuit Judge Sonia Sotomayor, who was the presiding judge in *DeLano* (CA:2180) and is now

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[70] http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf

[71] a. http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf;
b. http://Judicial-Discipline-Reform.org/docs/DrRCordero_v_JJNinfo_WBNY_11aug3.pdf

[72] http://Judicial-Discipline-Reform.org/docs/1DrCordero_v_reappoint_JNinfo.pdf of 17mar5
http://Judicial-Discipline-Reform.org/docs/2DrCordero_v_reappoint_JNinfo.pdf of 4aug5
http://Judicial-Discipline-Reform.org/docs/3DrCordero_v_reappoint_JNinfo.pdf of 6sep5

Justice Sotomayor; and Justice Ginsburg, who as the Circuit Justice (28 U.S.C. §42, 45(b)) for the Second Circuit has supervisory responsibility for it, is kept current of developments affecting the administration of justice in the Circuit, was informed repeatedly of the evidence of the scheme in *Pfuntner* and *DeLano,* and had the duty to report it to the U.S. attorneys for the sake of the integrity of judicial process.[73] (18 U.S.C. §3057(a); A:1265[74])

64. The scandal would shake the Federal Judiciary to its foundation. The biggest fish would wield their ultimate judicial power, pull the strings of their most influential connections in the Department of Justice and Congress, and shift all the blame on the small fish in the recesses of the pond. The small fish could soon find themselves kicked out of the water and fluttering convulsively on the shore. That explains why in order to avoid such risk, Judge Ninfo had to protect the misconduct of every insider and be biased against Dr. Cordero at every turn.

6) Att. MacKnight and Client Pfuntner disobeyed two orders of Judge Ninfo that they had sought, approached him ex-parte, and made disingenuous submissions to him, but benefited from their insider status when the Judge disregarded the law and the sanctions requested by Dr. Cordero while imposing on him strict discovery orders

65. At the only meeting ever held in the adversary proceeding, the pre-trial conference[75], Judge Ninfo orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner‟s warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The Judge stated that within two days of receiving them, he would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to Judge Ninfo and the parties (A:365, 368). Nonetheless, the Judge never answered that letter or informed Dr. Cordero of the most convenient date.

66. Dr. Cordero asked why at a hearing on February 12, 2003. The Judge said that he was waiting to hear from Mr. Pfuntner‟s attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The Judge took no action and the six dates lapsed.

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[73] http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf

[74] http://Judicial-Discipline-Reform.org/docs/make_18usc3057_report.pdf

[75] At the pre-trial conference, Att. Karl Essler (fn. 60 supra) represented Mr. David Dworkin and Jefferson Henrietta Associates, the warehouse that he owned and managed; both had been brought in as third party defendants by Dr. Cordero.

67. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Att. MacKnight contacted Judge Ninfo on March 25 or 26 ex parte –in violation of FRBP 9003(a). (A:372). Reportedly, the Judge stated that he would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.
68. Dr. Cordero raised a motion on April 3 to ascertain this reversal of Judge Ninfo‟s position and ensure that the necessary transportation and inspection measures were taken. (A:378) On April 7, the same day of receiving the motion (A:557/75, 76) and thus, without even waiting for a responsive brief from Att. MacKnight, the Judge wrote to Dr. Cordero denying his request to appear by telephone at the hearing –as he had been allowed to do on four previous occasions– and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester. (A:386)
69. Then Att. MacKnight raised a motion. (A:389) It was so disingenuous that, for example, it was titled "Motion to Discharge Plaintiff from Any Liability…" and asked for relief under FRCP 56 without ever stating that it wanted summary judgment while pretending that "as an accommodation to the parties" Plaintiff had not brought that motion before. Yet, it was his client, Plaintiff Pfuntner, who had sued parties even without knowing whether they had any property in his warehouse, just because their names appeared on labels. (A:364) Dr. Cordero analyzed in detail the motion‟s mendacity and lack of candor. (A:396, 410) Despite its obligations under Rule 56(g) to sanction a party proceeding in bad faith, Judge Ninfo disregarded Att. MacKnight‟s disingenuousness, just as he had shown no concern for the false statements that Trustee Gordon had submitted to him to avoid the review requested by Dr. Cordero of his performance as trustee for Premier. How much commitment to fairness and impartiality would you expect from a judge that exhibits an „anything goes‟ standard that includes the admission of dishonest statements? If that is what Judge Ninfo allows attorneys to get away with, what will he not allow or ask in-house court officers to engage in?
70. Nor did Judge Ninfo impose on Plaintiff Pfuntner and Att. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the Judge‟s first order to choose among the dates proposed by Dr. Cordero for the inspection of his property at Mr. Pfuntner‟s warehouse. By contrast, when it suited Mr. Pfuntner, Judge Ninfo ordered Dr. Cordero to carry out the inspection within four weeks or the Judge would order the containers bearing labels with his

name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

71. Mr. Pfuntner and Att. MacKnight agreed with Dr. Cordero that the inspection of his property at Mr. Pfuntner‟s warehouse in Avon, NY, would take place on May 19, 2003. (A:426, 427, 491, 492) Dr. Cordero informed Judge Ninfo and all the parties of that agreement and the date. (A:490, 493, 494) On May 19, Dr. Cordero flew to Rochester and inspected the property in Avon. He did so in spite of the fact that neither Att. MacKnight nor Client Pfuntner showed up for the very inspection that they had urged Judge Ninfo to order. Worse yet, they had taken none of the measures necessary for the inspection. (A:365)
72. At the hearing two days later, on May 21, Dr. Cordero reported on the damage and loss that his property had sustained. His report was uncontroverted and approved by Judge Ninfo. He also moved for sanctions and compensation due to Att. MacKnight‟s and Mr. Pfuntner‟s failure to comply with the discovery orders. Judge Ninfo asked that Dr. Cordero submit a motion therefor separate from his earlier motion (A:396) and even took the initiative to ask that he resubmit his application for defaulting Premier Owner David Palmer, who had abandoned his property at Mr. Pfuntner‟s warehouse.
73. Dr. Cordero complied with the instruction, moving for sanctions against Att. MacKnight and Mr. Pfuntner for disobeying the discovery orders (A:508, 510) and reapplying for default judgment against Mr. Palmer (A:474). Moreover, because of false representations that Att. MacKnight made to Judge Ninfo after the inspection (A:495), Dr. Cordero moved for sanctions against him (A:500, 503). Once again Judge Ninfo protected these insiders from any harm and granted neither the motions nor the application. Far from it, he required Dr. Cordero to travel to Rochester to argue the false representations motion. (A:505) Then he objected to the absence of Dr. Cordero‟s travel tickets in the discovery sanctions motion. But even though Dr. Cordero provided it (A:730-733), Judge Ninfo still did not grant it.
74. The Judge also raised objections to the proper service of Mr. Palmer. However, the Judge himself had found that “on November 22, 2002, an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint”. (A:305, 689§2) After Dr. Cordero‟s first application to default Mr. Palmer, it was enough for the Judge simply to recommend to his Co-Insider District Judge Larimer that the application not be granted and that Dr. Cordero be forced to inspect his property to determine damage and loss to it (A:306;

GC:30§0). But after he requested that Dr. Cordero resubmit it, he had to devise another pretext to deny it again; so he came up with that one about defective service on Mr. Palmer without caring to check his own earlier negative recommendation, whereby he missed his statement therein attesting to proper service; but if he did check his recommendation and see his own statement, then he disregarded it with wanton indifference to the truth.

75. By showing such blatant bias, arbitrariness, and abuse of judicial power, Judge Ninfo has encouraged the misconduct of insiders, whether attorneys or court staff. Through that showing, he has also given them proof that he will not hesitate to abuse his power either to their detriment if they cross him or to their benefit if they tolerate or even join his misconduct in coordination with other insiders to run a bankruptcy fraud scheme. The degrading effect of the standard of conduct that he has set by example manifests itself in the facts of blatant misconduct by attorneys and others in the *DeLano* case. (GC:41§D infra)

7) Trustee Schwartz relied on the self-serving statements of Complained-against Trustees Gordon and Schmitt, whereby she intended the reasonable consequences of her misreliance: she joined their cover-up of the bankruptcy fraud scheme and illustrated the Congressional finding of "absence of effective oversight"

76. After Dr. Cordero made an application to Judge Ninfo to review Trustee Gordon"s performance as trustee of Premier (A:7, 8), and the Judge passed it on (A:29) to Trustee Schmitt, her investigation (A:53) was so flawed that Dr. Cordero appealed (A:101, 102) to her supervisor, U.S. Trustee for Region 2 Carolyn S. Schwartz (¶14 supra). She pretended to rely on the rulings of Judge Ninfo to support her decision. Yet, she only misstated what he did, for it was objectively wrong to affirm that "We understand that the Bankruptcy Court…ruled that Mr. Gordon was not negligent in his administration of this bankruptcy estate" (A:364a) and "I understand that the Bankruptcy Court ruled that Mr. Gordon did not defame you" (A:364b). Far from it, what the Judge did was precisely the opposite, namely, to grant the Trustee"s motion for summary dismissal under FRBP 7012 (A:133-135) and thus, without deciding substantively the cross-claims that Dr. Cordero had brought against him (A:83§F). That is why Dr. Cordero had applied for the deferment of the dismissal motion until trial given that his cross-claims raised genuine issues of material fact that could only be decided after discovery and on the merits. (A:142, 143) But discovery had not even started. Nevertheless, the Judge arbitrarily disregarded

the applicable standard of decision so as to grant the motion for the benefit of Trustee Gordon, himself, and the other insiders.

77. In fact, Judge Ninfo‟s dismissal order of December 30 (A:151) did not even contain the terms "negligence" or "recklessness" or "defamation", nor did it state any reasons for dismissal. It was merely a fiat. Therefore, when in her letter of the following January 9 (A:364a) Trustee Schwartz wrote what „we or I understood‟ the Judge to have ruled, her understanding could not possibly have resulted from reading the Judge‟s order. Nor was it from reading the transcript of the hearing (A:263), which was not requested orally by Dr. Cordero until the second week of January, not requested in writing until the fourth (A:261); and not sent to him until the end of March (A:283). This only leaves the possibility of Trustee Schwartz having „understood‟ what Judge Ninfo had ruled by learning about it in a conversation with the Judge himself during an improper ex-parte contact with him or by relying on hearsay, that is, whatever somebody else told her the Judge had said at the hearing. If the persons on whom she relied to find out about the hearing were Trustee Gordon or Trustee Schmitt, then the information that she received was not only wrong, but also self-servingly so. Her reliance on their information was her fault, though.

78. Indeed, in her letter Trustee Schwartz did not affirm that she conducted an independent investigation, but simply that she reviewed the materials submitted by Dr. Cordero and „Trustee Schmitt‟s letter of October 22 (A:53) and the material on which she relied‟. However, Trustee Schwartz failed even to notice that the gravamen of Dr. Cordero‟s appeal from Trustee Schmitt‟s letter was precisely that her investigation was substandard because it consisted of a "Quick contact conducted instead of "thorough inquiry"" (A:107§C) This "thorough inquiry" is what Judge Ninfo had written "I am confident that Ms. Schmitt will make" in his letter (A:29) informing Dr. Cordero that he had referred to her his application for the Judge to review Trustee Gordon‟s performance as trustee for Premier. But Trustee Schwartz showed, just as Trustee Schmitt had, a "Failure to realize the inadequacy of a mere chatty supervisory „contact"". (A:121§22) That could only have been the extent of Trustee Schmitt‟s „contact‟ with Trustee Gordon given that Trustee Schmitt only gave herself one, and at the most two, days before dashing off her October 22 letter (A:53) in response to Dr. Cordero‟s detailed analysis and request to her (A:37, 38) to review Trustee Gordon‟s performance. Moreover, her own previous letter (A:30) to Dr. Cordero in reaction to the initial review application referred to her by Judge Ninfo indicated the meager

extent of her "investigation into this matter": "we have contacted Mr. Gordon for response". Any other "part" of that investigation appears from her October 22 letter to have been limited to "speaking with David MacKnight" and learning that Client Pfuntner's was "a Complaint to determine, inter alia, what property stored at the Avon location belongs to whom." (A:54) Since that „chatty contact" was what underlay Trustee Schmitt's letter on which Trustee Schwartz relied for her January 9 letter (A:364a) to Dr. Cordero, her letter was equally superficial and flawed. To realize how it was a classic example of „garbage in, garbage out", compare their reliance on such „chatty contact" and its product with what conducting the "thorough inquiry" that Judge Ninfo had expressed confidence Trustee Schmitt would make would have entailed in order to meet minimum standards of competence and necessity, let alone sufficiency, as described in the appeal to Trustee Schwartz (A:103¶5):

> 5. A "thorough inquiry" is an investigative exercise that entails, at a minimum:
>
> - reading closely the terms of the problem to the point of mastering its key issues, names, and relations;
> - choosing evaluating standards and formulating the specific questions on which to focus the exercise;
> - requesting documentary evidence and interviewing third-parties for independent corroboration of what is alleged to have been done as well as for unearthing what was embarrassing or incriminating enough not to have been even mentioned;
> - asking all along tough whys, hows, and whens about the relevant acts and omissions; and finally
> - reaching concrete findings and conclusive value judgments in which the specific questions of the inquiry are determined.
>
> Alas!, there is no evidence that this is the kind of exercise that Assistant Schmitt undertook.

79. Moreover, Trustee Schwartz inexcusably misstated a key issue of Dr. Cordero's review application and appeal: Quite clearly he did not claim that Trustee Gordon had failed to take possession of his stored property as part of Premier's estate to subject it to distribution. Rather, he faulted Trustee Gordon for failing to protect his claim against Premier as client-creditor of it by either filing a claim on his behalf or notifying him of the Trustee's liquidation of Premier so that Dr. Cordero could file his claim and share in the distribution. (cf. A:104§§5-6)
80. Likewise, Trustee Schwartz failed to realize that if she considered satisfactory the "several actions" taken by Trustee Gordon (A:364a 3rd¶), then she indicted him on another key issue of Dr. Cordero's review application and appeal, i.e., Trustee Gordon's failure to "furnish such

information concerning the estate and the estate‟s administration as is requested by a party in interest" (11 U.S.C. §704(a)(7); A:1, 2), to the point of enjoining Dr. Cordero not to contact his office anymore. (A:104§§11, 13, 14, 15; cf. 2, 9¶¶8-9) If it is assumed arguendo that Trustee Gordon obtained adequate information through satisfactory "several actions", then his refusal to provide any information to Dr. Cordero was intentional and blameworthy. The inconsistency of Trustee Schwartz makes the charges of inconsistency leveled against Trustee Schmitt applicable to her too. (A:104§§17, 18)

81. In the same vein, the application/appeal pointed out specifically the numerous instances of Trustee Gordon‟s failure to take action and to finally take it only in reaction to Dr. Cordero‟s prodding. (A:104§§6, 10, 19, 20) These belated and reluctant actions by Trustee Gordon were what Trustee Schwartz pretended constituted the satisfactory "several actions" taken by him, for what else was there to constitute such? Let‟s see.

82. Trustee Gordon declared *Premier* a case with assets for distribution, spent nine months on the case, hired Auctioneer Roy Teitsworth with Judge Ninfo‟s approval, and according to Trustee Schwartz‟ own statement, then "the trustee moved to sell the trailers only to learn that they also had liens on them". (A:364b) Thereby Trustee Schwartz only confirmed the pertinence of Dr. Cordero‟s question: "Failure to wonder „what has Trustee Gordon been doing [during all that time]?!‟" (A:118§20). Since the objective answer is that he was only getting ready to file a no-assets report (A:577/107) and a Report of No-Distribution (A:577 last entry), which was incompatible with his duty (¶¶38, 40 supra), it follows that Trustee Gordon‟s trusteeship of Premier was negligent and reckless.

83. Therefore, the evidence before Trustee Schwartz raised questions that she conveniently failed to investigate: Was hiring Auctioneer Teitsworth a way to create fictitious work for an insider? Was he paid? Was the estate wastefully diminished thereby? Was Clerk Warren‟s failure to disclose the fees paid part of the cover up? Was Judge Ninfo‟s denial of Dr. Cordero‟s application to enter default judgment against Mr. Palmer or even summon him to court part of the cover-up of an unlawful distribution of assets or of the proceeds of their auction? Was the failure to make any entries on the docket concerning the assets to be auctioned part of the cover up of the disappearance of those assets?

84. These and many other incisive questions warranted an investigation by both Trustee Schwartz and Trustee Schmitt had they wanted to get to the bottom of the opaque, questionable, and

suspicious conduct of Trustee Gordon, Judge Ninfo, Clerk Warren, and other insiders of the bankruptcy and legal systems. But they preferred willful ignorance limited to „chatty contacts" among themselves that did not upset their relation to those insiders.

85. It follows that Trustee Schwartz committed the crass managerial offense of limiting what she "reviewed" (A:364a) to the very same people that had the most pressing vested interest in distorting the facts and concealing them under fabricated explanations: Complained-against Trustees and Attorneys Gordon and Schmitt. Her offense was compounded by her own vested interest in preventing her own supervision of her supervisees and appointees from being found so inadequate as to constitute misconduct. Had Trustee Schwartz conducted the type of "thorough inquiry" that Judge Ninfo had been confident Trustee Schmitt would make (¶78 supra), she could have found Trustee Gordon involved in the disappearance of Premier assets and in taking undue fees or arranging for "professional persons" (11 U.S.C. §327) or even others to receive them too. Such findings would open the way for more of his 3,383 cases (¶3 supra) to be investigated. This would in turn lead straight to Trustee Schmitt being investigated for her deficient or complicit supervision that injudiciously allowed single trustees to concentrate in their hands such an unmanageable number of cases, such as Trustee Gordon"s 3,383 (fn. 18 supra) and Trustee Reiber"s 3,909 (fn. 34 supra). That overwhelming caseload made it impossible for the Trustees to "collect and reduce to money the property of the estate…investigate the financial affairs of the debtor…furnish such information concerning the estate and the administration of the estate as is requested by a party in interest", let alone do everything else that a trustee is charged with doing personally. (11 U.S.C. §704(a)(1, 4, 7) et seq.; 28 C.F.R. §58) One after the other, Trustees Schwartz, Schmitt, Gordon, and Reiber would be found to have intended the reasonable consequences of their acts: the setting up of a rubberstamping bankruptcy petition mill that by its own nature would inevitably further degenerate into a bankruptcy fraud scheme.

86. By Trustee Schwartz failing to pursue those questions in a "thorough inquiry", she confirmed a key finding by Congress that led to its passage of the Bankruptcy Fraud Prevention and Consumer Protection Act: "absence of effective oversight". (¶14 quoted text, supra) It falls now to the Departmental Disciplinary Committee to investigate her and the other misconducting attorneys.

D. The *DeLano* Case: bankruptcy fraud through concealment of assets covered up to make a retirement gift to an insider

87. M&T Bank (fn. 36 and 41 supra) extended a loan to Mr. David Palmer (fn. 22 supra) and his moving and storage company, Premier Van Lines, Inc., (fn.21 supra). It took a security interest in, among other things, the storage crates that he had bought with the loan proceeds. Mr. Palmer stored some of those crates containing the property of his clients, including Dr. Richard Cordero, Esq., in the warehouse of Mr. James Pfuntner in Avon, NY, (fn. 31 supra), and others in that of the Jefferson Henrietta Associates in Rochester, NY, owned and managed by Mr. David Dworkin (fn. 60 supra). At some point after Mr. Palmer filed for bankruptcy relief from his creditors (*In re Premier Van Lines*, 01-20692; (docket at A:565-578a), Mr. Dworkin told M&T Bankruptcy Officer David Gene DeLano (fn. 35 supra) that either M&T moved the Palmer crates out of his warehouse or paid storage fees. Mr. DeLano was working in M&T bankruptcy department collecting money from delinquent commercial borrowers and even liquidating their companies. (Transcript page 17, lines 14-19 = Tr:17/14-19) Actually, he was in charge of the defaulted loan to Premier. Mr. DeLano moved the crates out as soon as possible to cut M&T‟s losses and did so without regard for the owners of the property. This follows from his own testimony at the evidentiary hearing held at the initiative of and before Judge John C. Ninfo, II, WBNY, (fn. 12 supra) on March 1, 2005. (Pst:1285¶70 and GC:14§A supra)

88. At that evidentiary hearing, Mr. DeLano admitted that he told Dr. Cordero that he had seen the crates with his property in Mr. Dworkin‟s warehouse and that they were safe, but that in fact he never saw those crates at all. At the time, Dr. Cordero relied on Mr. DeLano‟s statement only to be filled with anxiety when his property turned out never to have been in Mr. Dworkin‟s warehouse. Mr. DeLano did not know its whereabouts; neither did Mr. Dworkin; Mr. Palmer had disappeared; and the trustee liquidating Premier, Kenneth Gordon, Esq., (¶3 supra) even enjoined Dr. Cordero not to contact his office to ask about the matter. (A:1, 2, 7) As a result, Dr. Cordero was forced to spend considerable effort, time, and money to figure out and find where his property was. He eventually found it in the warehouse of Mr. James Pfuntner. (fn. 31 supra) So after the latter commenced *Pfuntner v. Trustee Kenneth Gordon et al.,* 02-2230, WBNY, (docket at A:548-564i; GC:21§C supra), Dr. Cordero brought Mr. DeLano into it as a third-party defendant. (A:70, 82§D, 87§A) When Mr. DeLano and Wife Mary Ann, filed for bankruptcy under Chapter 13 (D:23-60), they named Dr. Cordero among their creditors (D:40).

1) Who the DeLanos are and their incongruous, implausible, and suspicious declarations in their bankruptcy petition

89. Mr. DeLano is not an average debtor in bankruptcy, but rather the most unlikely one. At filing time, he had worked in financing for 7 years and at two banks as an officer for 32 years: 39 years managing money!…and counting, for he continued working as an officer in precisely M&T bankruptcy department. (Tr:15/17-16/15) As such, he qualified as an expert in how to assess creditworthiness and remain solvent to be able to repay his creditors. Thus, Mr. DeLano is a member of a class of people who should know better than to go bankrupt. For her part, Mrs. Mary Ann DeLano was a specialist in business Xerox machines, and as such a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines. Hence, the DeLanos are[76] professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They must be held to a high standard of responsibility.
90. Mr. DeLano is certainly among the longest insiders of the local bankruptcy and legal systems. He wanted to end the rainbow of his and his wife"s careers in the golden pot of assets that they had been stashing away as they prepared their retirement. The elimination of their debts through a fraudulent bankruptcy petition was the last step in that preparation. So exactly three years before Mr. DeLano, age 62 (Add:939), planned to retire, they filed for bankruptcy under "Chapter 13-Adustment of Debts of An Individual With Regular Income", thereby avoiding liquidation under Chapter 7 after retirement. Likewise, he used his experience with borrowers that use or abuse the bankruptcy system, his connection with key insiders of both the bankruptcy and legal systems, and his knowledge of how to petition them even wrongfully but successfully for bankruptcy relief.
91. Consequently, their bankruptcy petition warrants close scrutiny. This is particularly so because their declarations in the Schedules A-J (D:29-46) and Statement of Financial Affairs (D:47-53) attached to their petition (D:27-28) are so incongruous, implausible, and suspicious as to raise red flags even for lay persons, such as those that make up juries and examine with a fair mind, general knowledge, and common sense the evidence presented to them. So the DeLanos declared, among other things:
    a. that they had in cash and on account only $535 (D:31); yet, they also declared that, after

[76] http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§II

their own liberal deductions of living expenses from their monthly income, their monthly excess income was $1,940 (D:45), and stated, in their Financial Affairs Statement (D:47) and their 1040 IRS forms for 2001-2003 (D:186-188), that they had earned $291,470 in just the three years prior to their filing;

b. that their only real property was their home (D:30), bought in 1975 (D:342) and appraised in November 2003 at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and receiving during that period through a string of eight mortgages (D:342-354[77]; SApp:1654[78]) at least $382,187, which they did not account for (Add:1057¶53) *Mind-boggling!*

c. that they owed $98,092 on credit cards –spread thinly over 18 of them (D:38) to ensure that their issuers would find a write-off more cost-effective than litigation to challenge the discharge in bankruptcy of such debt– while they valued their household goods at only $2,810 (D:31), although they earned over *100* times -$291,470- that amount in only the previous three years and had more than that in disposable income in less than two months. Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their working lives of more than 30 year;

d. that their total assets were worth $263,456 while their total liabilities only $185,462 (D;29), yet they proposed to repay only 22¢ on the dollar (D:23, 59¶4.d(2)); but they managed to end up paying less than 13¢ on the dollar[79] (Pst:1174).

92. So what did they do with all their disposable income if allegedly it was not in cash or on account, in home equity, or household goods? Or was it? In answering that question it is very revealing that the DeLanos‟ bankruptcy attorneys, Christopher K. Werner, Esq., and Devin Lawton Palmer, Esq. (¶¶8, 9, and 17 supra), knew that the DeLanos had money to pay for their legal

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[77] For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay $3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: "What did you do with all that money received from eight mortgages for which you paid so dearly in closing costs?"

[78] http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§§VIII and X

[79] While the DeLanos' plan provided for paying only 22¢ on the dollar (D:59; 23), what they actually paid was far less than that, as shown by Trustee Reiber's motion of December 7, 2005 (Pst:1175) to forgive 87.39% of the claims. (Cf. D:508h/169; 508o) This means that they paid less than 13¢ on the dollar, that is, when they paid anything at all.

services far beyond the initial $1,350 for assisting them in filing their petition. (D:54) They ran up a bill for an additional $16,654 to protect the DeLanos from having to produce to Dr. Cordero documents, such as their bank account statements, to corroborate such incongruous, implausible, and suspicious declarations. (Add:871-875) Those documents were obviously necessary for Att. Werner to inform himself of the DeLanos‟ financial affairs so as to decide whether to sign off "under penalty of perjury" (D:28, 252¶12) on their bankruptcy petition. Similarly, the Standing Chapter 13 Trustee, Att. George Max Reiber (¶7 supra), needed those documents to decide whether to recommend to Judge Ninfo the approval of the DeLanos‟ plan of debt repayment (D:59). The Judge himself needed them to determine whether their "plan has been proposed in good faith and not by any means forbidden by law". (11 U.S.C. §1325(a)(3); 18 U.S.C. §§152-157)

93. Nonetheless, far from ordering them produced, Trustee Reiber recommended the payment by the DeLanos to their attorneys of fees incurred in preventing their production and Judge Ninfo approved the payment of $18,005. (Add: 938, 942) Neither of them wondered where the DeLanos would come up with that kind of money, much less why the DeLanos, if they were really bankrupt, would prefer to pay their attorneys thousands of dollars rather than just produce the documents to Dr. Cordero. Actually, they preferred to pay even more, for Atts. Werner and Palmer provided further services for the same purpose, which Att. Werner billed at $9,948 and Trustee Reiber allowed. (Pst:1175) What is more, the sum of $27,953 for such services was only a partial total, for the DeLanos, according to Att. Palmer (SApp:1628¶4; 1645§1), would „„continue to incur legal fees‟‟ to prevent the production of such documents to Dr. Cordero…and the attorneys would continue to provide them their services for a fee. The attorneys knew that the DeLanos were good for the money and that their declaration that they only had $535 in hand and on account (D:31) was false and made only in furtherance of their bankruptcy fraud through concealment of assets.[80] From those assets the DeLanos paid Complicitly Misconducting Atts.

