UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van Lines **Case no.: 03-5023**

MOTION FOR Leave to Update the Motion For the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case With Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal

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

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I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero's complaint about the Chief Judge

2. Last March 22, Dr. Cordero showed the receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit's Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M-22, below). He also submitted a separate volume titled "Evidentiary Documents" (26, below). He asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him that Clerk Allen was unavailable. He filed the complaint.

A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the 'promptness' requirement

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit"s Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts" integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness

requirement. It reveals the Court‟s attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks‟ handling of Dr. Cordero‟s complaint, in particular.

B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint's handling

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts‟ decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.

6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion‟s case. The explanation offered was that the complaint‟s Statement of Facts and separate volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr.

Cordero‟s conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint‟s heading laid out thus (i, below):

STATEMENT OF FACTS
Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**
The Hon. John M. Walker, Jr., Chief Judge
of the Court of Appeals for the Second Circuit
addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers
to the Circuit Judge eligible to become the next chief judge of the circuit

8. For her part, Clerk Allen herself found that heading most confusing and said that „it would of course be interpreted as a statement of facts in support of the motion‟, never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"…forget‟a „bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four

copies for him to reformat and resubmit them. Her objections were the following:

a) The misconduct form was not on top, „so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?“ Dr. Cordero‘s suggestion that one might read the heading got him nowhere.

b) The complaint form was the wrong one, for its title refers to §372 rather that §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.

c) The complaint had a table of contents, but „complaints have no such thing!“.

d) A major issue was Dr. Cordero‘s inclusion of documents with the Statement of Facts and with the separate bound volume, „What for?! You can‘t do that!“ He explained that those are documents created since his August complaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E-# (E as in Exhibit, which was the title of a separate volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume

accompanying the March complaint the different title "Evidentiary Documents" was used). Subtleties of no significance to Clerk Allen.

e) An „obvious" defect was that Dr. Cordero had bound the complaint, but „a complaint must not be bound; rather, it must be stapled or clipped!" He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that "The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open." However, Dr. Cordero"s reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. „No!, Dr. Cordero, if the Rules do not say that you can do something, then you can"t do it! It is that simple".

9. These are the „unacceptable" features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to comply with her unwritten arbitrary demands to implement „the way things are done with complaints", which he had to discover the hard way after complying

with the written Rules, whether on point or applied by analogy.

C. Clerk Allen's March 24 letter imposes meaningless arbitrary requirements

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

1. Clerk Allen requires the separate volume to be marked "Exhibits"

11. Although Clerk Allen had told Dr. Cordero that she would write in the word "Exhibits", she wrote in her cover letter that "Exhibits should clearly be marked exhibits". As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word "Exhibits" prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked "Exhibits". Rule 2(d) reads thus:

> **(d) Submission of Documents**. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court's judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court's name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges,

as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be „confused" because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS
supporting a complaint
UNDER 28 U.S.C. §351 ABOUT
The Hon. John M. Walker, Jr.,
Chief Judge
of...

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

> The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

> (b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives sides), and the paper size should not be larger than the paper the form is printed on.* (emphasis added)

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what

the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.

18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen‟s letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen‟s top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.

19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court‟s record, what does she do with the copies if it is not to send them to the judges to whom she sends the

Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E-#, or A-#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the „names and addresses" of 85 „witnessing" documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.

26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the

Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero‟s time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.

29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of

the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M-27, below)

31. So Clerk Allen, with Clerk MacKechnie‟s approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by the Rules adopted by this Court‟s judges?! Moreover, why does Clerk Allen have

to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M-28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks" arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

> The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that "Every court of appeals must accept documents that comply with the form requirements of this rule," whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that "By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule", whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules" policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no authority to disregard the law or the rules, but rather the obligation to show the

utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors‟ orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable

37. Enough is enough! The clerks‟ tampering with Dr. Cordero‟s right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero‟s detriment. Here is a sampler:

    a) The January 26 order on Dr. Cordero‟s appeal, docket no. 03-5023, stated, and stills does, that it was the district court‟s decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added).

Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.

d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks‟ normal level of performance or did somebody not want Dr. Cordero to file the petition?

e) Dr. Cordero‟s original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts. (Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)

g) Cf. Rochester court officers‟ disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);

h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A-674 in the Exhibits)

i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A-768 in the Exhibits)

j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrong-doing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

III. Relief sought

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that:

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

and hearing en banc or any future proceeding in this case;

b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero‟s detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

c) the Court determine with respect to Dr. Cordero‟s complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:

1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
2. caused Dr. Cordero to waste his time, effort, and money, and inflicted on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint‟s Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement‟s original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on
April 18, 2004

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of the Motion of April 18, 2004

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March 19, 2004

STATEMENT OF FACTS

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

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

of the Court of Appeals for the Second Circuit

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

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

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

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

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

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

[1] The separate volume of evidentiary documents is not included here.

evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give

him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge‟s attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero‟s objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting‟s purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman‟s conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That‟s precisely the „practice‟ of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero‟s detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the

territory of the Second Circuit and which they defend by engaging in non-coincidental, intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant"s presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge"s failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero"s February 2 status inquiry letter.