[80] While the DeLanos never produced their bank account statements, Att. Werner blurted at the meeting of creditors eventually held on February 1, 2005, at Trustee Reiber's office, that he had obtained such documents from the DeLanos while preparing their bankruptcy petition and had reviewed them. It is reasonable to assume that Att. Werner did review those incriminating documents and learned through them that the DeLanos had enough assets to pay for the tens of thousands of dollars in legal fees that they incurred avoiding their production to Dr. Cordero and the consequent exposure of their bankruptcy fraud.

That meeting was officially recorded by Reporter Ms. Bonsignor of Alliance Shorthand, 183 East Main Street, Suite 1500, Rochester, NY 14604, tel. (585)546-4920. Although

Werner and Palmer. The $27,953 and counting was the disclosed cost of doing the business of bankruptcy fraud with impunity. Even if undisclosed costs were incurred in services rendered by others, they paid off, for Trustee Reiber, the U.S. trustees (¶103 infra), and Judge Ninfo allowed the DeLanos to dive into their golden pot without having to account for at least $673,657. (SApp:1654)

94. That was the farewell gift that the bankruptcy and legal system insiders made to the DeLanos with the money, not of their own, but rather of the creditors. If the insiders enable similar fraud in other cases among the 3,907 *open* cases that Trustee Reiber brought before Judge Ninfo (¶7 supra) –and Trustee Kenneth Gordon‟s 3,382 (¶¶3 and 23 supra)– the amount of money that ends up in the wrong hands to the creditors‟ detriment can be in the tens of millions of dollars. No wonder the insiders had a strong motive to cover up the following event, which undoubtedly showed that they knew that the DeLanos had engaged in bankruptcy fraud through concealment of assets.

2) The events at and after the meeting of creditors confirm that Att. Weidman and Reiber as well as Judge Ninfo knew that the DeLanos had committed bankruptcy fraud

95. Since Trustee Schmitt allowed Trustee Reiber to amass the unmanageable number of 3,909 *open* cases, according to PACER (¶7 supra), he could not be at the same time in all places where he needed to be to take care of them. So she let him conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully by his attorney, James Weidman, Esq. (¶13 supra). For a trustee not to conduct a meeting of creditors personally is such a serious violation of his duty that it is included among the causes for removal under 28 C.F.R. §58.6(a)(10). (fn. 49 supra; SApp:1689) On that occasion, Trustee Reiber was taking care of business, of all places, downstairs in Judge Ninfo‟s courtroom. In a well-coordinated scheme everybody has to pitch in. Trustee Schmitt‟s friendly next-door neighbor is the local office of the U.S. Department of Justice in the little, cozy federal building in Rochester. (¶11 supra)

Trustee Reiber had stated to Dr. Cordero that he would give him a copy of the transcript (D:333), after the meeting he refused to do so (Pst:1263¶19). That transcript can be obtained from either Trustee Reiber or Reporter Bonsignor. Moreover, the Trustee also tape-recorded the meeting.

96. Accompanying the DeLanos to the meeting were their one of a kind attorneys (D:79¶3): Att. Werner, who had brought 525 cases before Judge Ninfo (¶5 supra) and Att. Michael J. Beyma, who is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment (¶7 supra).

97. At that meeting of creditors, Att. Weidman examined the DeLanos under oath while being officially recorded on an audiotape. After examining them, he asked whether any of their creditors were in the audience. Dr. Cordero was the only of their creditors present. He identified himself and stated his desire to examine them. Att. Weidman asked him to fill out an appearance form (D:68) and to state what he objected to. Dr. Cordero submitted to him and Att. Werner copies of his Objection (under 11 U.S.C. §1324(a)) to Confirmation of the DeLanos‟ Plan of Debt Repayment (under §§1321-1322; D:63) No sooner had he asked Mr. DeLano to state his occupation –he answered „a bank loan officer‟– and then how long he had worked in that capacity –he said 15 years, but see Tr:15/17-16/15– than Att. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos‟ having committed fraud. When Dr. Cordero would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§§I-III)

98. Later that afternoon at the hearing for the confirmation of debt repayment plans before Judge Ninfo and in the presence of Trustee Reiber and Att. Weidman, Dr. Cordero brought to the Judge‟s attention in open court and for the record being made by the court reporter how that Att. Weidman had prevented him from examining the Debtors. Nobody contradicted his account of the incident. Yet, rather than uphold the law and the right of Dr. Cordero thereunder, Judge Ninfo faulted him for applying the Bankruptcy Code too strictly and thereby missing “the local practice”. He stated that Dr. Cordero should have phoned in to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. (D:99§C; Add:889§II) The Judge intentionally disregarded the statement that he had just heard from Dr. Cordero, to wit, that Att. Weidman had cut him off and terminated the meeting after Dr. Cordero had asked only two questions. Thereby Atts. Reiber and Weidman benefited from the unlawful protection given them as co-scheming “locals” by Judge Ninfo in breach of the national law of Congress. That law provides for not one, but rather a series of meetings where creditors can engage in an examination of the debtors of very wide scope. (11 U.S.C. §341(c); FRBP 2004(b); D:283¶¶a-b, 98§II, 362§2)

99. Trustee Reiber had been ready to recommend at that hearing the confirmation of the DeLanos‟ debt repayment plan even though he had not checked the petition underlying it against any supporting documents. Only Dr. Cordero‟s Objection (D:63) stopped him and Judge Ninfo from rubberstamping it. In how many of the thousands of cases of the Trustee do he and the Judge merely rubberstamp plans so as to enable debtors to repay their creditors far less than what they should if their financial affairs had been truly ascertained and the law applied? What is in it for them?

100. Subsequently, Dr. Cordero moved for Judge Ninfo to state what "the local practice" consisted of, but the Judge never provided a statement on the subject. (Add:891§III) Although Dr. Cordero gave notice of this event to Trustees Schmitt and Martini and requested the removal of Trustee Reiber for his misconduct in undeniable violation of the law and the evidence of coordinated misconduct, they did nothing about it. (D:79§§I-II, 94¶80) On the contrary, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:86§VI; Pst:1262¶¶13-20).

3) Dr. Cordero requested documents and Att. Werner pretended to be searching for them while comforted by Trustees Reiber, Schmitt, and Adams evading their duty to demand their production for the sake of the integrity of the bankruptcy system

101. For months after the meeting of creditors, Trustee Reiber and Att. Werner treated Dr. Cordero as a creditor of the DeLanos, pretending to be obtaining the documents that he had requested through Trustee Reiber. (D:63, 151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203) They also pretended to be available for an adjourned meeting of creditors where Dr. Cordero would use those documents to examine them under oath. But the documents only trickled in. Worse yet, the documents that they produced during the dragged-on period were incomplete, even missing pages! (D:194§II) Would Mr. DeLano have lasted 39 years in banking if his performance in producing his own documents had been a reflection of his competency to obtain the documents necessary for his employer, M&T Bank, to evaluate its clients‟ loan applications and current ability to repay loans and avoid defaulting on them? Of course not! Likewise, one can reasonably take for granted that Mr. Werner had learned during his 28 years in practice at the time and all those as a bankruptcy practitioner how to obtain documents that he wanted financial institutions to produce.

102. Similarly, Trustee Reiber failed to use the means at his disposal to obtain those documents. He is supposed to act as fiduciary to collect the assets of the estate and distribute them to the creditors (¶40 quoted text supra) after discharging his duty to "investigate the financial affairs of the debtor [and] furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (11 U.S.C. §§1302(b)(1), 704(a)(1, 4, 7)), such as Dr. Cordero. Far from that, Trustee Reiber spared the DeLanos the production of documents that he too needed to determine whether to recommend the approval of their plan of debt repayment (D:59) and that Dr. Cordero requested repeatedly. (D:66§IV, 94¶80d, 113¶6, 126¶9, 148¶7, 321¶16; 161, 467, 494, 684)

103. Along the same line, Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq., (¶¶11-12 supra), disregarded both the evidence of fraud and the requests for the DeLanos and Trustee Reiber to be investigated. (D:84§IV, 94¶80a-f, 160, 309, 470, 471, 474, 476, 495, 685, plus all other documents filed with the District Court, WDNY; CA2; and the Supreme Court; cf. fn. 1 supra) Her supervisor, U.S. Trustee for Region 2, Deirdre Martini, Esq. (¶14 supra), also disregarded both her duty to investigate and the requests for documents. (D:90§VII, 94¶80g; 104, 137, 139, 141, 154, 158, 307, 330, 682, plus all other documents filed with the courts) The current U.S. Trustee for Region 2, Diana G. Adams (¶14 supra), has also been served by Dr. Cordero with every paper that he has filed since she took office, but she has never communicated with him or filed anything concerning *DeLano* with any court, let alone investigated the DeLanos.[81]

104. Yet, all these trustees had the duty to obtain those documents, not just in general because they were necessary to find and collect the assets of the estate in the creditors' behalf, but also in particular because Mr. DeLano's superior knowledge of money management had rendered his petition for bankruptcy relief suspect, never mind his incongruous and implausible declarations therein. (¶91 supra) What is more, they had the right to obtain those documents concomitant with the DeLanos' duty to produce them, regardless of how damaging such production might be:

> 11 U.S.C. §521. Debtor's duties
>
> (a) The debtor shall-
>
> (4) …surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;

[81] Cf. Table of officers that have disregarded their statutory duty to investigate the DeLano Debtors (SApp:1609)

105. The DeLanos‟ production of documents was so objectionable that Trustee Reiber himself moved to dismiss the petition “for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding”, that is, liquidation. (D:164) This was for either show or leverage for another purpose given that the Trustee never even requested the DeLanos, despite Dr. Cordero‟s requests, to produce key documents, such as their bank account statements. Those statements are most threatening to all of them because they would enable creditors and investigators to track the DeLanos‟ bank deposits and transfers, which would show that they committed perjury when they declared under oath that they only had $535 in cash and on account (D:31) and Att. Werner signed off on that declaration (D:28).

4) Att. Werner used the artifice of a motion to disallow the claim of Dr. Cordero as creditor of the DeLanos in order to stop him from proving their bankruptcy fraud scheme

106. Dr. Cordero continued analyzing the petition intrinsically and extrinsically for its consistency with the few documents produced. (D:23-60, 63, 165-188) In a written statement submitted to Judge Ninfo (D:193), he showed that the DeLanos had concealed assets, a violation of 18 U.S.C. §152(1), and thereby committed bankruptcy fraud. That crime is punishable by up to 20 years in prison and a fine of up to $500,000 under 18 U.S.C. §§152-157, 1519, and 3571. (cf. D:46, 53) By that time, Att. Werner and the DeLanos, who had included Dr. Cordero among their creditors in Schedule F of their petition (D:40), had treated him as a creditor for six months.

107. Only after that statement did Att. Werner come up with the artifice of a motion (D:218) to disallow Dr. Cordero‟s claim. (D:142) He did not cite any authority at all for challenging the presumption of validity of a creditor‟s claim. (D:256§VII) Moreover, his challenge had become barred by waiver and laches. (D:255§VI) Indeed, the DeLanos named Dr. Cordero among their creditors precisely because Mr. DeLano had been aware for more than a year and a half that he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero. (¶¶87-88 supra; Add:786¶5) In addition, months before the disallowance motion, Mr. DeLano had been reminded thereof by Dr. Cordero filing his proof of claim (D:142), which included a copy of the part of his third party complaint in *Pfuntner* that concerned Mr. DeLano (D:250§I). What is more, three months earlier the DeLanos had raised the objection, already untimely after treating Dr. Cordero as their creditor for months, that he “is not a proper creditor in this matter”. (D:118) Within 10

days, Dr. Cordero countered their objection. (D:128) Then they dropped the issue…for months. Their conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge that they had committed bankruptcy fraud as participants in the bankruptcy fraud scheme. (D:253§V)

108. Judge Ninfo came through to assist Insider Att. Werner with his disallowance motion artifice. Sua sponte, he issued an order for an evidentiary hearing to determine the motion. (D:272) He required that thereat Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash the order of Judge Ninfo, who was that Court‟s appointee to a bankruptcy judgeship term. (D:441) CA2 merely "Denied" with no explanation Dr. Cordero‟s motion to quash. (D:312) Thereby it covered up its appointee‟s approval and use of Att. Werner‟s process-abusive motion and encouraged both the Judge and the Attorney to engage in even more abuse.

109. Judge Ninfo received the encouragement and engaged in even more egregious misconduct, knowing that he would soon be rewarded with his reappointment to a second 14-year term bankruptcy judgeship, as he was in 2005 (fn. 72), and that for Dr. Cordero to complain about his bias, arbitrariness, and abuse of power to CA2 would prove useless, as it already had (D:425; SApp:1655, 1657; CA:1721, 1859 fn.5; cf. fn. 71 supra). So the Judge required that discovery for the evidentiary hearing be completed within three and a half months, at the end of which he would set the date for the evidentiary hearing. (D:278¶3)

110. On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a party in interest and as a party to *Pfuntner*. (D:287) Nevertheless, Att. Werner denied him *every single document*, self-servingly characterizing all as irrelevant. (D:313, 314) Dr. Cordero moved for an order by Judge Ninfo to compel the DeLanos to comply with the discovery provisions of his order and respect his right to discovery under FRBP 7026-7037 and FRCP 26-37. (D:320§II) Disregarding his own order and showing contempt for the rules, Judge Ninfo aided and abetted Att. Werner‟s blatant violation of the right to discovery (D:325) and likewise denied him *every single document!* (D:327) Having thus ensured the non-production of incriminating evidence, the Judge scheduled the evidentiary hearing. (D:332)

5) Att. Werner and Att. Beyma were willing participants in, and beneficiaries of, the sham evidentiary hearing of the motion to disallow Dr. Cordero's claim against Mr. DeLano in *Pfuntner*

111. With no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary hearing held on March 1, 2005. Mr. DeLano was represented by both (Tr:2 in the transcript attached hereto), Att. Werner as his bankruptcy attorney, and Att. Michael Beyma, (¶10 supra), the attorney in *Pfuntner* for both Mr. DeLano and his employer, the very important client M&T Bank (fn. 36 supra). Nevertheless, as the transcript shows, during the whole examination it was Judge Ninfo who acted as Mr. DeLano"s Chief Advocate, and as if he still were a partner in Mr. Beyma"s law firm, Underberg & Kessler, in which he was actually a partner at the time of his appointment to the bench in 1992. (fn. 10 supra) The Judge objected on behalf of Mr. DeLano to Dr. Cordero"s questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. (Pst:1255§E) For their part, Atts. Werner and Beyma never once during the more than five hours of the hearing raised an objection to their First Chair On The Bench. There is, of course, a pecking order in their bankruptcy fraud scheme.

112. Although Judge Ninfo reduced Atts. Beyma and Werner to deferential second chairs, they were not inactive at all. Far from it. So confident did they feel in the presence of Att. Beyma"s old buddy John and Att. Werner"s frequent trier of 525 of his cases (¶8 supra) that they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. (GC:14§A supra; Pst:1289§f) No doubt, these attorneys" experience with the Judge had assured them that they could suborn perjury right in front of his eyes with no adverse consequences for themselves or M&T Officer DeLano.

113. Att. Werner felt so confident that the Judge would grant his motion to disallow Dr. Cordero"s claim against Mr. DeLano that neither of them had read Dr. Cordero"s original complaint impleading Mr. DeLano in *Pfuntner* (Add:797§D, 802§A) or Dr. Cordero"s proof of claim (D:142) or even brought a copy of either to the hearing. So in the middle of it, Att. Werner asked Dr. Cordero to lend them his copy of the complaint! (Tr.49/13-50/25; Pst:1288§e)

114. The cause for Atts. Werner"s and Beyma"s effort to suborn perjury and ask for that copy was that the testimony that Mr. DeLano was giving confirmed Dr. Cordero"s claim against him in *Pfuntner*. (Pst:1285¶70) Far from Judge Ninfo finding that Att. Werner"s ignorance of the claim that he had moved to disallow impugned his good faith and his motion"s merit, the Judge arbitrarily disregarded Mr. DeLano"s testimony against self-interest as "confused", although it

concerned his own conduct as the 39-year veteran M&T officer in charge of the Premier bankruptcy at stake in *Pfuntner*. The Judge found that Dr. Cordero had not introduced any documents to prove his claim, even though both he and Att. Werner had denied him *every single document* that he had requested during discovery. (Pst:1281§c) Then he entered the predetermined disallowance of Dr. Cordero"s claim and his ruling that Dr. Cordero no longer had standing to participate in *DeLano*. Thereby Judge Ninfo managed to attain the benefit of self-protection that he and the other insiders had sought-for: to prevent Dr. Cordero from requesting and obtaining documents from the DeLanos that would incriminate all of them in tolerating or participating in a bankruptcy fraud scheme and its cover-up. (Pst:1281.d) Judge Ninfo can be "heard" as the partisan, leading voice of the schemers in the attached transcript. (Pst:1266§E) Dr. Cordero had in fact been set up.

6) Bankruptcy Clerk Warren disregarded the law in coordination with District Judge Larimer in order to keep Dr. Cordero from obtaining the incriminating transcript of the sham evidentiary hearing to disallow his claim

115. To appeal from Judge Ninfo"s disallowance of his claim in *DeLano*, Dr. Cordero sent a notice of designation of items in the record and the statement of issues on appeal. (Add:690) Upon their receipt, Bankruptcy Clerk Paul R. Warren, Esq., (¶¶4, 15 supra) transmitted them that very same day to District Judge Larimer (Add:686) upstairs in the same little, cozy federal building (¶11 supra). However, he did not file the accompanying copy of Dr. Cordero"s letter requesting Bankruptcy Court Reporter Mary Dianetti a transcript of the March 1 evidentiary hearing.[82] (Add:681) That letter gave Att. Warren notice that the Reporter had barely had time to receive the request, let alone prepare and submit the transcript. Consequently, Clerk Warren was indisputably violating FRBP 8007:

> FRBP 8007. Completion and Transmission of the Record; Docketing of the Appeal
>
> …
>
> (b)…When the record is complete for purposes of appeal [(a)…On completion of the transcript by the reporter] the clerk shall transmit a copy thereof forthwith to the clerk of the district court.

116. Likewise, Clerk Warren disregarded FRBP 8006, which provides thus:

[82] On Reporter Dianetti's refusal to certify to Dr. Cordero that her own transcript would be complete, accurate, and free of tampering influence, see Add:912 and fn. 53, 56 supra.

> FRBP 8006…Within 10 days after the service of the appellant‟s statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of the additional items to be included in the record…The record on appeal shall include the items so designated by ***the parties***,… [emphasis added]

117. So Clerk Warren knowingly (Add:679) deprived another insider, Att. Werner, of time to file his designation and any statement in order to transmit immediately to Judge Larimer a record that could not possibly be complete but that would afford the Judge the opportunity to play his role in the scheme. He did: Judge Larimer dropped everything that he was doing and the following day he was already hard at work writing an order scheduling the submission of Dr. Cordero‟s appeal brief for 20 days hence. (Add:692) By contrast, he consistently took weeks to answer Dr. Cordero‟s motions, although such answers consisted in practice of nothing more than an arbitrary, no-reasons fiat "denied in all respects as lacking in merits". (Add:911Dia>991; 851, 881, 951>1021; 993>1019; 1081>1092; 1097>1155) Through this coordination between Pitcher Warren and Catcher Larimer, these court officers unlawfully maneuvered to deprive Dr. Cordero of an incriminating transcript that demonstrated how Judge Ninfo, acting as First Chair On The Bench of Atts. Werner and Beyma and Chief Advocate of Mr. DeLano, had conducted a sham evidentiary hearing. (Pst:1255§E; US:2448§D)

118. Dr. Cordero objected to such unlawful scheduling of his brief before the Reporter had even had time to respond to his letter requesting the transcript (Add:695, 831, 836, 839). It cost Dr. Cordero seven month‟s worth of effort and money (Add:834, 870, 911 and 912:Table of Letters Exchanged Between Dr. Cordero and Rep. Dianetti, 991, 993, 1019; 1027, 1031, 1072) to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court (Pst:1264¶22-26) and eventually to CA2 (CA1735§1) and the Supreme Court (US:2451§E).

119. Clerk Warren‟s attempt to deprive Dr. Cordero of his right to a transcript in *DeLano* is similar to his attempt to deprive him of the transcript of the hearing in which Judge Ninfo dismissed his cross-claims against Insider Trustee Kenneth Gordon in *Pfuntner*. (Add:1007§V; in the *Pfuntner* file, A:153, 155a, 157a-f, 183, 261-289; 1327§4) Those two attempts suffice to constitute a pattern of misconduct in furtherance of the bankruptcy fraud scheme. That pattern is confirmed by Clerk Warren‟s disregard of his duty in handling Dr. Cordero‟s application for default

judgment against Premier Owner David Palmer. (GC28§4) supra) [83]

120. Despite the transcript, Judge Larimer affirmed the disallowance of Dr. Cordero's claim against the DeLanos in a conclusory order (SApp:1501) that did not once make reference to it or to his brief on appeal (Pst:1231, summarizing headings at 1255§E). What is more, the Judge did not even use the term „fraud" although it and „a bankruptcy fraud scheme" were the express key notions of the four questions presented on appeal (Pst:1257§C; CA:1749§2) and permeated the brief. Actually, Judge Larimer did not address even one of those questions. On the contrary, he committed the gross mistake of stating that the „"preserved, appellate issues" had been "set forth" by the DeLanos" attorneys". (SApp:1502 2nd para.) However, those attorneys never filed a cross appeal and thereby could not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those "set forth" by those attorneys in their response to Dr. Cordero's brief. (Pst:1365) Yet, he did not engage in any legal analysis of even those issues. (CA:1756§4) In fact, to write his order Judge Larimer need not have even read Dr. Cordero's brief; he only needed to skim over the DeLanos' answer. (Pst:1361, 1398§§II-III, 1409§V) Judge Larimer and Clerk Warren did whatever they had to do, the law and the rules notwithstanding, to prevent their exposure as misconducting insiders participating in the bankruptcy fraud scheme. (CA:1743§VIII)

7) Trustee Reiber's shockingly perfunctory and unprofessional report on the DeLanos shows the degree of connivance between him and Judge Ninfo, who accepted it to approve their plan of debt repayment and eventually discharge their debts

121. Dr. Cordero requested Judge Ninfo to remove Trustee Reiber from *DeLano* due to his failure to discharge his duty to "investigate the financial affairs of the [DeLano] debtor[s]". (11 U.S.C. §704(a)(4); D:201¶32) So sure was the Trustee that the Judge would instead protect him that he did not bother to oppose the motion. (Add:971¶¶56-60, 974§4; CA:1738§2) His silence was significant given that had the Judge granted it, if only by default, the Trustee would have been

[83] Under RICO, 18 U.S.C. §1961(5), a " 'pattern of racketeering activity' requires at least two acts of racketeering activity…within ten years" of each other. However, the District Court has taken preemptive measures to protect the schemers from RICO by adopting Local Rule 5.1(h). (Add:633) It requires a party to plead over 40 discrete pieces of factual information before discovery has even commenced so as to make it practically impossible to file a claim under RICO. (US:2461§XI)

automatically removed from every other case and lost his livelihood. (11 U.S.C. §324)

122. Trustee Reiber went about his business and in July 2005 submitted to Judge Ninfo shockingly unprofessional and perfunctory undated scraps of papers titled "Trustee"s Findings of Fact and Summary of 341 Hearing", and an untitled form in Pidgin English that began "I/We filed Chapter 13 for one or more of the following reasons", which was undated too and unsigned to boot. (D:937-939) Dr. Cordero analyzed in detail such self-belittling bungle of a legal document. (Add:953§I) For instance, there is no such proceeding as a „341 Hearing", either in the Bankruptcy Code, i.e., 11 U.S.C., or the FRBP. This fact would have sunk into the mind and made a groove into the repeatedly used terminology of even an attorney that had not handled 3,909 bankruptcy cases, as Trustee Reiber had at the time. (fn. 34 supra) That groove would be all the deeper because substantive in nature:

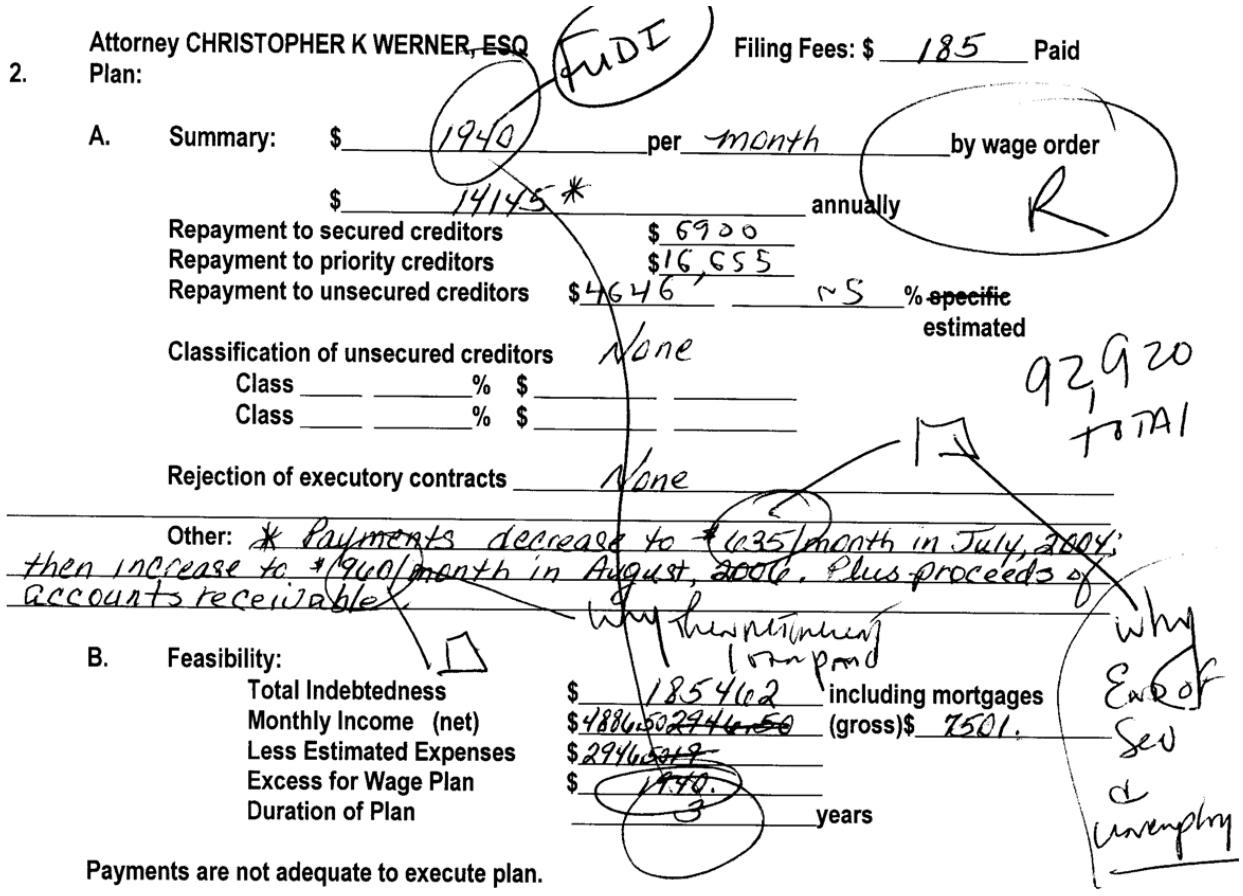
> 11 U.S.C. §341. Meetings of creditors and equity security holders
>
> (c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors".

123. However, Trustee Reiber is the attorney who with Judge Ninfo"s knowledge and consent held meetings of creditors in his courtroom contiguous with his chambers while the Trustee had his lawyer, Att. James Weidman (¶13 supra) hold unlawfully in his stead other meetings of creditors in a room contiguous with Assistant U.S. Trustee Schmitt"s office. (GC:45§2) What makes a substantive groove in his mind is the awareness of who is for every practical purpose very much in attendance and most certainly as presiding the meetings as if he were presiding a hearing and calling the shots, to wit, the judge who, whatever his benefit may be, is running the bankruptcy fraud scheme. (Cf. ¶129 infra)

124. Another substantive defect of Trustee Reiber"s "Report" was that its numbers did not even tally with those of the DeLanos" Schedules (D:29-46) accompanying their bankruptcy petition:

    a. The Notice of Meeting of Creditors stated "unsecured creditors to be paid 22 cents on the dollar" (D:23), that means 22% of the debt, and the Summary of Schedules stated "F – Creditors Holding Unsecured Non-priority Claims 98,092.91" (D:29). However, the "Report" states "Repayment to unsecured creditors $4646", (D:937) which is only the pittance of 4.7%.
    b. The Summary of Schedules stated "E - Creditors Holding Unsecured Priority Claims 0.00" (D:29); but the "Report" states "Repayment to priority creditors $16,655" (D:937).
    c. Schedule J. Current Expenditures of Individual Debtor(s) stated "D. Total amount to be

paid into plan each Monthly $1,940.00" (D:45). The "Report" states "2. Plan: A. Summary: $1940 [scribbling] MDI [presumably Monthly Disposable Income]" But see below "$14145*…Other: * Payments decrease to $635/month in July, 2004; then increase to $940/month in August, 2006. Plus proceeds of accounts receivable". There is no explanation why barely 5 months after the filing of the petition on January 27, 2004 (D:23), the payments decrease from $1,940 by 67.3% to $635 and remain so for the next 25 months out of 36 (3 years) and then increase to $940 for the last five months or so. But then see further down: "B. Feasibility:…Excess for Wage Plan $1940 Duration of Plan 3 years". So which one is it!: $1,940, mostly $635, or $960.



d. The "Report" states "Payments are not adequate to execute plan". Note that the last word "…plan." is followed by a period, not a colon as in „plan:", which would have suggested that the "reporter" was supposed to state either yes or no. Is that a general assessment of non-feasibility that should have led Judge Ninfo not to confirm the plan rather than to confirm it? (Add:941)

e. The Summary of Schedules stated "Total Assets 263,456.57" (D:29) But the second page of the "Report" states "3. Best interest of creditors test:…B. Total market value of assets: $256,562".

f. In Schedule C. Property Claimed As Exempt the "Value of Claimed Exemption" adds up to $178,361 (D:35); but the "Report" states "3.…B…Less exempt property $171732.

g. Schedule A. Real Property stated "Amount of Secured Claim 77,084.49". If in the "Report", entry "3…B…Less valid liens $83734" refers to that Secured Claim, then they do not match.

h. The Objection (under 11 U.S.C. §1324(a)) To Confirmation of the Chapter 13 Plan of Debt Repayment (under §§1321-1322), filed by Dr. Cordero (D:63) and entered on the docket (D:497/13), was not mentioned in the "Report", which instead has some scribbling next to "7. Objections to Confirmation" (Add:938)

i. On the third scrap of paper titled "I/We filed Chapter 13 for one or more of the following reasons:", see Add:956§A.

125. What a perfunctory "Report"! It is unworthy of being accepted by a U.S. judge, never mind docketed and relied upon to confirm the plan of debt repayment and thereby deprive creditors of what the debtors owed them. If you were the judge receiving such an incompetently drawn up form, filled out with such shockingly unprofessional scribblings and doodles, and so disrespectfully submitted for you to fend with it, how much effort and time would you have wasted trying to figure out whatever it was that the „reporter" was trying to „report" to you?

126. The only documents with figures that the DeLanos or Trustee Reiber filed and that were docketed were the former"s petition (D:23-60) and the latter"s "Report" (Add:937-939). Hence, there was no other information available for Judge Ninfo, let alone the creditors and parties in interest, to reconcile the discrepancies between those two documents and determine whether the DeLanos" plan of debt repayment should be confirmed or opposed. The Judge discussed no objection, much less the statement in the "Report" that "Payments are not adequate to execute plan". (¶124§d supra) He simply rubberstamped a form of his own to confirm the plan because from experience he knew that it was most unlikely for any creditor to challenge him, but if any did, the challenge would not be sustained by his buddy, District Judge Larimer upstairs, or his appointers at CA2.[84] Had Judge Ninfo denied confirmation, he would have risked giving cause

[84] http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf >¶¶4-6

for the 39-year veteran banker, M&T Bankruptcy Officer DeLano, to disclose what he knew about the Judge‟s participation in the bankruptcy fraud scheme, either out of spite or in a plea bargain if as a result he were criminally investigated for bankruptcy fraud.

127. Dr. Cordero also moved in District Court for Judge Larimer to remove Trustee Reiber (Add:974¶4; Pst:1306¶123.d). Once more, the Trustee did not bother to file even a yellow stick-it in opposition. What other attorney would show such suspiciously arrogant indifference to a direct challenge to his competency and livelihood and shocking disregard for professional standards unless he was sure that, regardless of what he did or failed to do, the judges would not dare expose him to a fall for fear that he might take them down together with him? Would Trustee Reiber have manifested the aloofness of the untouchable if the case had been before both a judge unafraid of him or the CA2 bankruptcy judge appointers and a jury free to find him a participant in a bankruptcy fraud scheme? (D:425) This is the type of superficially innocuous circumstance that catches the attention of insightful investigators and drives them to investigate its underlying causes. (US:2339§B, 2359¶75c, f; 2417¶¶c-e, h-i); 2459§B, 2479¶b)

8) CA2's admission that Trustee Reiber's motion to dismiss *DeLano* contained "deficiencies" and its disingenuous characterization of them as "minor" reveal its disregard for the rule of law by nevertheless granting the motion and thereby knowingly covering up the bankruptcy fraud scheme

128. Trustee Reiber did not bother either to contest in CA2 Dr. Cordero‟s implication of him in the bankruptcy fraud scheme and his request for his removal and for compelled production of documents. (CA:1652¶c, 1773¶f) Actually, he did not care for over a year to file even an appearance in Dr. Cordero‟s appeal to CA2, just as he had not done so in the District Court, even though the finding that the DeLanos had committed bankruptcy fraud through concealment of assets would have incriminated him as one of the trustees that made it possible by failing to investigate their financial affairs. (SApp:1609 row 1; CA:2112§I)

129. Instead, Trustee Reiber filed a motion on October 30, 2007, to dismiss the appeal as moot. (CA:2102) He set the tenor of the quality of his motion literally in its first line, the title, where he addressed it to “UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT”. This gross mistake cast doubt on which court he had intended to have jurisdiction over his motion. Even after Dr. Cordero pointed this out (CA:2124¶39), the most that the Trustee could muster by way of a correction in his amended motion (CA:2130) was this “UNITED STATES

COURT OF APPEALS SECOND CIRCUIT". However, even there he did not care to correct any of the gross substantive mistakes that he had committed in his original motion. To oppose dismissal, Dr. Cordero set forth some of those mistakes. (CA: 2111, 2135) So the Trustee, who in both his motions" opening sentence insisted that he was "an attorney admitted to practice before this Court", had:

a. failed to cite any authority for the proposition that failure to object timely by an unstated date to a trustee"s final report…or perhaps it was to the judge"s order approving it –the Trustee could not make up his mind (CA:2103¶¶15-16) or realize its importance for determining when the objection filing period began to run- had rendered the appeal moot and dismissible by some unexplained legal logic or factual connection and regardless of the grounds of the appeal;
b. failed to identify what class of people of whom Dr. Cordero was supposedly representative had an obligation to object to whatever it was that he was supposed to object;
c. failed to realize that Dr. Cordero"s objections to:
    1) the DeLanos" bankruptcy petition (D:63, 196§IV);
    2) the Trustee"s failure to perform his investigative duty (D:293; Add:962§II);
    3) the "Trustee"s Report" (Add:937-939);
    4) Judge Ninfo"s approval of it and confirmation (Add:941) of the DeLanos" debt repayment plan (Add:1038, 1066, 1095, 1097);
    5) Judge Ninfo"s disallowance of Dr. Cordero"s claim against the DeLanos (Pst:1306¶123.a and c); and
    6) Judge Larimer"s affirmance (SApp:1501) in the appeal filed over 2½ years earlier (D:1; SApp:1508§I; CA:1719§V);

    constituted clear evidence that Dr. Cordero objected to every other act flowing therefrom because if his contentions were sustained on appeal, such acts would be rendered null and void as deriving from the nullity of the DeLano"s fraudulent bankruptcy petition of January 27, 2004, and the ensuing cover-up;
d. failed to notice that Judge Ninfo had deprived Dr. Cordero of standing in *DeLano* (D:22), leaving him only the right to appeal, so that the Judge neither would serve, let alone do so timely, his report-approving order on Dr. Cordero nor could expect the latter to object to it;
e. failed to assert that the alleged service on Dr. Cordero of "a summary of the account" (CA:

2103¶14) -whatever relation that bore to the Trustee‟s report or the Judge‟s order- was timely, let alone to state on what date it was made;

f. failed to explain how service of such "summary" would impose any duty on the recipient to object to something else not served, which would presumably contain the substantive grounds on which an objection be based.

130. Dr. Cordero‟s detailed analysis (CA:2111, 2135) of Trustee Reiber‟s substandard motion (CA:2101) and its only-in-the-title "amended" version (CA:2130) was so accurate and fair that even CA2 subsequently admitted that "Appellant‟s argument that the Trustee‟s motion is deficient may be correct". (CA:2180) It is also correct to state that the Trustee nevertheless raised them in CA2 in a display of complicit assurance that it would suffice for him to cobble together a pretext for dismissal, such as mootness, for CA2 to take the hint and carry it through. (CA:2191) After all, the one thing he was sure CA2 could not dare do was disavow its twice appointee, Judge Ninfo, through a reversal. Such action would risk causing Insider DeLano to be investigated for bankruptcy fraud, who would in turn incriminate the Trustee and the Judge, and thus trigger a domino effect that could topple CA2 itself for its knowing condonation of a bankruptcy fraud scheme and its systematic denial of due process[85] to cover it up. (US:2459§B)

131. The content and effect of these arrogantly perfunctory motions warrant investigating whether Trustee Reiber‟s supervisors, namely, Trustees Schmitt, Martini, and Adams (¶¶11-14 supra), allowed their supervisee to amass 3,907 *open* cases before Judge Ninfo because of his capacity to handle them competently or because they, with reckless disregard for both their statutory duties to ensure the integrity of the local or regional bankruptcy system and the harmful consequences for debtors, creditors, and the public at large, deemed him in spite of his lack of such capacity a willing and pliable player in the bankruptcy fraud scheme that they tolerated or participated in.

[85] http://Judicial-Discipline-Reform.org/Follow_money/why_j_violate_due_pro.pdf

IV. Conclusion

A. Strategic thinking to investigate this complaint and the rewards for principled, courageous, and ambitious investigators

132. The in-depth investigation of this complaint by the Disciplinary Committee and/or its most principled, courageous, and ambitious members can enable them to pursue their commitment to honest practice of law by law-abiding and ethical attorneys as well as to a legal system that aspires to attain the noble goal of "Equal Justice Under Law". Through their investigation, they can advance the interest of the man in the street, who stands no chance of having his economic and due process rights (fn. 85 supra) respected by insiders, whether attorneys or judges, that have grown to deem themselves entitled to control the bankruptcy and legal systems for their personal and class benefit. Exposing them entails risk. But doing the right thing also offers the commensurable rewards of name recognition, support for a public office bid, and system-cleansing legal business.

1) A complaint that offers the rare opportunity to begin investigating attorneys in a bankruptcy court and end up exposing that their coordinated misconduct is tolerated or participated in by a former CA2 judge, now a justice, and the Supreme Court

133. This complaint is detailed enough and so organized as to make it possible to pursue a narrowly targeted investigation. This is further facilitated by the proposed Demand for Information and Evidence, which identifies the key documents that can prove bankruptcy fraud and the coordinated misconduct that enables it. (GCd:1 infra) Such investigation begins by realizing that attorneys that once were only aware of coordinated misconduct, of which a bankruptcy fraud scheme is only one manifestation, but did nothing to expose it, and those who even participated in it, eventually became well-connected attorneys or district judges. They were not about to incriminate themselves due to their passivity or participation by exposing such misconduct or to stop benefiting from gaming the system. Then they became partners in law firms or even circuit judges with the authority to appoint bankruptcy judges and an interest in not indicting their good judgment by reversing, let alone removing, their own appointees.

134. This is the case of Former CA2 Judge Sonia Sotomayor. She was a prosecutor in the NYC Manhattan D.A. office from 1979-1984[86]; then a lawyer and a partner[87]; an SDNY judge from

[86] Mr. Charles E. King, III, Assistant District Attorney, (FOIL) Records Access Officer, Special Litigation Bureau, District Attorney of the County of NY, One Hogan Place, New

1992 to 1998; a CA2 member from 1992-2009, and as such the presiding judge on the panel that decided the *DeLano* appeal (CA:2180), which was conveniently dismissed by summary order (US:2456§A).[88] Now she is on the Supreme Court. She illustrates how other justices moved up the judicial hierarchy with a baggage of incriminating knowledge (CA:1963§III) or conduct[89].

135. Consequently, on the strength of the facts of this particular complaint as well as circumstantial evidence concerning the Federal Judiciary it can be responsibly affirmed that the investigation of this complaint offers the realistic possibility of exposing what underlies the bankruptcy fraud scheme involving the complained-against attorneys, namely, coordinated misconduct that has become the Federal Judiciary‟s institutionalized modus operandi. Expressed in terms of the Commentaries on Canons 2A and 1 of the Code of Conduct for U.S. Judges[90]:

> "…reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude" that they constitute a "pattern of actual improprieties consisting of intentional and serious violations of law [and] court rules" „by judges that with disregard for the harmful effect on others and the judicial system‟ run and cover up a bankruptcy fraud scheme. (US:2518§C; http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf; cf. Add:621§1; CA:2025§C)

136. The Federal Judiciary is the most secretive, opaque[91], and due to its members‟ life-tenure and their authority to declare what the other two branches of government do unlawful or unconstitutional, the most powerful of the three. Yet, its members recognize that they are subject to a very low threshold of sleaziness tolerance on the part of the public:

> CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES
>
> COMMENTARY ON CANON 2A: An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances

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York, NY 10013; tel. (212)335-4370, fax (212)335-4390; cf. http://Judicial-Discipline-Reform.org/DANY/8DrCordero_FOIL_NYCDAoffice.pdf.

87 Sonia Sotomayor was an associate from 1984 to 1987 and a partner from 1jan88–30sep92 in the luxury goods boutique law firm of Pavia & Harcourt, LLP, 600 Madison Avenue, New York, NY 10022; tel.(212)980-3500, fax (212)980-3185; http://www.pavialaw.com; http://Judicial-Discipline-Reform.org/SCt_nominee/Pavia&Harcourt_7feb10.pdf.

88 Cf. *Pfuntner* in CA2 (A:1304§§VII-IX) conveniently dismissed on jurisdictional grounds (A:876; 885)

89 http://Judicial-Discipline-Reform.org/SCt_nominee/Senate/10DrCordero-SenLeahy&Sessions.pdf; http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_integrity/12table_JSotomayor-financials.pdf

90 http://www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf; with bookmarks at http://Judicial-Discipline-Reform.org/docs/Code_Conduct_Judges_09.pdf

91 http://Judicial-Discipline-Reform.org/docs/Sen_Specter_on_SCt.pdf

> disclosed by a reasonable inquiry, would conclude that the judge"s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety…Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. **Code of Conduct for United States Judges**[92]

2) The appearance of judges' and justices' impropriety of tolerating or participating in the bankruptcy fraud scheme or other forms of coordinated misconduct can be exposed through a Watergate-like highly professional investigation

137. Thus, the appearance of impropriety is enough –at least in theory– to require a judge to disqualify herself from a case or to refrain from engaging in an activity, e.g. all expenses paid judicial junkets. In reality, it turns federal judges into the public officers most vulnerable to a well-orchestrated ***publication*** of evidence where they appear to tolerate or participate in misconduct, whether within their own ranks or by attorneys closely associated with them, that is, insiders. It is hardly conceivable that any of the justices of the Supreme Court could remain in office as long as President Richard Nixon did after the media reported on the break-in at the Democratic National Committee headquarters at the Watergate Complex in Washington, D.C., on June 17, 1972, and kept closing in on him until he was forced to resign on August 9, 1974.[93]

138. Just think of Watergate. It is last century"s paradigm of a highly professional, determined, and intelligent investigation. Though originating in an apparently banal incident, it went on to expose a system of corruption in the Executive Branch that toppled all of its top officers. It was started by *Washington Post* Reporters Carl Bernstein and Bob Woodward. Both were initially ridiculed for pursuing a third rate story of a „garden variety burglary by five plumbers".[94] Yet, their sheer doggedness and piercing insight paid off by producing shocking revelations that compelled one outlet after the other of the media establishment to jump on the investigative bandwagon. Eventually, the ensuing public outrage at political espionage and organized abuse of power masterminded in, and controlled from, the White House made it inevitable an official investigation in Congress by the Senate Watergate Committee. It led to the drafting of articles of

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[92] Id.

[93] http://Judicial-Discipline-Reform.org/docs/WP_The_Watergate_Story.pdf

[94] *All the President's Men*, Carl Bernstein and Bob Woodward; Simon & Schuster (1974); a best-seller and Pulitzer Prize winner, which provided the basis for the homonymous hit movie and Oscar winner, starring Robert Redford and Dustin Hoffman.

impeachment of President Nixon, who avoided their filing by his preemptive resignation.

139. The Committee and/or its most ambitious members can accomplish similar results. Actually, it is reasonable to expect much more dramatic results because the exposure by an official body with investigative authority, such as the Committee, of coordinated misconduct in the Federal Judiciary has the potential to shake the latter to its foundation and cause an unprecedented Constitutional crisis. Imagine the media frenzy to scoop what judges were involved in the coordination[95], to what extent[96], with what non-judges[97], and the long-standing call[98] turned clamor for an inspector general of the Judiciary[99] or a citizens board for judicial accountability and discipline[100]. Add the flood of motions (cf. fn. 10 supra) to review cases decided by judges and justices and argued by attorneys involved in coordinated misconduct or merely suspected thereof. One can envisage the attorneys most knowledgeable about coordinated misconduct in the Federal Judiciary being avidly sought out to file those motions individually or as a class action with a multidistrict litigation dimension. The Committee and/or its members would be in the middle of it all.

3) Publicizing the nature of the investigation and the call to lawyers and the public for similar information and evidence to proceed legally and effectively

140. In pursuing its objective at the top of the Federal Judiciary, the Committee can make the most of its substantive advantage over reporters: All attorneys in NY are within its investigative jurisdiction and under the reporting duty of the Rules of Professional Conduct (fn. 7 supra), which in practice has already served them with a subpoena:

> RULE 8.3: Reporting Professional Misconduct (emphasis added)
>
> (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer"s honesty, trustworthiness or fitness as a lawyer ***shall*** *report* such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

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95 http://Judicial-Discipline-Reform.org/docs/Dynamics_of_corruption.pdf

96 http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf;

97 http://Judicial-Discipline-Reform.org/docs/DrCordero-CA2_clerks_wrongdoing.pfd

98 http://Judicial-Discipline-Reform.org/docs/Sensenbrenner_on_Judicial_IG.pdf

99 Bills S.2678 and H.R.5219 "Judicial Transparency and Ethics Enhancement Act of 2006" creating an inspector general for the Judiciary; http://judicial-discipline-reform.org/Follow_money/S2678_HR5219.pdf

100 Cf. http://Judicial-Discipline-Reform.org/docs/Jud_Discipline_Audit_Comm_Act.pdf

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to ***respond to a lawful demand for information*** from a tribunal or other authority empowered to investigate or act upon such conduct.

141. The initial requirement that the attorney "knows that another lawyer has committed a violation of the Rules" can be easily shown to have been met if the attorney had actual knowledge or knowledge can be imputed to him because he could not have not known, his efforts at willful ignorance notwithstanding, that the lawyer had violated the very general prohibition under Rule 8.4, providing that "A lawyer or law firm shall not:…(d) engage in conduct that is prejudicial to the administration of justice". If so, the "subpoena" is deemed to have issued under Rule 8.3(b). It compels the attorney, not just to turn over in response to a demand, but also to volunteer, not verified information or hard evidence, but rather a "substantial question" concerning the lawyer's dishonesty, untrustworthiness, and lack of fitness. That term is more akin to a reasonable doubt than a higher standard „reason to believe". Rule 8.3 is a magic wand that has already opened all doors to limitless knowledge and evidence of that type without the need for a formal demand to wield it. This means that attorneys have a preceding duty to come forward before they ever receive a formal demand from the Committee or similar authority. If they have failed to voluntarily report their "substantial question", they are already subject to discipline before the demand issues, never mind its being received by them. That provides leverage. Moreover, such duty to report is broadest, for it encompasses all other lawyers and their violations, thus going well beyond the four corners of any possible subpoena. If a demand issues, it covers both what the lawyer has in his mind as knowledge and what he has in his hands as evidence. When wielded by savvy and imaginative investigators, Rule 8.3 can be a most valuable information-gathering tool.

142. PACER can allow identifying lawyers with an oddly consistent record, who may be winning insiders or losing outsiders of some form of coordinated misconduct. All sorts of electronic case documents can be downloaded and information and evidence can be demanded from the lawyers. The Committee can also use PACER dockets to identify parties that have fallen victim to coordinated misconduct and invite them to testify or otherwise share their experiences with it.

143. Current and former clerks of judges and justices can be called. Court staffers that signed up in response to the noble calling to serve as Administrators of Justice only to be pressed into doing the dirty work of pawns of injustice can be disgusted enough as to hear the call and come forward as Deep Throats. Their leads can prove as invaluable as those of their illustrious namesake

during the Watergate Affair investigation. These and many other means[101] can allow the Committee to lawfully generate enough public outrage to cause its investigation to make progress and take a life of its own, while insulating itself from the pressures of insiders to shut it down.

144. Yet, to set in motion a Watergate-like series of events that build up a critical mass of public outrage, the Committee needs to publicize its investigation. It can work with the contacts that it or its members already have or can develop in the traditional media and with rising politicians. It can request information from the hundreds of Google- and Yahoogroups and websites that complain about dishonest and fraudulent attorneys and judicial bias and abuse of power. (fn. 4 >¶4 supra) It can tap the vigorously expanding Internet community of citizen investigative journalists. It can take advantage of the striking mass communication success of the social networking sites, e.g., Facebook, Utube, and Twitter. In so doing, the confidentiality of the investigation need not be violated. During the investigative stage preceding the lawful release of the investigatees‟ names or the charges and disciplinary measures brought against them, only the nature of the investigation and the call for information and evidence need be widely publicized.

4) The Committee as a reluctant hero that becomes The Champion of Justice

145. The heft of this complaint requires a thoughtful investigative strategy; its gravitas warrants an unwavering investigation. Its foundation lies in three cases that ascended on appeal in a straight line from a bankruptcy to a district court, to a circuit court and a presiding judge (CA:2180), to a current justice and through her to the Supreme Court[102] (fn. 1, 73 supra), whose members are circuit justices[103] (28 U.S.C. §42) so that from them the line goes down to both the circuits[104], which appoint bankruptcy judges (fn. 72 supra; A:990), and their chief judges (28 U.S.C. §352; fn. 71.b supra)[105], from whom the line goes back up to the Judicial Conference of the U.S.[106]

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101 Cf. http://Judicial-Discipline-Reform.org/DeLano_course/3Journalism_to_trigger_history.pdf

102 http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Justices_4aug8.pdf

103 http://Judicial-Discipline-Reform.org/docs/DrCordero-JGinsburg_injunction_30jun8.pdf

104 http://Judicial-Discipline-Reform.org/docs/DrCordero_appeal_CJWalker.pdf; fn. 106.c>N:36)

105 http://Judicial-Discipline-Reform.org/docs/28usc351-364.pdf;
http://Judicial-Discipline-Reform.org/docs/DrRCordero-Justices&judges.pdf

106 a. http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Jud_Conference_18nov4.pdf;
b. http://Judicial-Discipline-Reform.org/docs/DrCordero_2complaints_JConf.pdf; fn. 53 supra;
c. http://Judicial-Discipline-Reform.org/JNinfo/25Committee/7DrCordero-JConference_28feb9.pdf

146. Therefore, a thorough investigation of this complaint by the Committee holds out the realistic possibility of establishing a test case that can be mirrored or followed across the nation. While the jurisdictional foundation for the Committee's investigation is the misconduct of and among the named attorneys (GC:1§I supra), their coordination includes federal judges together with their staff. Those that have known or because of their supervisory duties should have known about the bankruptcy fraud schemes or other forms of coordinated misconduct have hushed it up recklessly to preserve in self-interest the Judiciary's esteem at the expense of the administration of justice and public welfare or even to benefit materially from the $10bls. handled annually in the bankruptcy courts.[107] This warrants the Committee widening its investigative scope to the Federal Judiciary and framing the investigative question thus: What have the top members and bodies of the Federal Judiciary known about bankruptcy fraud schemes developing in the Second Circuit and in any other and all other circuits given that in all of them obtain the same mode of appointment of bankruptcy judges, the same "absence of effective oversight" (¶14 supra), and the same opportunity in judicial proceedings as well as corruptive motive and means (GC:i supra)?