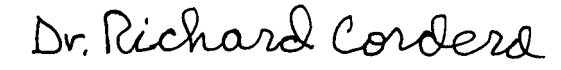
Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero"s appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit"s chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take „prompt and expeditious action" by taking action belatedly. His failure is a consummated wrong and his „prejudicial conduct" has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero"s experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI"s interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.



March 19, 2004

59 Crescent Street
Brooklyn, NY 11208

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

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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D.

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 30, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

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

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

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

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

By: _____
Patricia Chin-Allen, Deputy Clerk

Dr. Richard Cordero

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

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

June 19, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Chief Judge,

Last Wednesday, June 16, I went to the Take-in Room 1803 of the Court and requested of the head of that Room, Ms. Harris, to see the judicial misconduct orders and supporting memoranda. Ms. Harris did not know what I was talking about so I showed her the printed set of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers and drew her attention to Rule 17(a) and (b). After searching for them, Ms. Harris could not produce them. Those orders have not been made available to me yet although they are supposed to be made publicly available by this Court.

Indeed, on that occasion Ms. Harris told me that she would have to find out when I could see them and would call me the following morning to let me know. At that time I wrote down my name, phone number, and Rules that I was invoking. I pointed out to Ms. Harris that I also wanted to find out whether I could get access to the reports provided for under Rule 4(g). Ms. Harris failed to call me on Thursday morning and when I called her in the afternoon she still had not asked. She told me that she would ask and call me within the hour to let me know. She failed to do so too. When I called her again she said that she had been told that the orders had to be examined to determine whether they complied with the requirement concerning the disclosure of the name of the complainant and the complained-about judge. I told her that her statement was wrong since the determination of whether to disclose those names is made before the orders are requested by a member of the public, not upon his request; otherwise, the orders are not in fact been made publicly available, as required. Ms. Harris would not give me the name of the person who gave her that statement, but transferred me to Mr. Fernando Galindo.

Mr. Galindo said that he would find out what orders could be made available to me and call me the next morning. I brought to his attention that I am working to a filing deadline imposed by this Court and need to have access to those orders without further delay. Yet, Mr. Galindo failed to call me on Friday morning. When I called him in the afternoon, he said that he had talked to his Clerk of Court and had been told that the orders had to be submitted to you to determine which complied with the name disclosure requirement and could be made available to me. For the reasons that I had already explained to him on Thursday, I told Mr. Galindo that his statement was wrong, that the Court was not in compliance with its own Governing Rules, and was making me waste time that I need to prepare to meet the deadline.

Therefore, I respectfully request that:

1. pursuant to Rule 17(a), the "docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council" be made available to me;
2. it be determined whether I can obtain access to the reports under Rule 4(g); and
3. the deadline of July 9, for me to file a petition for review of the Order, filed June 8, 2004, dismissing my judicial conduct complaint, docket no. 03-8547, be extended by the same number of days from June 16 to the day of your mailing your reply, plus an additional three days, cf. FRAP 26(c).

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

July 1, 2004

Mr. Fernando Galindo
Chief Deputy of the Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

As agreed, I went today to the In-take Room 1803 and filed a second letter to Chief Judge Walker concerning both the new obstacles to my accessing all the "publicly available" judicial misconduct orders and my unanswered June 19 letter requesting them. Thanks to you, there was no problem. I guess you must have talked to Mrs. Harris, the head of that Room. When she saw me, she came over and took charge of my filing; she also date-stamped my copy of that second letter. I asked her to let you know that I had brought it, as yesterday you had requested that I put also those concerns in writing to the Chief Judge and I stated to you that I would.

Then, as if enough obstacles to my accessing those orders had not been raised despite the impending date of July 9 for filing my petition of review to the Judicial Council of the dismissal of my misconduct complaint, the following happened. Mrs. Harris asked me whether I was done with the available misconduct orders. I said no and that I wanted to check out the 2003 binder. She told me to fill out a card and give her my I.D. card. It was about quarter past noon when I went with the binder through the entrance of the doorless glass panel, which is parallel to and across from the In-take counter, to the adjoining reading room, where I sat at a table and began to read and take notes. Sometime later a male clerk came in and asked me whether I was waiting for somebody or something similar. I said no. He also told me that there was no sleeping in the room. I realized that I must have been nodding. He went out of the reading room and back to the clerk's room behind the counter. I went on reading and taking notes for several hours.