147. The investigation of this complaint can become a focal point of national attention. It all comes down to the Committee's and its members' commitment to ensuring that attorneys practice law in compliance also with those that apply to them and as a noble profession that aims to enable every person to assert and enjoy his or her rights and feel it fair to perform their duties just as others also do. The greater that commitment and the courage that must sustain it, the more realistic it will be for the Committee to emerge collectively as our generation's Senator Sam Ervin, the chairman of the Senate Watergate Committee. He became a national figure during the Senate hearings as he gave his TV audience in the millions the assurance that he would get to the bottom of a national political tragedy and bring calm through understanding to an outraged public. The Committee co-chairman, Senator Howard Baker, summarized his examination of all witness at the hearings in a simple but astonishingly effective question that he asked unfailingly of all of them. It became his hallmark and enduring legacy. It can be adapted for the Committee thus:

> What do the justices and judges know about coordinated misconduct in the Judiciary and how have they benefitted from doing nothing about it?

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[107] In building a case as it investigates that question, the Committee can draw from the jurisprudence of the cases against the Catholic Church's coordinated effort to protect pedophile priests. What doctrines could be more effective in impeaching the Judiciary than those that it developed to apply to others in a very similar organizational position?

148. If the Committee can muster the necessary strength of character and display the requisite investigative expertise to find the answer to that question, it can set in motion the process of resolving a disturbing institutional problem that goes to the heart of how we conceive of ourselves: A people governed with its consent by the rule of law. If so, the Committee or its most principled, courageous, and ambitious members can become a new and permanent iconic figure of our national psyche: The Champion of Justice. (fn. 5 supra)

B. Requested action

149. Therefore, Dr. Cordero respectfully requests that the Departmental Disciplinary Committee:

a. investigate, expose, and discipline the complained-against attorneys;

b. to that end, invoke Rule 8.3(b) to obtain information from those attorneys who possess knowledge or evidence concerning the subject of this complaint, an investigative undertaking that can be facilitated by the Demand for Information and Evidence (next infra), which identifies the documents most likely to pinpoint and expedite the investigation;

c. provide Dr. Cordero with copies of the information and evidence obtained or produced by it and notify him of, and allow him to attend, the depositions and hearings that it may hold given that his command of the record will enable him to suggest pertinent questions and provide helpful comments in assessing the truthfulness, accuracy, and relevance of such information and evidence, including the statements made at the hearings; and

d. post on its website or otherwise make publicly available the publicly filed documents in the records of the investigated cases, and call for submission of similar documents, which can help it to establish how widely coordinated misconduct has spread, how high it has reached in our legal and bankruptcy systems, and how detrimental its effect is on the public.

e. interview Dr. Cordero so that he may provide further information or clarify the information furnished in the complaint or contained in the record of *Premier*, *Pfuntner*, and *DeLano*;

f. consider this complaint an opportunity for the Committee and its members to emerge even unwillingly, reasonably scared, but morally compelled as reluctant heroes: Champions of Justice that make progress toward the realization in NYS and across the nation of the aspirational goal of "Equal Justice Under Law".

Dated: March 1, 2010

Dr. Richard Cordero, Esq.

59 Crescent Street
Brooklyn, NY 11208

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

V. Table of Authorities

1. NYCRR PART 1200. RULES OF PROFESSIONAL CONDUCT

2. HOUSE REPORTS

3. BANKRUPTCY CODE

4. CRIMINAL CODE

5. JUDICIAL CODE

6. FEDERAL RULES OF BANKUPTCY PROCEDURE

7. FEDERAL RULES OF CIVIL PROCEDURE

8. CODE OF FEDERAL REGULATIONS

9. FEDERAL REGULATIONS

10. CASES

11. STATISTICS OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

12. U.S. TRUSTEE MANUAL

13. CODE OF CONDUCT OF U.S. JUDGES

14. BOOKS

15. ARTICLES

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Case no. _____

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
Departmental Disciplinary Committee

61 Broadway, 2nd Floor
New York, NY 10006
tel. (212)401-0800; fax (212)287-1045

Demand for Information and Evidence

1. Having considered a complaint made to the Departmental Disciplinary Committee (Committee) about the conduct of several attorneys, the Committee exercises its power to investigate or act upon such conduct under the New York State Unified Court System, Part 1200 - Rules of Professional Conduct[1] (Rules or Rule #), and other applicable provisions of law.

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A. Duty to comply with the Demand, its addressees and subject

2. The Committee demands that the lawyers named below and any other lawyers who possess knowledge or evidence concerning the subject of this Demand for Information and Evidence (Demand) respond to it, as is their duty to do under Rule 8: [emphasis added]

[1] http://www.courts.state.ny.us/rules/jointappellate/index.shtml

RULE 8.3: Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer ***shall*** *report* such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to ***respond to a lawful demand for information*** from a tribunal or other authority empowered to investigate or act upon such conduct.

RULE 8.4: Misconduct

A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, ***knowingly assist*** or induce another to do so, or do so ***through the acts of another***;

(b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(f) ***knowingly assist a judge*** or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

[(g) on discrimination]

(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

3. Named lawyers to whom this Demand is addressed:

1) Ms. Diana G. Adams
[incumbent] U.S. Trustee for Region 2

2) Ms. Deirdre A. Martini

3) Ms. Carolyn S. Schwartz

Former U.S. Trustees for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212)510-0500; fax (212)668-2255
http://www.justice.gov/ust/r02/

4) Kathleen Dunivin Schmitt, Esq.
Assistant United States Trustee
Office of the United States Trustee
100 State Street, Room 609
Rochester, NY 14614
tel. (585)263-5812, fax (585)263-5862
http://www.justice.gov/ust/r02/rochester.htm

5) David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
The Granite Building, 2nd Floor
130 East Main Street
Rochester, NY 14604-1686
tel. (585)324-5724; fax (585)269-3047
dmacknight@lacykatzen.com
http://lacykatzen.com/bio-dmacknight.aspx

6) George Max Reiber, Esq.
Chapter 13 Trustee; and

7) James W. Weidman, Esq.
Attorney for Trustee George Reiber

Winton Court
3136 Winton Road S., Suite 206
Rochester, NY 14623-2928
tel. (585)427-7225; fax (585)427-7804
trustee13@roch13.com

8) Christopher K. Werner, Esq., and
9) Devin Lawton Palmer, Esq.
Boylan, Brown, Code,
Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528
cwerner@boylanbrown.com
http://www.boylanbrown.com/attorneys/Christopher%20K.%20Werner.aspx
dpalmer@boylanbrown.com
http://www.boylanbrown.com/attorneys/Devin%20L.%20Palmer.aspx

10) Michael J. Beyma, Esq.
Underberg & Kessler, LLP
300 Bausch & Lomb Place
Rochester, NY 14604
tel. (585)258-2890; fax (585)258-2821
mbeyma@underbergkessler.com, &
assistant breed@underbergkessler.com
http://www.underbergkessler.com/Attorneys/Detail/?ID=30

11) Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
1039 Monroe Avenue
Rochester, NY 14620
tel. (585)244-1070; fax (585)244-1085
kengor@rochester.rr.com
http://www.gordonandschaal.com/aboutus.html

12) Paul R. Warren, Esq.
Clerk of Court
U.S. Bankruptcy Court
1220 U.S. Courthouse
100 State Street
Rochester, NY 14614
tel. (585)613-4200
http://www.nywb.uscourts.gov/

13) Raymond C. Stilwell, Esq.
Adair Law Firm, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585)419-9000, fax (585)248-4961
rcstilwell@adairlaw.com
http://www.adairlaw.com

14) Karl S. Essler, Esq.
Principal, Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585)641-8000, ext. 242; fax (585)641-2702
kessler@fixspin.com; http://fixspin.com/
http://fixspin.com/attorneys/karl-s-essler/

15) William E. Brueckner, Esq.
Attorney for Trustee Kenneth Gordon in *In re Premier Van Lines, Inc.*, 01-20692, WBNY
at the time at:
Ernstrom & Dreste, LLP
2000 Winton Road South
Building One, Suite 300
Rochester, NY 14618-3922
now at:
Underberg & Kessler
300 Bausch & Lomb Place
Rochester, NY 14604
tel. (585)258-2892, fax (585)258-2821
wbrueckner@underbergkessler.com
http://www.underberg-kessler.com/Attorneys/Detail/?ID=78

4. Individuals and entities that may possess knowledge or evidence concerning this Demand and from whom the Committee demands, if they are lawyers, or whom it invites to provide information, if they are not lawyers, include, but are not limited to, the following:

a) Bankruptcy Judge John C. Ninfo, II

U.S. Bankruptcy Court
1220 U.S. Courthouse
100 State Street, Rochester, NY 14614
tel. (585)613-4200; http://www.nywb.uscourts.gov/

b) any and all current and former members of Judge Ninfo's staff, including, but not limited to:

1) Ms. Andrea Siderakis
Assistant to Judge Ninfo
courtroom tel. (585)613-4281, fax (585)613-4299

2) Mr. Todd M. Stickle
Deputy Clerk in Charge
tel. (585)613-4223, fax (585)613-4242

3) Case Administrator Karen S. Tacy

4) Case Administrator Paula Finucane

5) Court Directory:
http://www.nywb.uscourts.gov/rochester_court_directory_11004.php

c) U.S. District Judge David G. Larimer (Ret.)

U.S. District Court
2120 U.S. Courthouse
100 State Street
Rochester, N.Y. 14614
tel. (585)613-4000, fax (585)613-4035; http://www.nywd.uscourts.gov/mambo/

d) any and all current and former members of Judge Larimer's staff, including, but not limited to,

1) Rodney C. Early, Esq.
Former Clerk of Court

e) David J. Palmer
Owner of Premier Van Lines, Inc.
1829 Middle Road
Rush, NY 14543
tel. (585)292-9530

f) Auctioneer Roy Teitsworth
6502 Barber Hill Road
Geneseo, NY 14454
tel. (585)243-1563, fax (585)243-3311; www.teitsworth.com;
http://www.auctionzip.com/NY-Auctioneers/13102.html.

g) Bonadio & Co., LLP
Corporate Crossings
171 Sully's Trail, Suite 201

Pittsford, NY 14534-4557
tel. (585)381-1000; fax (585)381-3131;
http://www.bonadio.com/Profile/Locations/

h) Ms. Bonsignor
Court Reporter
Alliance Shorthand
183 East Main Street, Suite 1500
Rochester, NY 14604
tel. (585)546-4920

i) Ms. Melissa L. Frieday
Contracting Officer for court reporters
US. Bankruptcy Court
Olympic Towers, 300 Pearl Street, Suite 250
Buffalo, NY 14242
tel. (716)362-3200, fax (716)551-5103

j) The Circuit Judges of the Court of Appeals for the Second Circuit (CA2)
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY, 10007
Main tel. (212)857-8500; Clerk of Court tel. (212)857-8585
http://www.ca2.uscourts.gov/

k) any and all members of the CA2 judges' and the Court's staff, including, but not limited to:

1) Clerk of Court Catherine O'Hagan Wolfe

2) Former Clerk of Court Roseann B. MacKechnie

3) Court Directory: http://www.ca2.uscourts.gov/clerk/navfiles/contact.htm

5. The subject of this Demand includes, but is not limited to:

a) the specific information or evidence demanded hereunder;

b) the complained-about conduct, including, but not limited to, fraud, bankruptcy fraud, toleration of or participation in a bankruptcy fraud scheme, racketeering, concealment or wrongful disposition of assets, wrongful hiring of bankruptcy professionals, wrongful payment or sharing of fees, wrongful trusteeship, violation of fiduciary or official duty, wrongful influencing a judge, bribery, perjury, conflict of interest, wrongful denial of discovery, wrongful docketing, wrongful transmission of the record, tampering with the preparation and filing of a transcript, ex-parte contacts, bias, prejudice, partiality, abuse of process, abuse of judicial power, denial of due process, and any violation of the Rules or any other provision of law, whether the complained-about conduct was engaged in, or any such violation was committed by, the complained-against lawyers or the named

judges or any other lawyer or judge;

c) the following cases, their progeny, and the parties thereto:

1) *In re Premier Van Lines, Inc.*, 01-20692, WBNY, (*Premier*);
http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_15jan10.pdf

2) *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, (*Pfuntner*);
http://Judicial-Discipline-Reform.org/dockets/2Pfuntner_02-2230_15jan10.pdf

3) *Richard Cordero v. Kenneth Gordon, Esq.*, 03-cv-6021L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/3Gordon_03cv6021_15may6.pdf

4) *Richard Cordero v. David Palmer*, 03-mbk-6001L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/4Cordero_v_Palmer_03mbk6001L_19may3.pdf

5) *In re Premier Van*, 03-5023, CA2;
http://Judicial-Discipline-Reform.org/dockets/5Premier_03-5023_CA2_15may6.pdf

6) *Richard Cordero v. Kenneth W. Gordon, Trustee, et al*., 04-8371, SCt;
http://Judicial-Discipline-Reform.org/dockets/6TrGordon_04-8371_SCt.pdf

7) I*n re David and Mary Ann DeLano*, 04-20280, WBNY, (*DeLano*);
http://Judicial-Discipline-Reform.org/dockets/7DeLano_04-20280_WBNY_20jan9.pdf

8) *Cordero v. DeLano*, 05-cv-6190L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/8DeLano_05cv6190_WDNY_27oct6.pdf

9) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2;
http://Judicial-Discipline-Reform.org/dockets/9DeLano_06-4780_CA2_20jan9.pdf

10) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 08-8382, SCt
http://Judicial-Discipline-Reform.org/dockets/10DeLano_08-8382_SCt_6feb10.pdf

6. A reference to *Pfuntner* or *DeLano* includes its progeny, respectively, as reasonably applicable to obtain production of information and evidence as a means to investigate or act upon the complained-about conduct.
7. An officer with authority to execute this Demand is hereinafter referred to as the Committee.

B. Instructions for producing information and evidence

8. A lawyer shall:

a) understand a reference to an individual named herein to include any and all members of

such individual's staff, entity, partnership, group, or organization, whether incorporated or unincorporated;

b) comply with the instructions stated herein and complete such compliance within 14 days of being served with this Demand unless a different deadline for compliance is stated in ¶15 infra;

c) deem himself or herself served with this Demand as provided for mutatis mutandis under Rule 5(b)(2) of the Federal Rules of Civil Procedure (FRCP)[2], whether service is made on the lawyer or the attorney last know to be representing the lawyer;

d) compute time as provided for mutatis mutandis under FRCP 6 and understand a reference there to a court or a clerk's office to be a reference to the Committee; Rule 6(b)(2) does not apply;

e) be held responsible for any non-compliance and subject to the continuing duty to comply with this Demand within the day each day after the applicable deadline is missed, under pain of being named the subject of a disciplinary proceeding.

9. A lawyer shall produce to the Committee upon its demand and volunteer to it:

a) information concerning evidence herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person who is, is believed to be, is likely to be, or could be in possession or control of, or have access to, it;

b) information and evidence without passing judgment on its degree of relevance or lack thereof relative to the subject of the Demand in recognition of the fact that the relevance of a piece of information or evidence may only become apparent in the broader context of information or evidence already gathered or yet to be gathered by the gathering entity; and

c) information and evidence in application of the principle of honest compliance effort, i.e., "If in doubt, produce the information and evidence to the Committee and disclose the doubt".

10. A lawyer shall with respect to evidence herein demanded produce it, produce information about it, and issue a certificate, as defined in ¶14 infra, to the Committee whenever a reasonable person would who:

a) acts in good faith, or with due diligence, or competently, or in an official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of a

[2] http://www.uscourts.gov/rules/index.html >Rules and Forms in Effect, Federal Rules of Civil Procedure

person in such official or fiduciary capacity;

b) reasonably believes that at least one part of such evidence is herein demanded;

c) produces the information or evidence demanded and discloses any doubt as to whether any part thereof is relevant; or

d) believes that another person with an adversarial interest would want such information, evidence, or certificate or would find it of interest to the end of ascertaining whether an individual or entity:

1) is a holder or an identifier, as defined in ¶¶11 and 12, respectively, infra; or

2) has committed, covered up, or tolerated a violation of the Rules or any other applicable law, or engaged in complained-about conduct;

11. A lawyer who with respect to any evidence herein demanded has possession or control of, or access to, it is hereinafter referred to as a holder and shall for the Committee:

a) produce the original or a true, correct, and complete copy thereof together with a certificate, as defined in ¶14 infra;

b) if not complying for a legitimate reason under law with clause a) of this paragraph, certify that such holder holds the evidence and acknowledges the duty under this Demand to:

1) hold it in a secure place, which the holder shall name;

2) ensure its chain of custody; and

3) produce it without delay once the legitimate reason no longer justifies non-compliance;

12. A lawyer who with respect to any evidence herein demanded knows its actual, likely, or possible whereabouts is referred to hereinafter as an identifier and shall for the Committee:

a) identify the evidence of which the identifier knows the actual, likely, or possible whereabouts;

b) name such whereabouts,

c) identify the actual, likely, or possible holder of such evidence by stating his or her known, likely, or possible name, physical and electronic addresses, and telephone and fax numbers;

d) send to the Committee a true, correct, and complete copy of such evidence or of any secondary evidence that concerns such evidence and that directly or indirectly was received from, or generated by, the actual, likely, or possible holder of such evidence.

13. A lawyer shall produce all the parts of each piece of evidence herein demanded that state as to each transaction covered by such piece of evidence or, if not available each transaction, then for a set of such transactions:
    a) the time, place, amount, and currency or currency equivalent of each such transaction;
    b) the rates, including but not limited to, the normal, delinquent, introductory, preferential, promotional, special, and exchange rates, applied to the transaction;
    c) the description of the goods, goods seller, service, and service provider concerned by each transaction;
    d) the source or recipient of funds or the person or entity that made any charge or claim for funds;
    e) the opening and closing dates of the piece of evidence;
    f) the payment due date of the amount owing and such amount concerning each transaction;
    g) the good or delinquent standing of the account, agreement, or contract dealt with in the piece of evidence;
    h) the beneficiary of any payment;
    i) the surety, codebtor, or collateral for each transaction; and
    j) any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the piece of evidence.
14. A lawyer shall certify in an affidavit or an unsworn declaration subscribed under penalty of perjury as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each piece of evidence produced that:
    a) it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
    b) it is the whole of the piece of evidence and consists of both all the parts requiring its production and all other parts without regard to their degree of relevance or lack thereof relative to the Demand for production; or
    c) the certificate required under clauses a) and b) of this paragraph cannot be made with respect to any part or the whole of any piece of evidence and the reason therefor and attach the available evidence to the certificate.
15. A lawyer shall produce evidence demanded herein pursuant to the following timeframes measured from the time the Demand is served on such lawyer as provided for under ¶8c), d), e) supra:

a) within 14 days with respect to evidence that a lawyer has possession or control of, or access to, it at home or other permanent or temporary dwelling; in the office or place of work or business; in a land, sea, or air vehicle; in a security box or storage place; or equivalent place;

b) with respect to evidence that both does not fall within the scope of clause a) of this paragraph and must be requested from the third party (or parties) that has, is likely to have, or possibly has possession or control of, or access to, it:

   1) within 14 days send a request for such evidence to such third party and send a copy of such request to the Committee;

   2) within 10 days of receiving either such evidence or any communication concerning such request, send the evidence or a true, correct, and complete copy thereof to the Committee and, if such communication is not in writing, commit it to writing and send the resulting written communication to the Committee;

   3) proceed to obtain such evidence from the third party as a lawyer would who with due diligence makes a good faith and proactive effort to obtain on behalf of his or her client materially important evidence from a third party, including, but not limited to:

      i) applying to a court of competent jurisdiction for an order of production addressed to such party;

      ii) issuing a subpoena under FRCP 45 or equivalent state law provision;

      iii) proceeding under the discovery rules of FRCP or equivalent state rules.

c) within 14 days explain in writing to the Committee the lawyers' legitimate inability under law to comply with clauses a) and b) of this paragraph and continue to make an effort as described in clause b.3) of this paragraph to obtain and send to the Committee the evidence demanded.

C. Evidence in general, production, and certification

16. Evidence means information that already is or can be caused to be contained in a physical object and that relates to the subject of this Demand.

17. Information is the message that tells one entity something about another entity. It includes knowledge in the mind of a person that can be conveyed to, and received by, another person.

18. Evidence identified with particularity or in general in this Demand is to be understood broadly to include a physical object that holds information in any form and format about something related to the subject of the Demand and can convey knowledge about it directly to a human being or indirectly through a machine.
19. The information may be in the form of text, symbols, graphics, data, clip art, pictures, sound, or video; the format may be handwritten, print, digital, electronic, or otherwise; and the physical object may be any of the following or similar objects, any of which may be referred to as a document when it contains information:
    a) paper, carton, other paper pulp product; cloth, fabric, plastic, and similar materials;
    b) graphic or photographic paper, photo or movie film, microfilm, and equivalent;
    c) a removable storage device, such as a floppy disk; data tape; CD, DVD, Blue Ray, mini, or external hard disk; memory flash, stick, chip, or card; electronic memory strip, such as found on plastic cards, whether credit, debit, identity, security, medical cards and similar information-holding cards;
    d) fixed storage device, such as an internal hard disk of a computer, server, mainframe, or recorder box;
    e) an audio or video cassette, tape, or disk, such as used in a tape recorder, camcorder, telephone answering machine; surveillance or security system or device; phone switchboard or PBX; or central, control, or base unit that communicates with outside units, clients, and in-bound callers;
    f) a wireless handheld digital device, such as an iPod, Blackberry, Palm, or smartphone.
20. A lawyer from whom evidence is demanded herein and who has only or also information about it shall cause that information to be contained in the physical object, such as those listed in ¶19 supra, that is reasonably calculated to be the best means of conveying it to the Committee.
21. A lawyer that has evidence is referred to herein as evidence producer, whether the lawyer:
    a) is only in a position as a matter of fact rather than as a matter of law to produce such evidence but has not produced it yet;
    b) is in the process of producing such evidence; or
    c) has already produced such evidence.
22. Evidence includes information qualified by the evidence producer as:
    a) information believed by the evidence producer to be a fact;

b) information reasonably believed by the evidence producer to be true but not known to be a fact;

c) information qualified by the evidence producer as known to be false, likely to be false, or possibly false;

d) information qualified by the evidence producer as hearsay, regardless of its admissibility in court.

23. Evidence may be produced in the form of:

a) a written statement or affidavit composed to respond to this Demand;

b) an object that already exists at the time the evidence producer becomes aware that it contains evidence an oral communication or testimony;

c) an oral communication, such as a conversation, interview, deposition, or hearing, if such form of production is acceptable to the Committee; otherwise, it must be caused to be contained in a physical object, as described in ¶18 supra.

24. A reference herein to a specific piece of evidence includes the source evidence from which it was derived, such as through addition, deletion, merge, update, modification, correction, translation, transformation from one form to another, or rearrangement for inclusion in a database. Conversely, a demand for evidence that is the source from which other evidence was derived includes such derivative evidence.

D. Particular evidence to be produced

25. A lawyer shall produce to the Committee the following and reasonably similar evidence:

1. Financial evidence

26. Evidence of any payment, compensation, or transfer of value, whether in cash or in kind and for any reason whatsoever, or offer, promise, or contingent arrangement for such payment, compensation, or transfer by any partner, officer, any other employee, service provider, or person in any way and to any degree related to Underberg & Kessler, LLP, to U.S. Bankruptcy Judge John C. Ninfo, II, WBNY, since January 1, 1992, to date or in future.

27. The documents that during the preparation for and the course of their bankruptcy proceedings until their discharge and thereafter if related to such proceedings were made available directly or indirectly:

a) by David Gene and Mary Ann DeLano or their children, Michael David and Jennifer, to Christopher Werner, Esq., Devin Lawton Palmer, Esq., any other members or employee of Boylan, Brown; Trustee George Reiber, Assistant U.S. Trustee Kathleen Dunivin Schmitt, U.S. Trustees for Region 2 Deirdre A. Martini and Diana G. Adams; any other panel or official trustee; Judge Ninfo and District Judge David Larimer and any other judge or court staffer;

b) by David Palmer to Raymond C. Stilwell, Esq., Trustee Kenneth Gordon, U.S. Trustee Trudy Nowak, U.S. Trustee for Region 2 Carolyn Schwartz, and any other person mentioned by name or capacity in clause a) of this paragraph.

28. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Premier* and *Pfuntner*, regardless of the source, up to the date of compliance with this Demand, whether such documents relate generally to the bankruptcy petition of the DeLanos or Mr. Palmer or his former moving and storage company, Premier Van Lines, Inc., or its successor; or particularly to the investigation of whether either or both of them committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation.

29. The financial documents in either or both of the names of:

a) David Gene and Mary Ann DeLano;

b) David Palmer and Premier; and

c) third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's.

30. The dates of the documents referred to in this §D.1. are:

a) in the case of the DeLanos, since January 1, 1975, to date; and

b) in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.

31. The financial documents referred to in this §D.1. include the following:

a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at, or issued by, M&T Bank and any

other entity, whether banking, financial, investment, commercial, or otherwise, in the world;

b) the unbroken series of documents relating to the purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, including, but not limited to:
   1) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY 14580;
   2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
   3) Premier's warehousing space at the warehouses at:
      i) 2130 Sackett Road, Avon, NY, 14414, owned by Mr. James Pfuntner;
      ii) Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607;
      iii) 10 Thruway Park Drive, West Henrietta, NY 14586;
   4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and
   5) personal property, including any vehicle, mobile home, or water vessel;
c) mortgage documents;
d) loan documents;
e) title documents and other documents reviewing title, such as abstracts of title;
f) prize documents, such as lottery and gambling documents;
g) service documents, wherever in the world such service was, is being, or may be received or given; and
h) documents concerning the college expenses of each of the DeLanos' children, Jennifer and Michael, including, but not limited to, tuition, books, transportation, room and board, and any loans extended or grant made by a government or a private entity or a parent or relative for the purpose of such education, regardless of whose name appears on the documents as the loan borrower or grant recipient.

2. Minutes, transcripts, and recordings

32. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording of the status conference and pretrial hearing in *Pfuntner* requested by Trustee Schmitt on December 10,

2002, and held before Judge Ninfo on January 10, 2003.