Then somebody called me. I looked to my right and it was Mrs. Harris standing by the other reading table next to mine. She said that I was sleeping and that there was no sleeping in the reading room. I told here that I had not gone there to sleep, but rather that I must have fallen asleep. She replied that I had already been warned and that if I fell asleep again, she would call the marshals. I said nothing and she left. I went on reading and taking notes…in shock!

Mrs. Harris would call the marshals on me because I was nodding in the reading room, thereby treating me as if I were a homeless bum that had gone there just looking for a place where to sleep, though I was reading documents that I had checked out through her! What a disproportionate, heavyhanded, and embarrassing public exercise of raw power! Because I was nodding, she would have the marshals escort me out of the reading room and thus, of the courthouse, for it is reasonable to assume that she would not call them to ask that they bring me a cup of coffee or take me down to their room in the lobby to share their coffee with me. What a humiliating experience that would have been! Would the Chief Judge stop listening to and asking questions during a court session to tell a person who he knew was there waiting to deliver oral argument, and thus, engaged in bona fide business of the court, that he would call the marshals on him because he was nodding?

I was nodding shortly after noon due to, among other understandable reasons, mental fatigue. Indeed, I was trying to concentrate on reading and analyzing the orders despite the many distractions in the reading room, which, by contrast, Mrs. Harris, or the other clerks for that matter, could not escape noticing and yet tolerated, as they do routinely. To begin with, a corner office of the In-take Room shares one side with the reading room, from which it is divided by a wood panel that, like the glass panel to which it is perpendicular, does not reach the ceiling. Just as on many previous occasions on which I have been there, a radio was turned on to popular rock music and could distinctly be heard across and over the panel some ten feet away at the table at which I was reading. Ask yourself what is more offensive: that the clerks keep a radio on in an office where clerks of a court of appeals must carefully pay attention to their processing of documents that affect directly and substantially the life, liberty, and property of members of the public or that a member of the public nods while reading those documents?

Likewise, in the clerks' room the clerks were talking business among themselves and with people that came in to file or check out documents and they also bantered among themselves. A female clerk that sits by a window and right outside Mrs. Harris' cubicle was talking particularly loud and frequently. The clerks' talk and banter could on that occasion, as it can normally, be clearly heard across and over the glass panel, which has no door closing off the reading from the clerks' room. What would be a more justifiable housekeeping measure:

1. for Mrs. Harris to instruct her clerks to keep their voices down and limit their banter so that they can concentrate on their important work and not distract readers, or
2. to instruct a clerk or the clerks to keep an eye looking across the glass panel to see if a reader nods, stop what they are doing to go there and tell him not to nod, and keep an eye to see whether he commits nodding again so that they can stop what they are doing and report it to Mrs. Harris, for her to stop what she is doing and go from her cubicle to the reading room to tell the reader that he has already been warned against nodding and next time he nods she will call the marshals, for them to stop their work of protecting federal employees and the public in the building by mainly operating the metal detectors to prevent criminals, particularly terrorists, from bringing in weapons, such as bombs or detonating devices in cellular phones or portable photocopiers, and come up to the 18th floor to take custody of a reader threatening everybody in the reading and clerks' rooms with nodding?

Your turn. Would you, Mr. Galindo, or Clerk of Court MacKechnie or Chief Judge Walker want to stand up and defend before the jury Mrs. Harris's personnel and resource management and public relations skills as well as her priorities and discretion in exercising power? If not, let me bring to your attention other sources of noise that I was trying to shut off my mind while trying to concentrate on the reading and that contributed to the mental fatigue that made me nod.

To my right were people dropping coins into, and operating, the two console photocopiers some eight feet away from me. Right above me was a noisy utility pipe, which conducts perhaps the air of the roaring air conditioner by the windows; that pipe can be seen because a 2 sq. ft. tile of the covering ceiling is missing. To my left was a young woman some four feet from me by the window keyboarding on a beeping pager.

That she was able to bring it in past the marshals may point to her being an employee. A young man walked in and sat next to her by the row of computers through which other people could access court documents. They began to chat about what they had eaten with their friends

and their next activities, just as loudly as if they were in their living room, not a reading room. I turned around and looked at the young man several times, but he did not get the hint. So I went to the counter and told the male clerk that had first warned me against nodding that this couple was talking loudly and that "It is very distracting." Yet, neither he nor Mrs. Harris came into the reading room to ask them to stop their banter, let alone call the marshals on the young woman to confiscate her pager and interrogate her on how she had gotten it into the building past security.