33. The transcript and stenographic packs and folds of the hearings held before Judge Ninfo:
    a) in *Pfuntner* on:
        a. December 18, 2002
        b. February 12, 2003
        c. March 26, 2003
        d. April 23, 2003
        e. May 21, 2003
        f. June 25, 2003
        g. July 2, 2003
        h. October 16, 2003
    b) in *DeLano* on:
        a. March 8, 2008
        b. July 19, 2004
        c. August 23, 2004
        d. August 25, 2004
        e. December 15, 2004
        f. July 25, 2005
        g. November 16, 2005
34. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this Demand arrange for, and produce:
    a) the audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. James Weidman;
    b) its transcription on paper and as a PDF file on a floppy disc or CD; and
    c) the video tape shown at the beginning of such meeting and in which Trustee Reiber appeared providing the introduction to it.
35. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, made by Court Reporter Ms. Bonsignor of Alliance Shorthand and kept by Trustee Reiber, shall be produced by him or his transferee on paper and as a PDF file on a floppy disc or CD.
36. The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available upon demand to the Committee.
37. The statement reported in entry 134 of the docket of *DeLano* to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read and the stenographic packs and folds used by the reporter to record it.

3. Court orders

38. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:

a) in *DeLano*:

1) July 26, 2004, for production of some documents by the DeLanos;
2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;
6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee Reiber;
7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons";
8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos' debt repayment plan;
9) November 22, 2005, denying Dr. Cordero's motion to revoke the confirmation of the DeLanos' debt repayment plan;
10) Notice of January 24, 2007, releasing Mr. DeLano's employer, M&T Bank, from the obligation to make any further payments to Trustee Reiber.
11) February 7, 2007, discharging the DeLanos after completion of their plan;
12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinment of creditors from any attempt to

collect any discharged debt, the closing of the DeLanos' estate, and the release of their employer from the order to pay the Trustee;

b) in *Pfuntner*:

1) December 30, 2002, dismissing Dr. Cordero's cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero's application for entry of default judgment against David Palmer;
3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;
4) February 18, 2003, denying Dr. Cordero's motion to extend time to file notice of appeal;
5) July 15, 2003, ordering that a "discrete hearing" be held in Rochester on October 23, 2003, followed by further monthly hearings;
6) October 16, 2003, Disposing of Causes of Action;
7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

4. Docket documents

39. The Bankruptcy Clerk shall produce certified copies of the following documents referred to on the docket of *Premier*, 01-20692, WBNY, or connected to that case:

a) Documents entered on the docket:

1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;
2) the reports for the following months until the completion of the liquidation of

Premier;

3) the court order closing that case, which is the last but one docket entry, but bears no number;
4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof, which is the last docket entry, but bears no number.

b) Documents that are only mentioned in other documents in *Premier*, but not entered themselves anywhere:

1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;
2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.

40. Judge Ninfo's annual financial disclosure reports since 1992, required to be filed publicly under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (identified in West publications as App. 4) shall be obtained from the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600, for the purpose of determining compliance with the disclosure requirements, plausibility, and asset tracking.

for the Departmental Disciplinary Committee:

_____ _____

Date

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
NEW YORK, NEW YORK 10006
(212) 401-0800
FAX: (212) 287-1045 (NOT FOR SERVICE OF PAPERS)

March 10, 2010

PERSONAL AND CONFIDENTIAL

Richard Cordero, Esq.
59 Crescent Street
Brooklyn, NY 11208

Dear Mr. Cordero:

We write regarding your March 1, 2010 bound complaint against a number of Judges and attorneys involved in certain bankruptcy matters, a total of 14.

Of the attorneys named, only Diana Goldberg Adams and Carolyn Susan Schwartz are within the First Department's jurisdiction. The Committee will communicate with you regarding its review of the allegations of professional misconduct against Ms. Adams and Ms. Schwartz, under separate cover. Diedre A. Martini is not admitted in New York according to the records of the New York Office of Court Administration.

The other attorneys named in your complaint are registered in Rochester, New York and, accordingly, within the jurisdiction of the Fourth Judicial Department, 5th District Attorney Grievance Committee, 224 Harrison Street, Suite 408, Syracuse, NY 13202. Complaints against Judges are within the jurisdiction of the Commission on Judicial Conduct, 61 Broadway, 12th Floor, New York, NY 10006.

Please submit copies of your bound complaints directly to the jurisdictions referenced above.

Very truly yours,

Alan W. Friedberg

AWF:SKC:eh

GC:87

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
NEW YORK, NEW YORK 10006
(212) 401-0800
FAX: (212) 287-1045 (NOT FOR SERVICE OF PAPERS)

April 6, 2010

PERSONAL AND CONFIDENTIAL

Richard Cordero, Esq.
59 Crescent Street
Brooklyn, New York 11208

Re: Matter of Diana G. Adams, Esq.
Docket No.: 2010.1315
Matter of Carolyn S. Schwartz, Esq.
Docket No.: 2010.1316

Dear Mr. Cordero:

The Departmental Disciplinary Committee has completed the investigation of your complaints against the above-referenced attorneys. As explained below, the Committee has decided to take no further action.

Specifically, you report that both Ms. Adams and Ms. Schwartz failed in their supervisory capacities as United States Trustees for Region 2, to oversee the performance of Trustees in the administration of the Premier and DeLano bankruptcies. You do not describe any action that Ms. Adams took to which you object. You allege that Ms. Schwartz did not properly investigate your complaints concerning the Trustees, misstated the key issue in your appeal from Judge Ninfo's decision regarding Trustee Gordon, and failed to address your claim that Trustee Gordon failed to act promptly to protect your claim against the bankrupt.

Your submission relates a series of allegations against others, including charges of tampering with evidence, *ex parte* communication and cover-up of bankruptcy fraud, in the adjudication of claims at bankruptcy, naming Judges, Trustees, lawyers, and a Bankruptcy Clerk. You urge the Committee to undertake a Watergate-style investigation of all concerned. As noted in my letter to you dated March 10, 2010, this Committee does not have jurisdiction over any of the parties you name except for Ms. Adams and Ms. Schwartz. Furthermore, you have already pursued your position through litigation before Judge Ninfo and the suits initiated by you at p. GCd:6 of your complaint.

The Committee will not undertake an investigation as you suggest. More specifically, there is no basis to support an ethical violation by Ms. Adams or Ms.

rr:88

Schwartz.

The Committee arrived at this determination after the case was submitted to a member of the Committee, an independent board of lawyers and non-lawyers appointed by the Appellate Division, First Judicial Department. The Committee member concluded that no further investigation or action was warranted.

You may seek review of this decision by submitting a written request for reconsideration to this office at the above address within thirty (30) days of the date on this letter.

Very truly yours,

Alan W. Friedberg

AWF:MJE/mrh

Blank

Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England **59 Crescent St., Brooklyn, NY 11208**
M.B.A., University of Michigan Business School **Dr.Richard.Cordero.Esq@gmail.com**
D.E.A., La Sorbonne, Paris **tel. (718)827-9521**

[Sample of the request sent to each member of the Policy Committee; cf. Ci:170]

May 5, 2010

Alan W. Friedberg, Esq. tel. (212)401-0800; fax (212)287-1045
Chief Counsel, Departmental Disciplinary Committee
Appellate Division, 1st Judicial Department
NYS Supreme Court
61 Broadway, 2nd Floor
New York, NY 10006

Re: Matter of Diana G. Adams, Esq.
Docket No. 2010.1315
Matter of Carolyn S. Schwartz, Esq.
Docket No. 2010.1316
Complaint against Deirdre A. Martini

Dear Mr. Friedberg,

This is a request for reconsideration under 22 NYCRR §605.7(c)[1] of the recommendation of the Office of Chief Counsel, communicated to me in the letter of last April 6(rr:88 infra), not to take further action concerning my March 1 misconduct complaint* against the above-captioned attorneys, and for the Committee chairperson to designate to examine the request a member of the Committee other than the member who originally reviewed such recommendation.

Table of Contents

[1] Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the NYS Supreme Court, First Judicial Department, 22 NYCRR Part 605; http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

****

Dr. Richard Cordero, Esq.

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

59 Crescent St., Brooklyn, NY 11208
Dr.Richard.Cordero.Esq@gmail.com
tel. (718)827-9521

(as of 7june10)

APPENDIX

Question Concerning The Fact and Appearance of Conflict of Interests of The Five Member and Legal Staffers of The Attorney Grievance Committee in Rochester, NY,[1] Put to Them Upon The Dismissal of The Complaint of February 19, 2010, Against the Complained-against Attorneys Located in Rochester[2], But Which None of Them Answered

1. Whether any of the Committee member or legal staffers has any relation to the following parties or played any role in the following cases and, if so, which and to what extent:[3]

2. Gregory J. Huether, attorney in *In re Beverly Jackson*, WBNY bankruptcy case 2-04-22380-JCN [Judge John C. Ninfo, II], whose docket contains the following entries:

Filing date	entry #	
06/03/2004	1	Chapter 13 Judge John C. Ninfo/Trustee George Reiber AutoAssign.
01/03/2005	[below 24]	Appearances: James Weidman of counsel to George Reiber, Trustee;
01/04/2005	[below 25]	Notice to the Court of 341 assignment. Trustee: Kenneth Gordon, 02/08/05 at 3:00 at Rochester.
09/23/2005	45	10/06/2005 50 Order Granting Application to Employ Gregory J. Huether, Esq., as Attorney for Trustee Kenneth Gordon
01/24/2006	54	Notice to Creditors of Assets. Kathleen Schmitt, A.U.S.T. added as a party to this case. Proofs of Claims due by 4/27/2006.
04/06/2006	60	Application for Compensation for Gregory J. Huether , Trustee's Attorney, Period: 10/6/2005 to 11/17/2005, Fee: $6808.44, Expenses: $574.68.
04/14/2006	63	Letter filed by Gregory Huehter, Esq. advising that he does not have any objection to Application for Compemsation(RE: related document(s) 60 Application for Compensation,) [sic]

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[1] The member and legal staffers of the Attorney Grievance Committee in Rochester whose names are stated on the website of the Appellate Division, Fourth Department, and to whom the question was put are:
Thomas N. Trevett, Esq., Chair; Gregory J. Huether, Esq., Chief Counsel;
Daniel A. Drake, Esq. Principal Counsel; Andrea E. Tomaino, Esq., Principal Counsel;
Janet A. Montante, Investigator;
http://www.courts.state.ny.us/ad4/AG/AGdefault.htm >About the Committees, Offices & Staff

[2] Complaint, §I. List of Attorneys Complained-Against, GC:1

[3] The cases below can be downloaded through https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl.

05/22/2006	65	Order Granting Application For Compensation (Related Doc # 60) for Gregory J. Huether, fees awarded: $6808.44, expenses awarded: $574.68 Signed on 5/22/2006.
12/08/2006	70	Order of Distribution for Kenneth W. Gordon, Trustee Chapter 7, Fees awarded: $2157.59, Expenses awarded: $32.07; Awarded on 12/8/2006 Signed on 12/8/2006 .
05/15/2007	[last entry]	Trustee Fee Paid. P1# 07465500172

3. Robert F. Huether and Myrtle L. Huether, WBNY bankruptcy case, 2-88-21994-JCN
4. Daniel Martin Drake, WBNY bankruptcy case 2-04-21081-JCN
5. Daniel R. Drake, and Eileen C. Drake, WBNY 2-96-21061-JCN
6. Daniel R. Drake, WBNY 2-05-26779-JCN
7. Daniel Roy Drake and Michele Josephine Drake, WBNY 2-05-21890-JCN
8. Any of the following cases, which were returned upon querying "Drake" at: https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?953743629355141-L_517_0-1

Drake, Aaron J	(pty)	Drake, Christian O.	(pty)	Drake, Donna J.	(pty)
Drake, Aaron J.	(pty)	Drake, Colette L.	(pty)	Drake, Donna K.	(pty)
Drake, Barbara A.	(pty)	Drake, Constance M.	(pty)	Drake, Douglas E.	(pty)
Drake, Barbara A.	(pty)	Drake, Daniel Martin	(pty)	Drake, Duane	(pty)
Drake, Bernice	(pty)	Drake, Daniel R.	(pty)	Drake, Duane A	(pty)
Drake, Bert J.	(pty)	Drake, Daniel R.	(pty)	Drake, Duane D.	(pty)
Drake, Bill	(pty)	Drake, Daniel Roy	(pty)	Drake, Eileen C.	(pty)
Drake, Brian J.	(pty)	Drake, Danita M.	(pty)	Drake, Elicia Jo	(pty)
Drake, Candace M.	(pty)	Drake, Daryl R.	(pty)	Drake, Eugene J.	(pty)
Drake, Carol A.	(pty)	Drake, David S.	(pty)	Drake, Florence C.	(pty)
Drake, Catherine E.	(pty)	Drake, Debbie L.	(pty)	Drake, Francis S.	(pty)
Drake, Chad W.	(pty)	Drake, Debra J.	(pty)	Drake, Gary	(pty)
Drake, Charles Robert	(pty)	Drake, Deena L.	(pty)	Drake, Gary A.	(pty)
Drake, Charlotte A.	(pty)	Drake, Deena L.	(pty)	Drake, Gary D.	(pty)
Drake, Cheri M.	(pty)	Drake, Donald E.	(pty)	Drake, Gary D.	(pty)
Drake, Cheryl M.	(pty)	Drake, Donna J.	(pty)	Drake, Gary Dale	(pty)

Drake, George J. (pty)
Drake, George J. (pty)
Drake, Gerald L. (pty)
Drake, Glenda (pty)
Drake, Henry Rozell(Jr.) (pty)
Drake, Holly (pty)
Drake, James F. (pty)
Drake, James J. (pty)
Drake, James R. (pty)
Drake, Jason Anthony (pty)
Drake, Jean (pty)
Drake, Jeffrey A. (pty)
Drake, Jennifer J (pty)
Drake, Jennifer K. (pty)
Drake, Jennifer L. (pty)
Drake, Jill Marie (pty)
Drake, Joanna L. (pty)
Drake, John L.(Sr.) (pty)
Drake, John S. (pty)
Drake, Joseph D (pty)
Drake, Joseph D. (pty)
Drake, Judy A. (pty)
Drake, Julianne S. (pty)
Drake, Julie E. (pty)
Drake, Katharine E. (pty)
Drake, Kathleen P. (pty)
Drake, Kenneth W. (pty)
Drake, Kevin J. (pty)
Drake, Kim Ann (pty)
Drake, Kim M. (pty)
Drake, Kimberlee M. (pty)
Drake, Kimberlee Marie (pty)
Drake, Kimberlee Marie (pty)
Drake, Kimberly A (pty)
Drake, Kristin A. (pty)
Drake, Leroy (Jr.) (pty)
Drake, Lewis H. (pty)
Drake, Linda L. (pty)
Drake, Linda M (pty)
Drake, Lisa A. (pty)
Drake, Lisa A. (pty)
Drake, Lois E. (pty)
Drake, Margaret (pty)
Drake, Margaret M. (pty)
Drake, Marilyn A. (pty)
Drake, Marilyn A. (pty)
Drake, Mark A. (pty)
Drake, Marsha E. (pty)
Drake, Mary Anne (pty)
Drake, Mary L. (pty)
Drake, Michael C. (pty)
Drake, Michael L (pty)
Drake, Michael W. (pty)
Drake, Michele Josephine (pty)
Drake, Michelle (pty)
Drake, Michelle A. (pty)
Drake, Michelle R. (pty)
Drake, Michelle S. (pty)
Drake, Nancy D. (pty)
Drake, Nancy J. (pty)
Drake, Norm D. (pty)
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Drake, Norman D. (pty)
Drake, Norman D. (pty)
Drake, Pamela M. (pty)
Drake, Pamela M. (pty)
Drake, Paul R. (pty)
Drake, Randy (pty)
Drake, Richard J. (pty)
Drake, Richard J. (pty)
Drake, Robert (pty)
Drake, Robert A. (pty)
Drake, Robert D. (pty)
Drake, Robert E. (pty)
Drake, Robert R. (pty)
Drake, Robert R. (pty)
Drake, Robert W. (pty)
Drake, Robert William(Jr.) (pty)
Drake, Rochelle A. (pty)
Drake, Ronald D.(Jr.) (pty)
Drake, Ronald James (pty)
Drake, Ronald James (pty)

Drake, Ronald M	(pty)	Drake, Susan G.	(pty)	Drake, William L.(III)	(pty)
Drake, Roxanne E.	(pty)	Drake, Timothy A.	(pty)	Drake, William P.	(pty)
Drake, Russell A.	(pty)	Drake, Timothy E.	(pty)	Drake, William S.	(pty)
Drake, Sharla B.	(pty)	Drake, Wendy	(pty)	Drake, William S.	(pty)
Drake, Shawn A.	(pty)	Drake, Wendy Ann	(pty)	Drake Design	(pty)
Drake, Sherry E	(pty)	Drake, Wendy Kathleen	(pty)	Drake Manufacturing Co., Inc.	(pty)
Drake, Steven R.	(pty)	Drake, Wilda G.	(pty)	Drake's Tire Service	(pty)
Drake, Susan	(pty)	Drake, William J	(pty)		
Drake, Susan	(pty)	Drake, William L.	(pty)		
Drake, Susan B.	(pty)				

9. Thomas A. Trevett, WBNY bankruptcy case 1-10-10102-CLB
10. Janet L. Montante and Joseph P. Montante, WBNY bankruptcy case 1-00-10334-CLB
11. Elizabeth A. Tomaino and Thomas P. Tomaino, WBNY bankruptcy case 1-99-11376-MJK, **36 Dayton Street, Lockport**, NY 14094
12. Any of the following cases at: https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?200334768014293-L_517_0-1:

1. Tomaino, Lynn Marie, 1-93-13747-MJK, **38 Dayton St., Lockport**, NY 14094	(pty)	6. Tomaino, Michael J., 1-94-13622-MJK, 63 Rochester Street, **Lockport**, NY 14094	(pty)
2. Tomaino, Antoinette, 1-03-01106-MJK, 23 Waterman Street, **Lockport**, NY 14094	(pty)	7. Tomaino, Michelle E., and Richard M. Tomaino, 1-97-12796-MJK, 115 Willow Street, #3, **Lockport**, NY 14094	(pty)
3. Tomaino, Elizabeth A., 1-99-11376-MJK, 36 Dayton Street **Lockport**, NY 14094	(pty)	8. Tomaino, Susan C. and Earl R. Boyer and Susan C. Boyer,1-93-13461-MJK, 14 Ransom Court, **Lockport**, NY 14094	(pty)
4. Tomaino, Linda Anne, 1-99-14097-MJK, 6342 Robinson Road, Lot #63, **Lockport**, NY 14094	(pty)	9. Tomaino, Claire I., and Paul J. Tomaino, 1-01-15500-MJK, 558 East Avenue Medina, NY 14103	(pty)
5. Tomaino, Anthony Peter, 1-01-15181-MJK**,** 263 South Street, **Lockport**, NY 14094	(pty)		

10. Tomaino, Donna L, 1-09-10562-MJK, PO Box 287, North Tonawanda, NY 14120-0287 (pty)

11. Tomaino, Janet E., 1-05-14739-MJK, 3030 Gary Drive, North Tonawanda, NY 14120 (pty)

12. Tomaino, John M., 6142 Townline Road, **Lockport**, NY 14094 (pty)

13. Tomaino, Lorinda and Anthony Peter Tomaino, 1-01-15181-MJK, (pty)

14. Tomaino, Paul J. and Claire I. Tomaino, 1-01-15500-MJK (pty)

15. Tomaino, Penelope (pty)

16. Tomaino, Richard M.(Jr.), Tomaino, Michelle E., and Tomaino, Michelle E.,1-97-12796-MJK (pty)

17. Tomaino, Thomas P., and Elizabeth A. Tomaino, 1-99-11376-MJK (pty)

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
NEW YORK, NEW YORK 10006
(212) 401-0800
FAX: (212) 287-1045 (NOT FOR SERVICE OF PAPERS)

May 14, 2010

PERSONAL AND CONFIDENTIAL

Mr. Richard Cordero
59 Cresent Street
Brooklyn, NY 11208

Re: Matter of Diana G. Adams, Esq.
Docket No: 2010.1315

Dear Mr. Cordero:

This will acknowledge receipt of your request for RECONSIDERATION of a complaint closed by the Departmental Disciplinary Committee.

Your complaint will be reconsidered. However, due to the large volume of complaints filed in this office, reconsideration is a lengthy process and we regret that we cannot issue progress reports. You will be advised in writing when the decision is reached.

Thank you for your patience

Very truly yours,

The Office of the Chief Counsel

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
NEW YORK, NEW YORK 10006
(212) 401-0800
FAX: (212) 287-1045 (NOT FOR SERVICE OF PAPERS)

May 14, 2010

PERSONAL AND CONFIDENTIAL

Mr. Richard Cordero
59 Cresent Street
Brooklyn, NY 11208

Re: Matter of Carolyn S. Schwartz, Esq.
Docket No: 2010.1316

Dear Mr. Cordero:

This will acknowledge receipt of your request for RECONSIDERATION of a complaint closed by the Departmental Disciplinary Committee.

Your complaint will be reconsidered. However, due to the large volume of complaints filed in this office, reconsideration is a lengthy process and we regret that we cannot issue progress reports. You will be advised in writing when the decision is reached.

Thank you for your patience

Very truly yours,

The Office of the Chief Counsel

Dr. Richard Cordero, Esq.

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

59 Crescent St., Brooklyn, NY 11208
Dr.Richard.Cordero.Esq@gmail.com
tel. (718)827-9521

[Generic sample of the individualized cover letter sent to each member of the Disciplinary Committee (Gi:168)]

May 21, 2010

Committee Member
Departmental Disciplinary Committee
61 Broadway, 2nd Floor
New York, NY 10006

tel. (212)401-0800; fax (212)287-1045

Dear Committee Member,

I filed with the Disciplinary Committee of the Appellate Division, 1st Department, a complaint[1] against three attorneys in Manhattan. It is in your capacity as member of that Committee that I am addressing you because I believe that neither you nor your colleagues thereon would approve of its handling in your collective name by the Office of Chief Counsel.(rr:88) Hence, this is a request for you to intervene to review it and reconsider its rejection.(Ci:126,127)

Indeed, the explicit purpose of the Committee is to protect the public from misconducting attorneys and promote integrity in the legal profession[2]. The complaint is a meticulous presentation of *uncontested* evidence of misconduct based on documents filed with the courts in three cases that twice went from a bankruptcy court all the way to the U.S. Supreme Court[3]. It shows that the attorneys' misconduct was aggravated by their status as public officers: They were or are U.S. Trustees for Region 2[4]. As such, they were duty-bound to ensure the conformance of bankruptcy cases to the law[5] and bore responsibility for their subordinate attorney-trustees' conduct[6]. Nevertheless, they allowed two trustees, required by regulation to handle their cases personally[7], to lay their hands on an unmanageable 7,289 cases and bring them before the same judge[8], who has in practice unreviewable power[9] to determine whether they earn their per case compensation[10] and are reimbursed for their expenses[11]. A bankruptcy petition mill[12] and a situation inherently fostering dependence and connivance degenerated naturally into a bankruptcy fraud scheme[13]. Run by trustees, attorneys, and judges(157§V), it unjustly enriches or unjustifiably harms debtors and creditors while inflicting upon the public the loss caused by every bankruptcy. The Trustees should have known(141§A) and were made to know about the schemers and their scheme, but covered up for them. Yet, the Office of Chief Counsel, without any investigation(148§IV) or even asking the attorneys to respond(135§I), rejected the complaint by rubberstamping it "no further investigation or action was warranted"[14]. In so doing, the Office disregarded its duty(144§III), gives the appearance of impropriety(151§A; cf. 161§VI) and enables attorneys to continue degrading the profession and harming the public even more(138§II).

I trust you will not show the same indifference to evidence of misconduct, which only emboldens misconducting attorneys[15], but instead will report it to the Appellate Division(154§B). Thus, I respectfully request(164§VIII) that you:**1)** and other members **call a meeting** of the Committee[21](168) to review the complaint and reconsider its rejection; **2)** cause the Committee to act as such[16] or by subcommittee[17] to investigate it[18] by **(i)** applying for subpoenas[19] to obtain the documents and depose the people on the proposed Demand for Information and Evidence(69), which can focus and speed up the investigation, and **(ii)** holding hearings[20]; **3)** given my knowledge of the facts and the record, share with me the evidence produced and allow me to attend any hearings so that I may assist in the investigation; and **4)** consider how you, your firm, and I can take action on behalf of the class of defrauded debtors and creditors and emerge, possibly with the vocal support of a challenger in this mid-term election year, as the Champions of Justice(162¶64). Thus, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero, Esq.

[1] Complaint of March 1, 2010, in http://Judicial-Discipline-Reform.org/NYS_att_complaints/DrRCordero-DisciplinaryCom_20may10.pdf >GC:i-86; this letter is included in that file, where the links in these endnotes are active and with a click can access their references.

[2] III. WHAT THE COMMITTEE DOES

> The purpose of the Committee is **to protect the public** and the legal profession by ensuring that lawyers adhere to the ethical standards set forth in the Rules of Professional Conduct (the "Rules"). **The Committee protects the public by reviewing and investigating complaints against lawyers** and by recommending sanctions against those who are proven to have violated the Rules. It protects the legal profession by **enforcing high standards of conduct**, while at the same time ensuring that **complaints are dealt with fairly**. (emphasis added) Committee's self-description;

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

[3] 08-8382, SCt, http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCt_petition_3oct8.pdf; 04-8371, SCt, http://Judicial-Discipline-Reform.org/docs/DrCordero_petition_to_SCt_20jan5.pdf

[4] Region 2 Trustee-Attorneys Diana Goldberg Adams, current, and Carolyn Susan Schwartz and Dierdre A. Martini, former; as to the latter see Ci:163§VII.

[5] 28 U.S.C. Chapter 39-United States Trustees. §586 Duties, Ci:163¶66.

[6] Id.; Rule 5.1(b) of the Rules of Professional Conduct, Ci:143¶13; U.S. Trustee Manual:

> §2-2.1 Pursuant to 28 U.S.C. §586(a), the United States Trustee must supervise the actions of trustees in the performance of their responsibilities.
>
> §2-3.1 The primary functions of the United States Trustee in chapter 7 cases are the establishment, maintenance, and supervision of panels of trustees, and the monitoring and supervision of the administration of cases under chapter 7 of the Bankruptcy Code.

http://www.justice.gov/ust/eo/ust_org/ustp_manual/index.htm >Chapter 7 Case Administration

> §4-3.1 The primary responsibilities of the United States Trustee in chapters 12 and 13 cases are the appointment of one or more individuals to serve as standing trustees; the supervision of such individuals in the performance of their duties; and the supervision of the administration of cases under chapters 12 and 13.

http://www.justice.gov/ust/eo/ust_org/ustp_manual/index.htm >Ch. 12 & 13 Case Administration

[7] 28 CFR §58.6(10), http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf; Ci:139¶e1)(a)

[8] http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf
http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf

[9] http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf >¶4

[10] Compensation of trustee under Chapter 7, 11 U.S.C. §§326(a) and 330(a)(1)(A) ; under Chapter 13 if a panel trustee, §§326(b) and 1326(a)(2)-(3); and if a standing trustee, §1326(b)(2) and 28 U.S.C. §586(e); http://Judicial-Discipline-Reform.org/docs/11usc_Bkr-Code_08.pdf and http://Judicial-Discipline-Reform.org/28usc586_trustees_duties.pdf

[11] Reimbursement of expenses, 11 U.S.C. §330(a)(1)(B), (2), and (7); §330(a)(1)(B) and §331

[12] 11 U.S.C. §330(c), on payment of no less than $5 per month from any distribution, which creates a perverse incentive to rubberstamp any bankruptcy relief petition and as many as possible.

[13] http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf

[14] Infra: rr:89 and cf. Ci:171; Ci:151§A.

[15] Non-lawyers too are emboldened; see Bankruptcy Officer DeLano's incongruous, implausi-

ble, and suspicious declarations in his bankruptcy petition, Ci:139¶e1)(c) infra; GC:42§1.

[16] 22 NYCRR 603. Conduct of Attorneys. Rules of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department

§603.4 Appointment of Disciplinary Agencies; Commencement of Investigation of Misconduct; Complaints; Procedure in Certain Cases

c. Investigation of professional misconduct…may be commenced sua sponte by this court or by the Departmental Disciplinary Committee….

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

[17] id. §603.4 b.…The…Committee may act through…subcommittees or hearing panels.

[18] The Committee should take over from the Office of Chief Counsel by applying the principle adopted in its Rules that a person cannot review his or her own decision:

22 NYCRR Part 605. Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the NYS Supreme Court, First Judicial Department

§605.7 Review of Recommended Disposition of Complaint (emphasis added)

c. Reconsideration. Upon notification of the dismissal of a complaint pursuant to Section 605.6, the complainant may submit a written application for reconsideration that shall be filed with the Office of the Chief Counsel within 30 days of the date of the notification. The Committee chairperson shall **designate to examine** a request for reconsideration **a member** of the Committee **other than the member who originally reviewed** the recommendation of the Office of the Chief Counsel.

§605.8 Final Disposition Without Formal Proceedings (emphasis added)

c.3 …As soon as practicable after the receipt of an application [for reconsideration of a letter of admonition], the Office of Chief Counsel shall transmit the application and the file relating to the matter to a member of the…Committee (**who shall not be a Reviewing Member designated with respect to such matter** under § 605.6(f)(2) of the Part) designated to review the matter by the Committee Chairperson.…

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

Cf. 28 U.S.C. §47. Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him. http://uscode.house.gov/pdf/2008/2008usc28.pdf

[19] §603.5 Investigation of Professional Misconduct on the Part of an Attorney; Subpoenas and Examination of Witnesses Under Oath

a. Upon application by the Departmental Disciplinary Committee…conducting an investigation of professional misconduct…the clerk of this court shall issue subpoenas for the attendance of **any** person and the production of books and papers before such committee…or any subcommittee or hearing panel thereof…. (emphasis added)

[20] §603.4 Appointment of Disciplinary Agencies; Commencement of Investigation of Misconduct;

d. When the Departmental Disciplinary Committee, after investigation, determines that it is appropriate to file a petition against an attorney in this court, the committee shall institute disciplinary proceedings in this court and the court may discipline an attorney on the basis of the record of **hearings before such committee**,… (emphasis added)

§603.5b. The Departmental Disciplinary Committee, or a subcommittee or hearing panel there-of, or its counsel, is empowered to take and cause to be transcribed the evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

[21] §605.19a. The Committee shall meet…upon notice from the Secretary given at the direction of…five members…not less than 24 hours prior to the time fixed for the meeting…

Dr. Richard Cordero, Esq.

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May 20, 2010

Request For Intervention to Review and Reconsider

to the Departmental Disciplinary Committee
of the NYS Supreme Court, Appellate Division, 1st Judicial Department
61 Broadway, 2nd Floor, New York, NY 10006, tel. (212)401-0800; fax (212)287-1045

CONCERNING

Matter of Diana Goldberg Adams, Esq.
Docket No. 2010.1315

Matter of Carolyn Susan Schwartz, Esq.
Docket No. 2010.1316

Matter of Deirdre A. Martini

CASE HISTORY AND GROUNDS FOR THE REQUEST: On March 1, 2010, a misconduct complaint against the above-captioned attorneys or counsellor-at-law was filed with the 1st Department Disciplinary Committee by Complainant Dr. Richard Cordero, Esq.* The Office of Chief Counsel informed him last April 6 of its rejection of the complaint in the conclusory statement with no discussion of any allegation that "there is no basis to support an ethical violation [and] no further investigation or action was warranted".(rr:88 infra) A reconsideration request dated May 5 was filed. The Office acknowledged receipt on May 14(Ci:126, 127) and stated that "reconsideration is a lengthy process [and] due to the large volume of complaints filed in this office [] we cannot issue progress reports".

No provision of law or rule even hints that reconsideration is a lengthier process than the initial consideration of a complaint. Instead, these statements give rise to the inference that for reasons of its convenience unrelated to the merits of complaints, the Office lightens its caseload by rejecting them out of hand. Thereby it raises before the complainant an artificial barrier to obtaining lawful relief for his grievance through the disciplinary committee system. To overcome that barrier, the complainant is forced to request reconsideration by rearguing the merits of his complaint and arguing the Office"s duty to investigate it, for no grounds for rejection were provided that he could argue against. Only if he survives that test of his determination to obtain relief does the Office resign itself to getting down to work by submitting the complaint to a reconsideration"s "lengthy process", presumably a careful consideration of the complaint, the first one. This inferential reading of the Office"s statements is particularly justified in light of the formal and substantive merits of the instant complaint, discussed below. It also justifies having no confidence in the Office"s willingness to investigate the complaint, let alone do so thoroughly. Consequently, this is a request for the Committee to intervene by reviewing the complaint and taking over its reconsideration under 22 NYCRR §605.7(c)[1] in order to conduct the necessary investigation to prosecute the complaint, administer discipline, and provide relief.

* http://Judicial-Discipline-Reform.org/NYS_att_complaints/DrRCordero-DisciplinaryCom_20may10.pdf

Table of Contents

[1] Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the NYS Supreme Court, First Judicial Department, 22 NYCRR Part 605; http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

ii) To download Adobe Reader 9.3 for free, go to http://get.adobe.com/reader/

a. Cover letter and complaint of March 1, 2010
http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Disciplinary_Com.pdf

b. Proposed Demand for Information and Evidence
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_Disom/2DrRCordero-DisCom_infoDemand.doc
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/2DrRCordero-GC_infoDemand.pdf

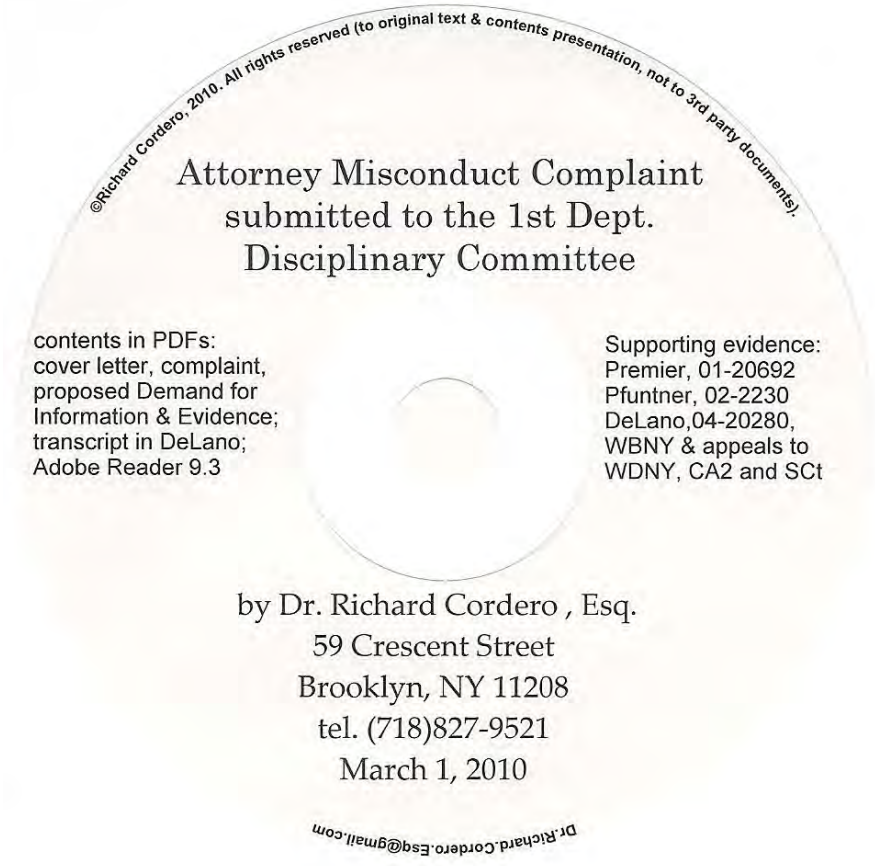
c. Transcript of the evidentiary hearing in re David and Mary Ann DeLano
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/3transcript_DeLano_1mar5.pdf

d. Table of Exhibits in James Pfuntner v. Trustee Kenneth Gordon et al.
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/4Pfuntner_Table_Exhibits.pdf

e. Exhibits in Pfuntner
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/5Pfuntner_record_A1-2229.pdf

f. Exhibits in DeLano volume 1 = D:1-CA:2090
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/6DeLano_D1-CA2090.pdf

g. Exhibits in DeLano volume 2 = CA:2091-US:2547
http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/7DeLano_CA2091-US2547.pdf



I. The Disciplinary Committee's Office of Chief Counsel failed even to request the complained-against attorneys to respond to the complaint

1. Part 605. RULES AND PROCEDURES OF THE DEPARTMENTAL DISCIPLINARY COMMITTEE provides that requesting a response from the complained-against attorney is the normal course of action that the Office of Chief Counsel must take unless the exception applies.

> 22 NYCRR §605.6(d)(2) Transmission of Notice.
>
> **Except** where it appears that there is **no basis for proceeding further**, the Office of Chief Counsel **shall** promptly prepare and forward to the Respondent a **request** for a statement in **response** to the Complaint,…. (emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

2. Complainant Dr. Richard Cordero, Esq., received no copy of a response to his complaint of either Complained-against Attorneys Carolyn S. Schwartz or Diana G. Adams, former and current U.S. Trustees for Region 2,[2] respectively.[3] If the Office of Chief Counsel had afforded them the opportunity to provide such response and they had responded, the Office would have been required by the Committee"s own description of its purpose and functioning to send Dr. Cordero a copy of their response for him to reply to it. Since the Committee"s self-description is officially published[4], the public is entitled to rely upon it.

> VII. B. Initial Investigation.
>
> …During this investigation, the attorney about whom you complained will be

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[2] Trustees Schwartz and Adams can be investigated and disciplined for misconduct regardless of date of occurrence of their misconduct given that there are at least two applicable sets of rules, as provided for under Part 603. CONDUCT OF ATTORNEYS of the Appellate Division, First Department, and hereinafter referred to generally as the Rules:

> 22 NYCRR §603.2 Professional Misconduct Defined
>
> Any attorney who fails to conduct himself both professionally and personally, in conformity with the standards of conduct imposed upon members of the bar as conditions for the privilege to practice law and any attorney who violates any provision of the rules of this court governing the conduct of attorneys, or with respect to conduct on or after April 1, 2009, **the Rules** of Professional Conduct, (22 N.Y.C.R.R Part 1200), or with respect to conduct on or before March 31, 2009, any disciplinary rule of **the former Code** of Professional Responsibility, as adopted by the New York State Bar Association, effective January 1,1970, as amended, or **any of the special rules** concerning court decorum, shall be guilty of professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law. (emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

[3] As to Dierdre A. Martini, former U.S. Trustee for Region 2, see Ci:158§VII and 161¶(g).

[4] See generally the website of the Appellate Division, 1st Judicial Department, of the NYS Supreme Court, http://www.courts.state.ny.us/courts/ad1/index.shtml

sent a copy of your complaint and will be given the opportunity to respond to it. You, in turn, will be given the opportunity to reply to the lawyer's response.

Committee's self-description;
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

A. The provisions for rejecting a complaint were not applicable to the instant complaint, whose presentation of evidence raised substantial questions of ethical violations that required investigation

3. According to the Committee"s self-description, there are four specific, mostly objective reasons for the Office of Chief Counsel to reject a complaint without requesting a response.

VII. HOW COMPLAINTS ARE PROCESSED

A. Initial Screening

Every complaint is given a docket number and initially reviewed by an attorney on the Committee staff. If it is determined that your complaint involves a matter falling outside our Committee's authority, the staff will notify you that your complaint is being rejected. **A rejection** does not mean we did not believe you. It only **means** that what you said the attorney did either was not a violation of any specific rule of the Rules or **we cannot pursue it for one of the following reasons**: (emphasis added)

- A major portion of your complaint is in essence a fee dispute over which the Committee has no jurisdiction.
- The Committee cannot act on your complaint for other reasons having to do with jurisdiction. For example, that the lawyer's registration address is not in Manhattan or the Bronx; the lawyer has already been suspended or disbarred; the lawyer is deceased; or there is a lawsuit pending that involves the same issues.
- Your complaint involves collecting a debt that a lawyer owes to you and you have not exhausted available civil remedies.
- There appears to be little likelihood that your complaint alleging professional misconduct can be proven due to the passage of time, the unavailability of evidence or applicable law.

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

4. The Office did not cite any of those four specific reasons for rejecting the complaint. Nor could it do so, for the complaint is not about a fee dispute or a debt collection and is within the Committee"s territorial jurisdiction. Likewise, the passage of time has not affected it given that its allegations can be proven on the basis of the thousands of pages of court documents consisting of pleadings, briefs, dockets, motions, transcripts, letters among the parties, trustees, judges, their staff, etc., that form the record of the cases involving Trustees Schwartz, Adams, and Martini. This record was submitted to the Chief Counsel –as well as to the Committee chair and the other members of the Policy Committee- on a CD-ROM(GC:vi-vii infra) and part of it

was even printed and attached to the complaint, namely, the transcript(Tr:i-190) by the Bankruptcy Court reporter of the evidentiary hearing in *In re David and Mary Ann DeLano*(cf. GC:14¶A).

5. Underscoring that the norm is to ask for a response to a complaint, the Appellate Division"s rules in Part 603. CONDUCT OF ATTORNEYS only provide one instance in which the Committee can dismiss a complaint without taking that first investigative step, which strictly speaking is reject it: if it consists of a fee dispute.

> §603.4 Appointment of Disciplinary Agencies; Commencement of Investigation of Misconduct; Complaints; Procedure in Certain Cases
>
> c. …Whenever the Departmental Disciplinary Committee concludes that **the issue involved upon the complaint is a fee dispute** and, accordingly, **dismisses the complaint**, the chief counsel to the committee or his assistant shall advise the complainant and the respondent that the dispute might be satisfactorily resolved by referring it for conciliation to the Joint Committee on Fee Disputes…(emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

6. As indicated previously, the instant complaint does not involve a fee dispute at all. So the only remaining reason for rejecting a complaint without first asking for a response is a catch-all, subjective one, for it requires interpreting the law to mean that "what you said the attorney did [] was not a violation of any specific rule of the Rules"(¶3 supra). This is the reason that the Office of Chief Counsel conveniently invoked by limiting itself to making this conclusory assertion, which can be applied as a boilerplate to reject any and every complaint:

> The Committee will not undertake an investigation as you suggest. More specifically, there is no basis to support an ethical violation by Ms. Adams or Ms. Schwartz. (rr:88, cf. Ci:171 and 142fn6 infra)

7. Yet, the instant complaint is a professionally written one that runs to 68 pages, contains hundreds of references to the pages, sections, and paragraphs of the record on the CD and transcript, and has 107 footnotes that include hundreds of links to the text of laws, rules, regulations, and codes as well as to statements and statistics from members and entities of government, such as the Administrative Office of the U.S. Courts, PACER, and Congress; to the websites of people to verify their identity, employment, and contact information; to commentaries on the law and the administration of justice; etc. Those 68 pages are preceded by the pages of a table of contents(GC:iii infra) consisting of headings which not merely name, but rather concisely summarize the contents of the numerous sections composing the complaint and in which sets of facts and contentions are treated with particularity and to the point while displaying a

chronological and logical progression. Hence, that table furnishes an overview of the complaint and functions as its index. All that provides easy access to the evidence of what Trustees Schwartz, Adams, and Martini and their supervised trustees, for whom they are responsible, were supposed to do but failed to do and shows what they did instead. Those formal features point to the thoroughness of complaint composition and lend credence to its substantive elements. Neither admit of the complaint being tossed away with a flick of a hand as if it had been written on the back of a napkin. They establish, if not the fact that the Trustees violated ethical requirements, then probable cause to believe that they did and most certainly raise "substantial question"(Rule 8.3(a) at Ci:145 infra; GC:64§3) that they committed misconduct given „the available "evidence or applicable law""(¶3. 4th bullet supra).

8. If in a complaint that survives the four objective reasons for rejection the *possibility* is shown that ethical violations *may* have been committed, then the Office of Chief Counsel was and is bound to open an investigation and take its first step of asking the complained-against attorney for a response.

> VII. B. Initial Investigation
>
> If the initial screening reveals that the complaint is within our Committee's authority and **may** involve an ethical violation, the legal staff **will** carry out an initial investigation of the case. (emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

II. Summary of the allegations of 'repeated, serious possible offenses' of Trustees Schwartz, Adams, and Martini made in the complaint

9. The Complaint Overview(GC:3§II) sets forth with scrupulous accuracy specific facts of misconduct by the complained-against attorneys concisely and in clearly identifiable paragraphs for the respective attorneys. The Statement of Facts(GC:14§III) provides background and more details showing, among other instances of misconduct, that:
    a. attorneys in front of the judge in the courtroom signaled answers with their arms to their client while the latter was under oath and examination by the opposing party;
    b. attorneys withheld discoverable information that would incriminate them and their clients in bankruptcy fraud through concealment of assets;
    c. attorneys manipulated a transcript and an official audio recording to the same end of depriving a party of evidence incriminating a judge and other attorneys in setting up and conducting a sham evidentiary hearing or incriminating a trustee in unlawfully depriving

a creditor or party in interest of his right to examine the debtor in bankruptcy proceedings;

d. attorneys engaged in ex-parte communications with a judge to obtain a benefit for themselves to the detriment of the opposing party; and

e. Trustees Schwartz, Adams, and Martini:

1) covered up the misconduct of their supervisees, to wit:

(a) Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq., who made her office available for her supervisee Chapter 13 Trustee George Reiber, Esq., to delegate the conduct of a meeting of creditors to his attorney, James Weidman, Esq., instead of conducting it personally, as he was duty-bound to do, an offense so serious as to be grounds for Trustee Reiber"s removal (28 CFR §58.6(10))[5]; then manipulated the tapes of the meeting to cover it up;

(b) Chapter 7 Trustee Kenneth Gordon, Esq., who had 3,382 cases before the same judge, J. John C. Ninfo, II, WBNY, and who officially declared that *Premier* was a case with assets for distribution, secured authorization from the judge to hire an auctioneer, but then never accounted for the proceeds of the auction or the whereabouts of the assets, and

(c) Chapter 13 Trustee George Reiber, Esq., who recommended to, and secured from, Judge Ninfo, before whom he had 3,907 *open* cases, approval of the bankruptcy petition of a 39-year veteran of the banking and financing industries, Mr. David Gene DeLano, who at filing time was and continued to be employed by a major bank, M&T, precisely as a bankruptcy officer, without ever asking, and instead refusing a creditor"s repeated requests, that Mr. DeLano and his working wife Mary Ann produce their bank account statements in order to show the whereabouts of the $291,470 that they had earned in just the three years prior to such filing and of which they declared to have only $500 on account and $35 in hand!

2) participated in or tolerated the fraud, deceit, and misrepresentation of those who so blatantly:

(a) trampled upon the provisions of the Bankruptcy Code (11 U.S.C.) and its

[5] http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf

specific duties to oppose a discharge involving fraud (11 U.S.C. §§727(c-e); 1302(b)(1) and 704(6));

(b) violated the bankruptcy crimes provisions of the Criminal Code (18 U.S.C. §§151-158) by concealing assets and documents;

(c) caused consequential loss of property and livelihood to the creditors, debtors, and the public whom they preyed upon; and

(d) tolerated in silence the repeated violation by bankruptcy court employees of bankruptcy law and rules and their participation in deceit and misrepresentation(GC:6¶4, 13¶15, 22§§2-4, 52§6) in spite of their duty to conform their conduct to the law and to high ethical standards:

> 22 NYCRR 50.1 Code of ethics for nonjudicial employees of the Unified Court System
>
> Preamble: A fair and independent court system is essential to the administration of justice. Court employees must observe and maintain high standards of ethical conduct in the performance of their duties in order **to inspire public confidence and trust in the fairness and independence of the courts**. This code of ethics sets forth basic principles of ethical conduct that court employees must observe, in addition to laws, rules and directives governing specific conducts, so that the court system can fulfill its role as a **provider of effective and impartial justice**. (emphasis added)
>
> (I.) Court employees shall avoid impropriety and the appearance of impropriety **in all their activities**. (emphasis added)
>
> (A.) Court employees shall respect and comply with the law.
>
> http://nycourts.gov/rules/chiefjudge/index.shtml

3) thereby repeatedly disregarded their duty under "applicable law" to speak out by reporting their violations:

> 18 U.S.C. §3057. Bankruptcy investigations
>
> (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, receiver-ships 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);
>
> http://Judicial-Discipline-Reform.org/docs/18usc3057.pdf; cf. Ci:164¶(F)

Cf. 28 U.S.C. §586(f)(2)(B)(i) on the duty of a U.S. trustee to cause

audits to be performed and make §3057 reports of thereby revealed "material misstatements of income or expenditures or of assets". http://Judicial-Discipline-Reform.org/docs/28usc_2008.pdf

4) so that the Trustees committed misconduct under the Rules of Professional Conduct, 22 NYCRR Part 1200 (hereinafter Rule #):

Rule 8.4: Misconduct

A lawyer or law firm shall not: …

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

http://www.courts.state.ny.us/rules/jointappellate/index.shtml; with enhanced bookmarks to facilitate navigation also at http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf

A. The circumstances, the seriousness of the misconduct, and the condition as experts and supervising public officers imputed knowledge to Trustees Schwartz, Adams, and Martini of a bankruptcy fraud scheme and triggered their duty to act rather than remain indifferent or participate in a cover-up

10. Reasonable people impartially assessing with common sense and logic "the totality of circumstances" that they knew and were supposed to find out through the diligent performance of their official duties would have excluded the possibility of a mere series of isolated wrongful acts of the same individuals coincidentally working on the same cases. This follows from the views of the New York State Bar Association on the Rules entrusted to the Committee for application:

Rule 1.13: Organization as Client

NYSBA Comment: Acting in the Best Interest of the Organization

[3]…Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must **proceed as is reasonably necessary** in the best interest of the organization. Under Rule 1.0(k), **a lawyer's knowledge can be inferred from circumstances**, and **a lawyer cannot ignore the obvious**. The terms "reasonable" and "reasonably" connote a range of conduct that will satisfy the requirements of Rule 1.13. In **determining what is reasonable** in the best interest of the organization, the circumstances at the time of

determination are relevant. Such circumstances may include, among others, the lawyer's **area of expertise**, the time constraints under which the lawyer is acting, and the lawyer's **previous experience** and **familiarity with the client**.

http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Final NY Rules of Conduct with Comments

11. Trustees Schwartz, Adams, and Martini, experts in the bankruptcy area, were fully aware that the area is strewn with one of the most contagious pathogens of corruption: *money!* the $10s of bls. that the annual bankruptcy debts to be discharged and claims to be asserted are worth to the frontrunners in the bankruptcy race, that is, debtors, creditors, trustees, lawyers, and the judges who drive the fastest vehicle to corruption, namely, the power to decide who keeps and takes money. They were experienced in the treatment of the resulting disease: bankruptcy abuse. They developed familiarity with those who helped in treating it, their supervisees, i.e., Trustees Schmitt, Gordon, and Reiber, and presumably with the one single judge, Judge Ninfo, before whom they had brought 7,289 cases. Specifics increased their knowledge of the totality of circumstances because these Region 2 Trustees were kept abreast of developing events in the cases in question, to wit, *Premier*(GC:17§B), *Pfuntner*(GC:21§C), and *DeLano*(GC:41§D), by Dr. Cordero serving them with his filings in them and requesting their intervention(GC:12¶14). Hence, they must be held to have recognized and to have been made to recognize that there was a pattern to those circumstances. [6]It was formed by the intentional practices developed by a group of trustees, attorneys, judges, and their supervised staff working in coordination over years as members of the bankruptcy and judicial systems. So the Region 2 Trustees knew actually or constructively what was going on: Insiders were running a bankruptcy fraud scheme.

12. Their knowledge heightened the duty of Trustees Schwartz, Adams, and Martini, who as U.S. Trustees for Region 2 were or still are public officers, to take action to counter, report, and cause the prosecution of those involved in the scheme.

NYSBA Comment on Rule 1.13: Organization as Client

Government Agency: [9] The duties defined in this Rule apply to governmental organizations.....Moreover, in a matter involving the conduct of **government officials**, a government lawyer may **have greater authority** under applicable law **to question** such conduct than would a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may

[6] Cf. Under the Racketeer Influenced And Corrupt Organizations Act (RICO) 18 U.S.C. §1961(5) a pattern of racketeering can be established by two acts of racketeering activity occurring within 10 years. http://Judicial-Discipline-Reform.org/docs/18usc1961_RICO.pdf.

be appropriate between maintaining confidentiality **and assuring that the wrongful act is prevented or rectified**. (emphasis added)

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13. Trustees Schwartz, Adams, and Martini certainly were authorized and had the duty to question their supervisees, Attorney-Trustees Schmitt, Gordon, and Reiber.

RULE 5.1: Responsibilities Of Law Firms, Partners, Managers And Supervisory Lawyers

(b)(2) A lawyer with direct supervisory authority over another lawyer **shall** make reasonable efforts to ensure that the supervised lawyer conforms to these Rules. (emphasis added)

(c) …A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the **degree of supervision** required is that which is **reasonable under the circumstances**, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and **the likelihood that ethical problems might arise in the course of working on the matter**. (emphasis added)

(d) A lawyer shall be **responsible for a violation** of these Rules **by another** lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, **ratifies** it; or

(2)(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but **fails to take reasonable remedial action**; or

(ii) in the exercise of reasonable management or supervisory authority **should have known** of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated. (emphasis added)

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14. Despite their status as officers of the government bankruptcy system working for the public, their duty as supervisors to inform themselves, and the knowledge that they acquired from a member of the public, Trustees Schwartz, Adams, and Martini failed to provide "effective oversight"[7] to

[7] "The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system…[to] respond to…**the absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings." (emphasis added) HR Report 109-31, which was enacted as the Bankruptcy Abuse Prevention and Consumer Protection Act of April 20, 2005, Pub. L. 109-8, 119 Stat. 23; http://Judicial-Discipline-Reform.org/docs/BAPCPA_HR_109-31.pdf

their supervised Attorneys Schmitt, Gordon, and Reiber. They took no action to prevent their further involvement in the bankruptcy fraud scheme and with the other schemers.(GC:12¶14, 36§7, 67¶146) They disregarded even their duty to report the violations of bankruptcy law to U.S. district attorneys with authority to prosecute the schemers(Ci:140¶3) supra). No wonder, the schemers grew more confident of the risklessness of their wrongdoing and engaged in even more blatant bankruptcy fraud.(cf. GC:42§1) Thereby the Region 2 Trustees also violated Rule 8.3:

> RULE 8.3 :Reporting Professional Misconduct
>
> (a) A lawyer who knows that another lawyer has committed **a violation** of the Rules of Professional Conduct that **raises a substantial question** as to that lawyer's honesty, trustworthiness or fitness as a lawyer ***shall*** report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation. (emphasis added)
>
> http://www.courts.state.ny.us/rules/jointappellate/index.shtml;
> with enhanced bookmarks to facilitate navigation also at
> http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf

III. The Office of Chief Counsel too must have recognized the pattern of ethical and legal violations that emerged from the bankruptcy fraud scheme, which triggered its duty to investigate the complaint

15. The complaint and the CD containing the court record of the cases in question, i.e. *Premier, Pfuntner*, and *DeLano*, provided the Office of Chief Counsel as well as the other members of the Policy Committee with a coherent account and reliable information that enabled it to recognize a pattern of misconduct. This should have prompted the Office to launch an investigation to obtain whatever facts it deemed necessary to determine whether the misconduct constituting that pattern existed and, if so, its breadth and depth. Obtaining those facts is the duty of the Office, so much so that the Rules governing its operation were adopted by the Appellate Divisions for that very purpose so that it is from the perspective of that purpose that the Rules are to be construed.

> §605.1 Title, Citation and Construction of Rules
>
> a. These Rules shall be known, and may be cited, as the "Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department"; (hereinafter called the Committee) [so in the original]
> b. **These Rules** are **promulgated for the purpose** of assisting the Office of Chief Counsel, the Respondent and the Committee **to develop the facts** relating to, and to reach a just and proper determination of, matters brought to the attention of the Office of Chief Counsel or the Committee. (emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

16. The Office must also have realized that it, not the complainant, had the authority and manpower to pursue the investigation necessary to develop those facts.

> NYSBA Comment on Rule 8.3: Reporting Professional Misconduct
>
> [1]…An apparently isolated violation may indicate **a pattern of misconduct that only a disciplinary investigation can uncover**. Reporting a violation is especially important where the victim is unlikely to discover the offense. (emphasis added)
>
> http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Final NY Rules of Conduct with Comments

17. The Office could not reasonably have expected Dr. Cordero to submit an evidentiary document so fully developed factually that it only needed the signature of the Committee Chairman or the Chief Counsel to be referred to the Appellate Division as a recommendation to disbar Trustees Schwartz, Adams, and Martini.

> NYSBA Comment on Rule 8.3: Reporting Professional Misconduct
>
> [3]…This Rule [8.3] limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is therefore required in complying with the provisions of this Rule. The term "substantial" refers to **the seriousness of the possible offense** and **not the quantum of evidence** of which the lawyer is aware. (emphasis added) Id.

18. Hence, in order to cause the Office to investigate, the Rules only call for a complaint to be filed that alleges "the seriousness of the [Trustees'] **possible** offense". This is in harmony with the view that a lawyer can make a good faith argument in the expectation of subsequently substantiating it through discovery.

> NYSBA Comment on Rule 3.1:
>
> [2] The filing of a claim or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to **develop vital evidence only by discovery**. Lawyers are required, however, to inform themselves about the facts of their clients' cases and the applicable law, and determine that they can make good-faith arguments in support of their clients' positions. (emphasis added)
>
> http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Final NY Rules of Conduct with Comments

19. In the same vein, neither the Committee nor the Office of Chief Counsel can require that it be presented with at least one offense so serious as to turn the complaint into a notice of formal charge. The NYSAB Comments make it clear that even a series of minor offenses is enough to trigger the duty to investigate:

NYSBA Comments on Rule 8.4: Misconduct

[2]…Violations involving violence, **dishonesty, fraud, breach of trust**, or serious interference with the administration of justice are illustrative of illegal conduct that reflects adversely on fitness to practice law. Other types of illegal conduct may or may not fall into that category, depending upon the particular circumstances. **A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation**. (emphasis added)

[3] The prohibition on **conduct prejudicial to the administration of justice** is generally invoked to punish conduct, whether or not it violates another ethics rule, that results in **substantial harm to the justice system** comparable to those caused by **obstruction of justice**, such as

- advising a client to testify falsely, [¶9a supra; GC:14§A]
- paying a witness to be unavailable
  [or transcripts or an audio recording, ¶9a supra; GC:12¶13, 44fn80, 46¶97, 52§6]
- altering documents, [GC:26¶46]
- repeatedly disrupting a proceeding,
  [Tr.28/13-29/4; 75/8-76/3; Tr.141/20-143/16; GC:14§A; and abusing process, GC:9¶8, 50¶108]
- failing to cooperate in an attorney disciplinary investigation or proceeding....[if the trustees were asked to provide an answer to the complaint but failed to do so. ¶1 supra]

The conduct must be **seriously inconsistent** with [not outrageously violative of] a lawyer's responsibility as an officer of the court. (emphasis and bullet formatting added) Id.

20. In any event, the offenses described in the complaint are not minor, judging by the views expressed by the American Bar Association:

ABA Model Rules for Lawyer Disciplinary Enforcement,

Rule 9. Grounds For Discipline/Lesser Misconduct,

B…Conduct shall not be considered lesser misconduct if any of the following considerations apply:

(1) the misconduct involves the misappropriation of funds;
[similar to the assets in *Premier*(GC:4¶3, 17§B) and the $291,470 in *DeLano*(GC:8¶7, 42¶91) nowhere to be found]

(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person;

[● Trustees Schwartz, Adams, and Martini allowed Supervisee Schmitt to let Trustees Gordon and Reiber amass in their hands the unmanageable numbers of 3,383 and 3,909 cases, respectively(GC:11¶12), because a scheme's benefits for each member are bigger and its management is easier the fewer schemers there are;

● fraud among the 1,402,816 cases filed in just the U.S. Bankruptcy Courts in FY09(GC:iiifn3) concerned $10s of bls. and affected 10s of millions of people;

- when Lehman Brothers went bankrupt due to mortgage fraud, 10s of thousands of direct and indirect employees lost their jobs and the whole City of New York suffered the loss of their taxes]

(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent;
[that is what pervades not just the running, but also the toleration of the bankruptcy fraud scheme; GC:14§A, 49§4, 58§8, 61§1]

(6) the misconduct constitutes a "serious crime" as defined in Rule 19(C) or
[bankruptcy fraud is so serious a crime that it is punishable by up to 20 years in prison and a fine of up to $500,000 under 18 U.S.C. §§152-157, 1519, and 3571; so are money laundering and participation in a RICO enterprise]

(7) the misconduct is part of a pattern of similar misconduct.
[that pattern reveals a bankruptcy fraud scheme]

http://www.abanet.org/cpr/disenf/rule9.html

21. The NYSBA Comments also lead to the realization that the seriousness of the „repeated possible offenses" of Trustees Schwartz, Adams, and Martini was heightened by the fact that they were or are public officers.

NYSBA Comments on Rule 8.4: Misconduct

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. **A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers**. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization. (emphasis added)

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22. Another law is by analogy relevant here because it highlights how determining misconduct on the part of public officers does not depend on "the quantum of evidence"(¶17[3] supra) produced by the complainant. Rather, a misconduct determination relies on the exercise of reason that enables conduct regulation enforcers to detect a pattern of "improper activity". This notion is so much broader than "misconduct" that it defies precise, black letter definition, but can be found by the trained eyes of the enforcer. Sensitivity to impropriety and a sense of responsibility to eliminate it are key to understanding the magnitude of the activity"s impact on people, who sustain concrete consequences, and on a more abstract entity, „the judicial system, whose providing effective and impartial justice depends on public confidence and trust in its officers"(Ci:140).

22 NYCRR 100 Rules of the Chief Administrative Judge, Part 100. Judicial Conduct

Preamble: The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is

> not intended, however, that every transgression will result in **disciplinary action**. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be **determined through** a reasonable and **reasoned application of the text** and should depend on such factors as the seriousness of the transgression, whether there is **a pattern of improper activity and the effect of the improper activity on others or on the judicial system**. (emphasis added);
> http://nycourts.gov/rules/chiefadmin/100.shtml

IV. The thrust of the Appellate Division rules and the Committee's self-description decidedly favors the investigation of each complaint and the protection of the public interest rather than complaint rejection on a lazy, conclusory "no ethical violation" before even asking the complained-against attorney to respond to the misconduct allegations

23. In brief, there was a professionally composed complaint that lent credibility to its allegations, substantial evidence of „repeated serious offenses" establishing a pattern of misconduct, the aggravating factor of its commission by public officers, and a duty weighing on "a self-regulating profession [that] must vigorously endeavor to prevent"(¶17[3] supra) such offenses and consequently weighing even more heavily on a Committee specifically set up to investigate and prosecute them. Nevertheless, the Office of Chief Counsel in effect rejected the complaint without even submitting it to Trustees Schwartz, Adams, and Martini for them to respond to the allegations. In so doing, the Office exceeded its authority and disregarded its duty.

24. The rubberstamping of the complaint with the Office"s boilerplate "no basis to support an ethical violation"(¶6 supra) was patently insufficient to gainsay substantial evidence and disregard the totality of circumstances that so firmly established a prima facie case for „repeated serious offenses" committed by the Region 2 Trustees. More critically important, it was jurisdictionally insufficient. This follows from the fact that neither the duty nor the authority of the Committee, and thus of the Office, is limited to processing allegations of ethical violations. Disciplinable offenses that fall within the Committee"s jurisdiction and that the Office must investigate have a scope much broader than only those ethical in nature: (bullet formatting and emphasis added)

> §605.4 Grounds for Discipline
> - Section 90 of the Judiciary Law of the State of New York,
> - the **Disciplinary Rules** and
> - decisional law
>
> indicate what shall constitute misconduct and shall be grounds for discipline.

§605.2 Definitions

10. **Disciplinary Rule**.
    - Any provision of the rules of the Court governing the **conduct of attorneys**,
    - any Disciplinary Rule of the Code of Professional Responsibility, and
    - any Canon of the Canons of Professional Ethics as adopted by the New York State Bar Association.

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

§603. Conduct of Attorneys

2. Professional Misconduct Defined

a. Any attorney who fails to conduct himself both professionally and personally, in conformity with
   - the standards of conduct imposed upon members of the bar as conditions for the privilege to practice law and…
   - any of the special rules concerning court decorum,

shall be guilty of professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law.

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

25. The Office"s reduction of the scope of its duty to only the processing of ethical violations while disregarding all the other types of misconduct has the natural consequence and shows its intent to lighten its caseload for its convenience. It was as a matter of law unjustifiable and as a matter of fact injurious to the attorney disciplinary system and to everybody who was deprived of its protection as a result of his or her complaint being rejected thereby.

26. The Office"s rejection of the complaint without even asking the complained-against attorneys for a response lightened its workload too and disregarded the rules as well. The Appellate Division"s Part 603. CONDUCT OF ATTORNEYS immediately after providing for the appointment of the Committee, provides for the receipt of a complaint to be followed by its investigation:

§603.4 Appointment of Disciplinary Agencies; Commencement of Investigation of Misconduct; Complaints; Procedure in Certain Cases

c. Investigation of professional misconduct may be commenced upon receipt of a specific complaint by this court, or by the Departmental Disciplinary Committee or such investigation may be commenced sua sponte by this court or by the Departmental Disciplinary Committee.….

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

27. If the only ground for rejection, namely, that "the issue involved upon the complaint is a fee dispute"(¶5 supra) is inapplicable, the rules of Part 603 proceed on the assumption that the complaint is valid and to be investigated insofar as it falls within the Committee"s authority and alleges possible offenses constituting misconduct.

§603.4c. When the Departmental Disciplinary **Committee, after investigation**, determines that it is appropriate to file a petition against an attorney in this court, the committee shall institute disciplinary proceedings in this court and the court may discipline an attorney on the basis of **the record of hearings before such committee**, or may appoint a referee, justice or judge to hold hearings. Id. (emphasis added)

28. Once more the Appellate Division"s Part 603 emphasizes the assumption of complaint validity by providing for the suspension of the complained-against attorney even while the investigation is still under course. In so doing, it highlights the consideration that must take precedence over the possibility that the investigation may nevertheless end up exonerating the attorney: the protection of the public and its interest rather than the attorney"s.

§603.4e.1. **An attorney who is the subject of an investigation**, or of charges by the Departmental Disciplinary Committee of professional misconduct, or who is the subject of a disciplinary proceeding pending in this court against whom a petition has been filed pursuant to this section, or upon whom a notice has been served pursuant to section 603.3(b) of this Part [re misconduct in a foreign jurisdiction], **may be suspended** from the practice of law, pending consideration of the charges against the attorney, upon a finding that the attorney is guilty of professional **misconduct immediately threatening the public interest**. (emphasis added) Id.

29. The importance accorded the exposing of misconduct and the disciplining of misconducting attorneys is such that the Appellate Division provides:

§603.4f. Disciplinary proceedings shall be granted a preference by this court. Id.

30. Accordingly, the Appellate Division"s Part 605. RULES AND PROCEDURES provide that even when a complained-against attorney is acquitted on allegations substantially similar to those that it is investigating, it can still proceed with its investigation and can also do so despite the attorney having won a suit predicated on such allegations:

§605.9 Abatement of Investigation

b. Matters Involving Related Pending Civil Litigation or Criminal Matters.

1. General Rule. The processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not be deferred pending determination of such litigation.

2. Effect of Determination. The acquittal of a Respondent on criminal charges or a verdict or judgment in the Respondent's favor in a civil litigation involving substantially similar material allegations shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division, 1st Department, 22 NYCRR Part 605;

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

31. These provisions stress the paramount importance that the law attaches to ensuring that lawyers are persons of integrity in all aspects of their personal and professional conduct. Lawyers too impose upon themselves the duty to conform their conduct to ethical standards so high as to earn the confidence and trust of the people and thereby protect and enhance a common good: our system of justice.

> NYSBA NY Rules of Professional Conduct
>
> PREAMBLE: A LAWYER'S RESPONSIBILITIES
>
> [1] A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibility for the quality of justice. As a representative of clients, a lawyer assumes many roles, including advisor, advocate, negotiator, and evaluator. As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. In addition, **a lawyer should further the public's understanding of and confidence in the rule of law and the justice system** because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.
>
> http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Final NY Rules of Conduct with Comments

A. The Committee members' duty to avoid even the appearance of impropriety and protect the public favors the investigation of every complaint so as not to appear to be protecting their colleagues and friends by sparing them the embarrassment of an investigation and the possibility of discipline

32. Earning and safeguarding the public confidence in both the legal profession and lawyers explain why even after similar criminal and civil allegations have been disposed of through litigation the investigation into misconduct must continue: to avoid even the appearance that the Committee members took such disposal as a pretext to spare one of their colleagues or friends any embarrassment through investigation, provisional suspension, or discipline.

> CANON 9
>
> A Lawyer Should Avoid Even the Appearance of Professional Impropriety
>
> ETHICAL CONSIDERATIONS
>
> EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. **A lawyer should promote public**

confidence in our system and in the legal profession.

EC 9-6 Every lawyer owes a solemn duty **to uphold the integrity and honor of the profession**;…to act so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of clients and of the public; and to strive **to avoid** not only professional impropriety but **also the appearance of impropriety**. (emphasis added)

New York Lawyer's Code of Professional Responsibility (Updated Through December 28, 2007); cf. Ci:135fn2 supra
http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm;
also at: http://Judicial-Discipline-Reform.org/docs/NYSBA_Code_Prof_Res.pdf;

33. Hence, the Committee‟s self-description names only two grounds for dismissal *after* investigation:

VII. How Complaints are Processed

…

D. Dismissal. **If the investigation** reveals that the lawyer did not violate a specific rule in the Rules, or if it appears that the complaint cannot be proven, the Committee may decide that your complaint should be dismissed. (emphasis added) Committee's self-description;
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

34. So the Committee must avoid even the appearance of protecting its complained-against colleagues and friends by sparing them the bother of having to respond to a complaint that has been in their behalf predetermined for dismissal no matter what. To that end, in addition to requesting that they respond and enabling the complainant to reply, it can require them,

§603.4 e.1(i) to comply with any lawful demand…made in connection with any investigation;
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

VII. F.…conduct further investigation which may require issuing subpoenas for documents and records as well as interviewing witnesses including at times the complainant as well as the attorney whose conduct is being investigated. Committee's self-description; [and]
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

§603.4d. [hold] hearings before such committee (¶27 supra)

35. Investigating a complaint is not only a means for the Committee to avoid the appearance of impropriety, but also to comply with its duty to investigate:

§603.4 Appointment of Disciplinary Agencies; Commencement of Investigation of Misconduct; Complaints; Procedure in Certain Cases

a.1 This court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be **charged with the duty and empowered to investigate** and prosecute matters involving **alleged** misconduct by attorneys who, and law firms that, are subject to this Part, and to impose discipline to the extent permitted by section 603.9

of this Part. Rules of the Appellate Division; (emphasis added)
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

36. In its self-description, the Committee confirms the key role that investigating complaints plays in its protection of the public, which it professes to be its purpose and to fulfill it by dealing with complaints fairly.

> III. WHAT THE COMMITTEE DOES
>
> The purpose of the Committee is **to protect the public** and the legal profession by ensuring that lawyers adhere to the ethical standards set forth in the Rules of Professional Conduct (the "Rules"). **The Committee protects the public by reviewing and investigating complaints against lawyers** and by recommending sanctions against those who are proven to have violated the Rules. It protects the legal profession by **enforcing high standards of conduct**, while at the same time ensuring that **complaints are dealt with fairly**. (emphasis added)
>
> http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

37. How can it be fair to the public or a reasonable means to protect it to reject out of hand without even requesting a response from the complained-against attorneys, let alone investigating, a complaint containing substantial evidence of attorneys, who are public officers to boot, who abuse their office by committing and protecting others who commit „repeated serious offenses"? The complaint credibly sets forth the seriousness of those offenses: Attorneys who as insiders of the bankruptcy and judicial system participate in or tolerate a bankruptcy fraud scheme. Thereby they injure the public gravely by letting the schemers take the money of debtors in the throes of bankruptcy, drive their creditors into financial predicament, if not bankruptcy itself, and make all of them and the rest of the public pay a bankruptcy loss compensation and risk premium for all goods and services that they buy. If the possibility exists that attorneys are so seriously harming the public, then the interest of the public, whose protection constitutes the Committee"s existential purpose, demands that the Committee investigate them.

38. Not to do so is not only not fair or in the public interest, it has the appearance of impropriety. So much so that what the rules of the Appellate Division provide is that a lawyer still being investigated for "misconduct immediately threatening the public interest"(§603.4(e)(1); ¶28 supra) can be suspended pending the outcome of the investigation.

> §603.4(e)(2) **The suspension** shall be made upon the application of the Departmental Disciplinary Committee to this Court, after notice of such application has been given to the attorney pursuant to subdivision six of section 90 of the Judiciary Law. The court shall briefly state its reasons for its order of suspension which **shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded**, and until

further order of the court. (emphasis added)
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

39. Consequently, it was error for the Office of Chief Counsel to reject the instant complaint out of hand, for it was inconsistent with both its purpose to protect the public and its duty to do so by investigating the attorneys‟ „repeated serious possible offenses‟. Thereby it failed its fiduciary duty to act as lawyer for its client, the public, defeating the reasonable expectation that it would represent the public zealously when defending it from those who betrayed their public trust so as to gain a moral or material benefit for themselves, their colleagues, and their friends.

> Lawyers are *fiduciaries* of their clients. A fiduciary in the law is similar to a trustee. Lawyers must act with utmost good faith, candor, and scrupulousness in dealing with clients. Clients have every right to expect trust from their lawyers, who are expected to act for the benefit of their principals, their clients. Clients have every right to expect loyalty from their lawyers, while they do not expect loyalty from their electricians or grocers." (emphasis in the original) 2009-2010 Legal Ethics, The Lawyer's Deskbook on Professional Responsibility, Ronald F. Rotunda and John S. Dzienkowski; West (2009); p.39-40.

B. The Committee and each of its members have a duty to bring to the attention of the Appellate Division a systemic failure in the attorney disciplinary system due to conduct allowed by the Policy Committee and engaged in by the Office of Chief Counsel that detracts from the integrity and effectiveness of the system

40. The Policy Committee, each of whose members was addressed an original of both the March 1 complaint and the May 5 request for reconsideration, should not have allowed the Office of Chief Counsel to resort to rejecting complaints out of hand and limiting its duty to act to only complaints about ethical violations as means of lightening its caseload or to rubberstamping its „no ethical violation‟ boilerplate to spare even public officers a response to allegations of what by any reasonable assessment constitutes „repeated serious possible offenses‟.(Ci:126-127, 171 infra; 142fn6 supra) By allowing such conduct to develop, the Policy Committee failed its own duty to supervise the Office of Chief Counsel.

> §605.21 Policy Committee
>
> a. General. The Policy Committee **shall**:
>
> 4. oversee and evaluate on a continuing basis the effectiveness of the operation of the Committee to assure **the integrity of the attorney disciplinary system**; (emphasis added)
> 5. develop and implement a program to make the public aware of the importance and **effectiveness of the disciplinary procedures and**

activities of the Committee; (emphasis added)
Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division, 1st Department, 22 NYCRR Part 605;
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

41. Therefore, it now falls to the Committee and each of its members to intervene, in particular, to review the instant complaint and reconsider its rejection, and to ensure, in general, that the conduct of the Policy Committee and the Office of Chief Counsel who in the Committee"s name process complaints is so reasonable and professionally responsible as to reflect integrity on the part of all the members of the attorney disciplinary system. The Committee owes it to the public whose duty it is to protect to make sure that such system is not only effective, but also is seen to be working effectively(cf. fn10 infra), thereby discharging its duty "to make the public aware of it"s effectiveness"(§605.21.a.5 at ¶40 supra) That duty flows to each of the Committee members individually, for each one is an appointee under §603.4.a.1 of the Appellate Division(¶35 supra) and as such agreed to take upon himself or herself the duty to perform a public function. Hence, each member has the duty to bring a systemic failure directly to the attention of the Appellate Division.

42. That duty is evident when the failure originates in the Office of Chief Counsel, for it is in consultation with the Committee that the chief counsel is appointed by the Appellate Division.

§603.4.a.1. …This court shall, in consultation with the Departmental Disciplinary Committee, appoint a chief counsel to such committee and such assistant counsel, special counsel and supporting staff as it deems necessary.
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

43. In the same vein, the Policy Committee works for the Committee.

§605.21 Policy Committee
a. General. The Policy Committee shall:
2. consult with and **report regularly to the full Committee**;
3. consider and **recommend to** the Committee the establishment of policy for the Committee including without limitation, the establishment of priorities for type of misconduct to be investigated and prosecuted, **standards** to insure uniform treatment of cases and, subject to these Rules, the establishment of **procedures for** the conduct of **investigations by the Office of Chief Counsel** and hearings by the Hearing Panel;
6. engage in such **activities** as may be **assigned to it by the Committee** or the Committee Chairperson. (emphasis added)
http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

44. As a result, the Committee is responsible for the Policy Committee"s work. This follows from the Rules of Professional Conduct, which the members that compose the Committee have agreed

to enforce. Honesty and consistency demand that they strive to appear to, and actually, conform their conduct as members and collectively as the Committee to those Rules rather than shirk such demand by wiggling excuses and exceptions, and hairsplitting. Consequently, they have toward both the lawyer and nonlawyer members of the Policy Committee and the Office of Chief Counsel a clear duty: To exercise supervisory authority over them and their work deriving from Rule 5.1(¶13 supra) and 5.3:

> Rule 5.3: Lawyer"s responsibility for conduct of nonlawyers
>
> (a) **A law firm shall** ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. **A lawyer** with direct supervisory authority over a nonlawyer **shall** adequately supervise the work of the nonlawyer, as appropriate.…(emphasis added)
>
> (b) A lawyer **shall be responsible for conduct of a nonlawyer** employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:
>
> (2) the lawyer…individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed…; and
>
> (i) **knows of such conduct** at a time when it could be prevented or its consequences avoided or mitigated **but fails to take reasonable remedial action**; or
>
> (ii) in the exercise of reasonable management or supervisory authority **should have known of the conduct** so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.
>
> http://www.courts.state.ny.us/rules/jointappellate/index.shtml

45. There is no doubt that exercising supervisory duty over persons who are colleagues and may have become friends, and reporting their failed performance to the Appellate Division will provoke their resentment and recrimination as well as criticism from other members. However, doing what is right, not to mention what is one"s duty, in the face of adversity and at the risk of personal harm is the fundamental element of integrity. It is what turns one member of the Committee among others into one that discharges conscientiously the duty assumed to protect the public and the legal profession: one that becomes a Champion of Justice.(¶64 infra; GC:66§4)

V. The litigation before Judge Ninfo and the subsequent suits are not dispositive under §605.9 of the complaint against Trustees Schwartz, Adams, and Martini, did not address the issue of their misconduct, and were decided by judges involved in the bankruptcy fraud scheme and who in the self-interest of avoiding exposure denied Dr. Cordero *every single document* that he requested to defend his rights, thus denying him discovery rights and due process and vitiating their decisions

46. Chief Counsel Friedberg‟s letter of April 6(rr:88 infra) contains this untenable statement:

> Furthermore, you have already pursued your position through litigation before Judge Ninfo and the suits initiated by you at p. GCd:6 [GC:74]of your complaint .

47. It is difficult to fathom why such statement was made given that from the explicit provisions under §605.9 it follows that even if "a verdict or judgment in [Trustees Schwartz, Adams, and Martini]‟s favor in a civil litigation involving substantially similar material allegations [had been entered it] shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations".(¶30 supra)

48. Moreover, neither Judge Ninfo, WBNY, the U.S. District Court, WDNY, the Court of Appeals for the Second Circuit (CA2), nor the Supreme Court was even presented with, and certainly did not decide, any "substantially similar material allegations" of misconduct against either of Trustees Schwartz, Adams, and Martini. The Office of Chief Counsel could have realized this if it had only bothered to do as little as skim over the section „Issues for Review‟ or „Questions Presented‟ of the briefs that it could have downloaded using the links on the very page GCd:6 =GC:74 that it cited. In addition, had it wanted to appear to know what it was asserting, it could have reviewed the orders issued by Judge Ninfo and other judges that had been „listed on a platter‟ further down at GCd:16§3. Court Orders =GC:84.

49. Likewise, the Office could have concluded why those judges‟ decision were not dispositive of the instant complaint if it had only read with a minimum of care the information supplied to it as early as the second paragraph of the complaint‟s cover letter sent to the Chief Counsel and each of the other Policy Committee members(GC:i infra). There it was stated that:

> Each of these three file components [GC:3§II, 14§III, and the accompanying Transcript] helps understand what creates the opportunity for the attorneys to engage in misconduct: **When a judge leads the way into misconduct**, the attorneys and court staff that can benefit from following him will do so. They are allowed as insiders into **biased proceedings**.…[where they act] in coordination under the two most insidious and corruptive motive and means: the enormous amount of money at stake in the thousands of bankruptcy cases that they have concentrated in their hands and the strongest power to

> break the law, i.e., that which also ensures immunity. They have coordinated their misconduct into a bankruptcy fraud scheme. (emphasis added) GC:i infra; cf. GC11¶11

50. These judges have every interest in not incriminating themselves or their appointee to a bankruptcy judgeship, Judge Ninfo, (28 U.S.C. §152; GC:58§8) by exposing their participation in, or toleration of, the bankruptcy fraud scheme. Hence, they at a minimum enable the continuation of misconduct, whether for their own material or moral benefit(GC:3¶¶1-2). This explains why they denied Dr. Cordero *every single document* that he requested, such as the court documents relating to Trustee Gordon‟s administration and auctioning of the assets in *Premier*(GC:22§§2-3) and all the DeLanos‟ documents(GC:47§§3-4). The latter included their bank account statements, so indisputably necessary for the judges themselves, let alone a creditor, to determine the good faith of a bankruptcy petition, which judges are duty-bound to do(11 U.S.C. §1325(a)(3) and (7)). Those bank account statements can prove that 39-year veteran banker and bankruptcy officer Mr. DeLano, the quintessential insider, concealed the $291,470 that he and his wife had earned in just the three years before filing for bankruptcy and thereby committed perjury in their bankruptcy petition and bankruptcy fraud as participants in the bankruptcy fraud scheme. But the judges could not allow a co-schemer who must know so much about the other schemers and their operation of the scheme to be indicted, lest he trade up in plea bargaining by incriminating „bigger fish‟, who may do likewise, causing everybody‟s downfall in a domino effect. How high in the judicial and U.S. trustee hierarchy could this toppling reach?(GC:61§1)

51. This means that the judges that dealt with *DeLano* –who also decided *Premier* and *Pfuntner* and the motions en banc in all those cases- were not interested in deciding and could not possibly have decided even the issues that were, not to mention those that were not, in the briefs and motions before them, because they denied Dr. Cordero *every single document* that he requested to defend his rights by proving his allegations. Thereby those judges denied themselves too what they needed to decide those issues: „facts fully substantiated through the vital evidence developed only by discovery‟(¶18 supra). Those judges included:

    a. Bankruptcy Judge John C. Ninfo, II, WBNY (GC:9¶8; Transcript=Tr:188/7-189/21 attached to the complaint);
    b. District Judge David Larimer, WDNY (Table at Pst:1261; CA:1735§B; on the submitted CD);

c. the CA2 panel presided over by then Judge Sonia Sotomayor(GC:62¶135; CA:2180) and all the other CA2 judges that determined the motions en banc(CA:1723¶9; Table at CA:2364 showing 12 requests for documents denied in their entirety by CA2); and

d. the Supreme Court (document requests at US:2241, denied at 2309; 2313, denied at 2485; 2429, denied at 2504; 2505, denied at 2547).

52. For judges consistently to deny a party *every single document* that he requests during litigation constitutes an incontrovertible deprivation of his right to discovery and consequently, a denial of due process. It demonstrates their contempt for their fundamental duty: to decide controversies neither capriciously nor by reaching a prejudged outcome, but rather by applying the law to the facts. It also shows that they acted in coordination. The decisions that they entered during such biased and abusive litigation are so suspect and constitutionally defective as to be null and void.

53. As to *Pfuntner*, Bankruptcy Judge Ninfo dismissed Dr. Cordero‟s cross-claims for negligent and reckless liquidation in *Premier*(GC:17§B) against Trustee Kenneth Gordon, the one who had had 3,382 cases before him, by biasedly refusing to review the Trustee‟s motion for summary judgment in light of the applicable outcome-determinative standards of genuine issues of material facts and assumption of validity of the non-movant‟s contentions. Likewise, in determining Dr. Cordero‟s motion to extend time to appeal, Judge Ninfo arbitrarily refused to examine Insider Trustee Gordon‟s own written statement against self-interest that the motion had been timely filed.(GC:21§C) Neither Judge Ninfo nor any other court ordered production of the *Pfuntner* docket, much less reviewed it, to determine whether it had been manipulated by Att. Paul Warren, the clerk of court, or his deputies.

54. On the contrary, District Judge Larimer summarily issued an affirmance without discussing even a single issue that Dr. Cordero had presented to impugn Judge Ninfo‟s decisions.(CA:1725¶13) Moreover, Judge Larimer showed the same contempt for legality when he subjected Dr. Cordero to an “inquest” as a prerequisite for deciding his application for default judgment under FRCP 55 against the owner-debtor in *Premier*. For that “inquest” he cited no authority at all given that there is no basis whatsoever for it either in the Federal Rules of Civil or Bankruptcy Procedure, the Bankruptcy Code, or anywhere else. His only authority was that of the worst kind: power to get away with it.

55. As for CA2, it avoided reviewing on the merits Dr. Cordero‟s appeal in *Pfuntner* by the expedient of dismissing it on the technicality of alleged lack of finality. As for the Supreme

Court, it denied certiorari both in *Pfuntner*/*Premier* and *DeLano* without a word of explanation, of course.(GC:17§§B and C)

56. Had the Office of Chief Counsel bothered to review the evidence submitted to it, it would have realized that none of these judges or courts as much as used even once the term that Dr. Cordero, as litigant and appellant, had expressly made the central notion of the issues that he raised: fraud. There is not a whiff of a hint in any of those judges‟ dispositive orders(GCd:16§3=GC:84) that any of them was aware that he had charged anybody with participation in, or toleration of, a bankruptcy fraud scheme. They do not even mention that Dr. Cordero complained against any of the attorneys listed in the complaint to the Committee. Moreover, just as they did not acknowledge even the presence in Dr. Cordero‟s briefs of his issues or questions presented, they never once made a reference to any of his exhibits supporting them.

57. What the record shows is that those judges and courts did not have to take into account Dr. Cordero‟s position on the issues because they had already prejudged the necessary, self-interested outcome and decided how they were going to put an end to the litigation and suits at hand. As a result, they did not have to be fair to him as a party by allowing him access to documents that would not change their minds anyway and could only implicate them and the other insiders and their appointee, Bankruptcy Judge Ninfo, in the bankruptcy fraud scheme. By their conduct, they showed that they lacked a fundamental element of due process: impartiality.

> 22 NYCRR Part 100.0 Terminology
>
> (R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.
>
> Rules of the Chief Administrative Judge Part 100. Judicial Conduct, 22 NYCRR 100.0 Terminology; http://nycourts.gov/rules/chiefadmin/100.shtml

58. Yet, the Office of Chief Counsel invokes the litigation over which Judge Ninfo and the other judges presided(¶46 supra) to imply that those judges not only must have dealt with the allegations in the complaint against Trustees Schwartz, Adams, and Martini, but also must have disposed of them appropriately so that if the Office ever bothered to read their decisions it would not find anything objectionable therein. So the Office took for granted that the complaint could not establish any ethical violations on the Trustees‟ part. Its invocation is so unlawyerly as to constitute a pretext for avoiding its duty to investigate the complaint and for not even asking the Trustees to respond to its allegations. It has the appearance of impropriety as the use of another indefensible means for its effect of lightening the Office‟s workload.

59. The Office‟s statement that Dr. Cordero‟s previous litigation justifies its rejection of his complaint shows disregard for the Committee‟s own Rules and Procedures -its ignorance of them cannot be lightly presumed- and cursory treatment of the information and evidence submitted to it. Both detract from the necessary confidence in either the Office‟s willingness to conduct an investigation, let alone a thorough one, and its capacity to do so. Consequently, the Office‟s statement only strengthens the solidly reasonable foundation already laid above for requesting that the Committee intervene by reviewing the complaint and reconsidering its rejection in order to take in hand the investigation and prosecution of the complaint.

VI. Fact and appearance of conflict of interests through involvement in bankruptcy of even the departmental disciplinary committee in Rochester that dealt with the complaint against the attorneys registered there

60. In his first letter to Dr. Cordero, dated March 10(rr:87 infra), Chief Counsel Alan Friedberg wrote thus:

> The other attorneys named in your complaint are registered in Rochester, New York and, accordingly, within the jurisdiction of the Fourth Judicial Department, 5th District Attorney Grievance Committee, 224 Harrison Street, Suite 408, Syracuse, NY 13202.

61. One can leave it up to the Office of Chief Counsel to pick its poison: whether it did not bother to check which grievance committee had jurisdictional authority over the attorneys who are listed on §I. LIST OF ATTORNEYS COMPLAINED-AGAINST(GC:1) as having an address in Rochester[8], where the Appellate Division for the Fourth Department also sits, or it was sending Dr. Cordero a coded but doomed-to-prove-misleading message to steer away for good reason from the Committee in Rochester, which is the proper one, and try his luck with the Syracuse Committee, although the latter certainly would reject his complaint on lack of territorial jurisdiction.

62. Nevertheless, the most statistically improbable and revealing development of events occurred after Dr. Cordero sent his complaint of February 19 against the attorneys in Rochester to each of the five Rochester Committee member and legal staffers, including the chief counsel. They likewise rejected the complaint out of hand without even sending it to the complained-against attorneys for a response. Moreover, they did not afford Dr. Cordero any right to request reconsideration because their 4th Department Appellate Division, the one in the same situs as the

[8] http://www.courts.state.ny.us/ad4/AG/Page8.AGCadds.htm; http://www.courts.state.ny.us/ad4/AG/Page3.about.htm

bankruptcy fraud schemers, did not provide any in its rules(22 NYCRR 1022.19)[9]. So Dr. Cordero queried those five members in PACER. The returns proved to be nothing short of shocking: They show the fact and appearance of impropriety through conflict of interests of those five members due to their undisclosed involvement in bankruptcies, including the chairman, who worked with and for the very trustees and judge complained-against. What are the odds of the five of them, appointed by the same appointer, the Appellate Division, being purely by chance so involved?

63. Since those Committee members are presumed to be ethical persons intent on avoiding even the appearance of impropriety and aware of the need not only to do the right thing, but also to be seen doing the right thing[10], Dr. Cordero addressed each of the member and legal staffers once more individually to ask that each comment on the PACER returns and the thereby revealed fact and appearance of their conflict of interests. None of the five commented on them.(rr:121-Appendix infra)

64. This precedent warrants the request made to the members of this Committee to disclose any conflict of interests of their own.(¶69a infra) To those members free of any such conflict the investigation of this complaint offers the rare opportunity to begin conducting a highly professional and thorough investigation(GC:63§2) into allegations of misconduct of attorneys in Manhattan and end up discovering a much wider and intricate web of coordinated wrongdoing spreading throughout New York and far beyond.(GC:61§1) Thereby they may be able to expose how a few well-connected and entrenched insiders richly benefit from corruption in the legal and bankruptcy systems while devastating financially and emotionally many others and affecting everybody else in the public, whether it be by driving them into bankruptcy through mortgage fraud or other types of fraud or by contemptuously frustrating their reasonable expectation of "Equal Justice Under Law" whenever they go to court concerning any matter. Such investigation (GC:64§3) can allow the most principled, courageous, and ambitious members of the Committee to protect the public while making a name for themselves: Champions of Justice.(GC:66§4) In a midterm election year, that name can be not only honorable, but also a valuable asset in a race

[9] http://www.courts.state.ny.us/AD4/

[10] *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). "[I]mportant as it was that people should get justice, it was even more important that they should be made to feel and see that they were getting it," *Kramer v. Scientific Control Corp.*, 534 F. 2d 1085, 1088 (3rd Cir. 1976).

for state or even national office. Who can be our generation‟s Senator Sam Ervin, the nationally recognized chairman of the Senate Watergate Committee, who so much contributed to exposing corruption as the modus operandi of the administration of President Richard Nixon and to forcing him to resign, and who systematically asked his famous, cover-up piercing question of all witnesses at the nationwide televised hearings: "What did you know and when did you know it?"

VII. Former U.S. Trustee for Region 2, Dierdre A. Martini, should have been found within the jurisdiction of the Committee and the complaint against her should have been investigated

65. Chief Counsel Alan Friedberg‟s letter of March 10 stated that former U.S. Trustee for Region 2, "Dierdre A. Martini is not admitted in New York according to the records of the New York Office of Court Administration".(GC:87 infra) This statement allows the inference that the Office of Chief Counsel determined that it lacked jurisdiction to process the allegations of misconduct against her contained in the complaint. As a result, the Office did not open a case in her name. Yet, those allegations were similar to the ones against her colleagues, Trustees Schwartz and Adams, which explains why the factual and legal considerations set forth in this request for intervention are also applicable to Trustee Martini.

66. The March 10 letter is silent on whether Trustee Martini was admitted in New York at the time her alleged misconduct took place. It is reasonable to assume that just as the Office failed to investigate Trustees Schwartz and Adams it did not bother to find out whether Trustee Martini was a lawyer admitted elsewhere. Nor does the Office appear to have considered that as chief law enforcement officer of federal bankruptcy law Trustee Martini was in fact practicing law in New York regardless of whether she was even a lawyer.

> 28 U.S.C. §586. Duties; supervision by Attorney General
>
> (a) Each United States trustee, within the region for which such United States trustee is appointed, shall—
>
> (3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11 by, whenever the United States trustee considers it to be appropriate—
>
> (A)…
>
> (ii) filing with the court comments with respect to such application [for compensation and reimbursement under section 330 of title 11] and, if the United States Trustee considers it to be appropriate, objections to such application;
>
> (B) monitoring plans and disclosure statements filed in cases under

chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action; (cf. Ci:140)

(I) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

http://uscode.house.gov/pdf/2008/2008usc28.pdf;
http://www.law.cornell.edu/uscode/uscode28/usc_sec_28_00000586----000-.html

67. The performance of such trustee duties constitutes the practice of law and subjects the trustee to the Rules on misconduct and any other applicable law.

Judiciary Law §90.2

…the practice of law in any form, either as principal or as agent, clerk or employee of another…, to wit:

a. The appearance as an attorney or counsellor-at-law before any court, judge, justice, board, commission or other public authority.
b. The giving to another of an opinion as to the law or its application, or of any advice in relation thereto.

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/Section90(10).shtml

§603.1 Application

a. This Part shall apply to all attorneys who are admitted to practice, reside in, commit acts in or who have offices in this judicial department, or who are admitted to practice by a court of another jurisdiction and who practice within this department as counsel for governmental agencies…

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

68. At the time of her misconduct, Trustee Martini was certainly the chief counsel for the government‟s Executive Office of the U.S. Trustee in its NY office. Hence, it was error for the Office of Chief Counsel to consider that it lacked jurisdiction to determine whether she had committed misconduct as alleged in the complaint or otherwise under applicable law. It was wrong for it to lighten its workload by failing to perform with due diligence its duty to ascertain whether a complained-against attorney fell within its jurisdictional scope.

VIII. Action requested

69. Therefore, Dr. Cordero respectfully requests that the Committee:

a. and each of its members, in order to be seen protecting fairly and without conflict of interests the public from the misconduct of complained-against attorneys while processing this complaint, and in light of the fact and appearance of impropriety described at Ci:161§VI supra and the Appendix at rr:121 infra, disclose their past or current professional and personal relations to any of the following persons or entities:
    1) Attorneys Carolyn Susan Schwartz, Diana Goldberg Adams, and Deirdre A. Martini, former or current U.S. Trustees for Region 2;
    2) any other member of the Executive Office of the U.S. Trustee and its panel and standing trustees;
    3) the other attorneys complained-against(GC:1), including any past or current work done with or for them;
    4) the judges mentioned in the complaint, including, but not limited to, any cases in which the members have appeared in any capacity before them;
    5) the judges of the U.S. Bankruptcy Courts for the Southern District and for the Western District of New York;
    6) the parties to cases that have come before judges of the U.S. Bankruptcy and District Courts for the Western District, wherever they hold court, including their attorneys and law firms, trustees, and 11 U.S.C. §327 professional persons;
    7) their roles in each of such cases; and
    8) any other relation that an ethical person, intent on complying with the letter and spirit of the Rules of Professional Conduct, particularly Rule 8.4(c)(d) and (h); would disclose to a reasonable person and a court seeking to determine whether there is any conflict of interests, bias, or objectionable circumstance that could impair the fair, impartial, and thorough processing of a complaint such as the instant one or cast the appearance of impropriety;

b. place in the agenda of its next meeting and review therein the complaint and intervene by taking over its reconsideration under §605.7(c) and entrusting the complaint to those members who have demonstrated to be free of any conflict of interests, bias, and objectionable circumstance, and able to protect the public in order for them to;
    1) investigate and institute formal proceedings against Trustees Schwartz, Adams, and Martini; and

2) originate under §605.6(b)(2) and (e) any complaint, investigate it, and take appropriate action concerning any other attorney who during the investigation may be found to have engaged in disciplinable misconduct under §§605.4 and 605.5(a);

c. in order to prosecute the complaint and discipline the misconducting attorneys, obtain all the necessary information and evidence:

1) under Rule 8.3(b) from those attorneys who possess knowledge or evidence related to the subject of this complaint; and

2) by exercising its subpoena power, give effect to the proposed Demand for Information and Evidence(GCd:1=GC:69 infra), which identifies the documentary evidence apt to pinpoint and expedite the investigation as well as persons and entities likely to possess such information and evidence;

d. provide Dr. Cordero with copies of the information and evidence obtained or produced by it and notify him of, and allow him to attend, the oral examinations, depositions, and hearings that it may hold given that his first-hand knowledge of the events and command of the record will enable him to suggest to the appropriate Committee members and its investigators during and after such examinations, depositions, and hearings pertinent questions and lines of inquiry and provide helpful comments in assessing the truthfulness, accuracy, and relevance of such information and evidence;

e. post on its website and make otherwise publicly available the publicly filed documents in the records of the investigated cases, such as those concerning *Premier*, *Pfuntner*, and *DeLano* on the CD-ROM accompanying the complaint(GC:vi-vii infra), and other documents not subject to confidentiality under 22 NYCRR §605.24, and call for submission of similar documents(GC:64§3), which can help it to establish how widely coordinated misconduct, such as in the form of a bankruptcy fraud scheme(GC:63§2), has spread, how high it has reached in our legal and bankruptcy systems, and how detrimental its effect is on the public(GC:61§1);

f. interview Dr. Cordero so that he may provide further information or clarify the information furnished in the complaint, this request, and the record on the CD;

g. reconsider the Office of Chief Counsel‟s determination concerning former U.S. Trustee for Region 2 Dierdre A. Martini and investigate the misconduct allegations against her together with and on similar grounds to those against her colleagues, Trustees Schwartz

and Adams;

h. bring to the attention of the Appellate Division the systemic failure in performance of the Policy Committee and the Office of Chief Counsel revealed by their way of processing the instant and other complaints;

i. deem this complaint an opportunity for the Committee and its members to advance their purpose of protecting the public by exposing how attorneys, trustees, judges, their staff, and others charged with enforcing the law engage for their selfish benefit in coordinated misconduct that corrupts our legal system and the practice of law and injures everybody else, and by undertaking such exposure even unwillingly, reasonably scared, but morally compelled emerge as reluctant heroes(¶64 supra): Champions of Justice.

Date: May 20, 2010

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IX. Table of Rules, Statutes, Congressional Reports, Regulations, Cases, and Treatises

1. NYCRR PART 1200. RULES OF PROFESSIONAL CONDUCT

http://www.courts.state.ny.us/rules/jointappellate/index.shtml

2. NYSBA COMMENTS ON THE RULES OF PROFESSIONAL CONDUCT

http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Final NY Rules of Conduct with Comments

3. NEW YORK LAWYER'S CODE OF PROFESSIONAL RESPONSIBILITY

http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm >Lawyers Code of Professional Responsibility

4. 1ST DEPARTMENT DISCIPLINARY COMMITTEE'S SELF-DESCRIPTION

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml

5. NYCRR PART 50. RULES GOVERNING CONDUCT OF NONJUDICIAL COURT EMPLOYEES

www.courts.state.ny.us/courtinterpreter/pdfs/50.1.pdf

6. 22 NYCRR PART 100. RULES OF THE CHIEF ADMINISTRATIVE JUDGE

http://nycourts.gov/rules/chiefadmin/100.shtml

7. NYCRR PART 603. CONDUCT OF ATTORNEYS OF THE APPELLATE DIVISION, FIRST DEPARTMENT

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part603.shtml

8. NYCRR PART 605. RULES AND PROCEDURES OF THE DEPARTMENTAL DISCIPLINARY COMMITTEE

http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/part605.shtml

9. 22 NYCRR PART 1022.19 RULES OF THE SUPREME COURT, APPELLATE DIVISION, 4TH DEPT.

http://www.courts.state.ny.us/AD4/ >Grievance Committee
>Appellate Division Rules Relating to Attorneys

10. ABA MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

http://www.abanet.org/cpr/disenf/contents.html

11. NY STATUTES

http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$JUD90$$@TXJUD090+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=30262718+&TARGET=VIEW

12. BANKRUPTCY CODE

13. CRIMINAL CODE

14. JUDICIAL CODE

15. CONGRESSIONAL REPORT

http://Judicial-Discipline-Reform.org/docs/BAPCPA_HR_109-31.pdf

16. CODE OF FEDERAL REGULATIONS

http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf

17. CASES

cf. GC:74=GCd:6

18. TREATISE

X. Service List

The request of May 20, 2010, for intervention to review and reconsider the complaint of March 1, 2010, filed by Dr. Richard Cordero, Esq., with the Departmental Disciplinary Committee, Appellate Division, 1st Judicial Department, was sent to the following Committee members[11]:

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Date: May 20, 2010

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Brooklyn, NY 11208

Dr. Richard Cordero, Esq.
tel. (718)827-9521; Dr.Richard.Cordero.Esq@gmail.com

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[11] The complaint of March 1, 2010, and the request for reconsideration of May 5 were sent under individualized cover letter to each of the members of the Policy Committee, namely:

1. Roy L. Reardon, Esq., Chair
2. Alan W. Friedberg, Esq., Chief Counsel
3. Haliburton Fales, 2d, Esq., Special Counsel
4. Charlotte Moses Fischman, Esq., Special Counsel
5. Martin R. Gold, Esq., Special Counsel
6. Robert L. Haig, Esq., Special Counsel
7. Myron Kirschbaum, Esq., Special Counsel
8. William Francis Kuntz, II, Esq., Special Counsel
9. Stephen L. Weiner, Esq., Special Counsel

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DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
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FAX: (212) 401-0810

January 12, 2009

PERSONAL AND CONFIDENTIAL

Eliot I. Bernstein
IVIEWIT
39 Little Avenue
Red Bluff, California 96080-3519

Re: Matter of Various Attorneys
Docket No. 2008.0756

Dear Mr. Bernstein:

The Departmental Disciplinary Committee has completed its investigation of your complaint against the above-referenced attorney. As explained below, the Committee has decided to take no further action.

Specifically, there is insufficient evidence to support your allegations in your most recent complaint. Also, we note that our Court previously transferred a similar complaint that you filed with our office to the Second Judicial Department.

The Committee arrived at this determination after the case was submitted to a member of the Committee, an independent board of lawyers and non-lawyers appointed by the Appellate Division, First Judicial Department. The Committee member concluded that no further investigation or action was warranted.

You may seek review of this decision by submitting a written request for reconsideration to this office at the above address within thirty (30) days of the date on this letter.

Very truly yours,

Alan W. Friedberg

D-PR/C
AWF:JD//nkd
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SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
DEPARTMENTAL DISCIPLINARY COMMITTEE

ROY L. REARDON, ESQ.
CHAIRMAN

61 BROADWAY
NEW YORK, N.Y. 10006

June 4, 2010

Dr. Richard Cordero, Esq.
59 Crescent Street
Brooklyn, NY 11208

Dear Dr. Cordero:

I write in my capacity as Chairman of the Departmental Disciplinary Committee and on behalf of the members of the entire Committee in response to your May 21, 2010 letter which appears to have been sent to each member of the Committee. As reflected in the May 14, 2010 letter from the Office of the Chief Counsel , the Committee's prior decision to take no further action regarding the above-referenced matters is in the process of being reconsidered under the procedure set forth in Section 605.7 (c) of our rules. I am satisfied that no departure from this procedure is warranted here. However, your May 21, 2010 letter will be included with the file for review. Once the Committee member has made a recommendation, we will let you know in writing in the normal course.

Very truly yours,

Roy L. Reardon

Roy L. Reardon

cc: Members of Committee and Policy Committee

DEPARTMENTAL DISCIPLINARY COMMITTEE
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July 08, 2010

PERSONAL AND CONFIDENTIAL

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Matter of Carolyn S. Schwartz
Docket No. 2010.1316

Dear Dr. Cordero:

We have received your letter dated 5/7/2010 in which you have requested reconsideration of the determination by this Committee to dismiss your complaint against the above respondent-attorney. As a result of your request we forwarded your letter, together with the entire file, to a different member of the Departmental Disciplinary committee than the person who originally reviewed and approved the staff recommendation of dismissal.

That independent review has now taken place. I have been formally advised that the second reviewing member is in accord with the original decision not to proceed further with your complaint. Accordingly, I regret to inform you that we cannot be of any further assistance in this matter.

Very truly yours,

Alan W. Friedberg

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