Could Mrs. Harris' nonsensical and discriminatory treatment of people in the reading room be explained by the fact that the day before I had pointed out to her that her statement about the archiving of misconduct orders was not in harmony with Rule 17 of the Rules Governing Misconduct Orders and she rebuked me in public for trying to tell her what the Rules were? When you and I talked subsequently, you admitted that neither you nor the clerks were familiar with those Rules and I brought to your attention Mrs. Harris' all the more unjustified rebuke. You said that you would talk to her about it. Was she retaliating against me? To that end, was she inventing a prohibition on nodding, which is not posted anywhere in the reading room? Note that, by contrast, at least 5 types of notices, including one on "No eating or drinking in this area", are posted, some in several copies, throughout the room, thus revealing the relative unimportance of nodding.

I cannot control nodding, specially in such a noisy environment, just as neither you, nor Mrs. MacKechnie, nor Chief Judge Walker can give any assurance that none of you will nod, be it while reading, watching TV, or even doing something as dangerous as driving a car, for nodding is an involuntary physiological state. But I can deliberately not go to that reading room to avoid exposing myself to the humiliating experience and grave consequences of having the marshals lead me away upon Mrs. Harris charging me with the crime of nodding while reading.

Therefore, for my protection and the Court's from the poor judgment and excesses of its agents while performing by its appointment and under color of apparent authority, I respectfully request that you give me assurances:

1. that if I go to the reading room to read court documents and it happens that I nod, neither Mrs. Harris nor any other clerk will disturb me, let alone call the marshals on me;
2. that neither Mrs. Harris nor them will rebuke me for any reasonable conduct on my part, such as pointing to a Court rule as support for a procedural right that I invoke;
3. that on the contrary, Mrs. Harris and the other clerks will treat me with the professionalism and courtesy that anybody that goes to that room, including a prudent and polite person like myself, is entitled to, particularly from public servants employed by an institution headed by officers whose function it is precisely to judge people by the standard of the conduct of a reasonable person;
4. that you take notice of the positive aspects of my comments about noise in the reading room and will consider the possibility of taking appropriate remedial action; and
5. I also request that your assurances, though expected to be given timely generally, be given taking particular account of the timeliness required by the Court-imposed deadline of July 9 for me to research, write, print, and file my petition for review.

Sincerely,

Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Richard Cordero **Case no.: 04-8510**

MOTION FOR DECLARATORY JUDGMENT
THAT OFFICERS OF THIS COURT INTENTIONALLY
VIOLATED LAW AND RULES AS PART OF A PATTERN OF WRONGDOING
TO COMPLAINANT'S DETRIMENT
AND FOR THIS COURT TO LAUNCH AN INVESTIGATION

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1. On Monday, March 22, Dr. Richard Cordero submitted a judicial misconduct complaint "addressed…to the Circuit Judge eligible to become the next chief judge of the circuit", who is the one to whom it should be transmitted when the judicial officer complained-about is the Chief Judge, as provided for by this Circuit's Rules Governing Complaints under 28 U.S.C. §351 (these Rules are referred to hereinafter as Rule #). This triggered **another** series of acts of disregard of law and rules by clerks of this Court that delayed the "acceptance" of the complaint for more than a week and caused Dr. Cordero **more** waste of effort, time, and money and inflicted upon him **more** of the aggravation concomitant of the trampling of one's rights and of evidence of **more** injustice to come. Establishing that such disregard of legality occurred in, of all places, this Court, identifying those liable for it, and finding its cause and objective are the subject matter of this motion.

Table of Contents

I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero's complaint about the Chief Judge

2. Last March 22, Dr. Cordero showed the deputy clerk behind the counter at In-Take Room 1803 an original and three copies of a judicial misconduct complaint about the Hon. John M. Walker, Chief Judge of this Court (i-25, below; see the Table of Contents, M-22, below) as well as a separate volume bearing on its cover the title "Evidentiary Documents" (26, below). Dr. Cordero asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk behind the counter phoned her, she told Dr. Cordero that Clerk Allen was unavailable. He filed the complaint.

A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the 'promptness' requirement

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit‟s Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts‟ integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness

requirement. It reveals the Court‟s attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks‟ handling of Dr. Cordero‟s complaint, in particular.

B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint's handling

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts‟ decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.

6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion‟s case. The explanation offered was that the complaint‟s Statement of Facts and separate volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr.

Cordero‟s conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint‟s heading laid out thus (i, below):

STATEMENT OF FACTS
Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**
The Hon. John M. Walker, Jr., Chief Judge
of the Court of Appeals for the Second Circuit
addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers
to the Circuit Judge eligible to become the next chief judge of the circuit

8. For her part, Clerk Allen herself found that heading most confusing and said that „it would of course be interpreted as a statement of facts in support of the motion‟, never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"…forget‟a „bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four

copies for him to reformat and resubmit them. Her objections were the following:

a) The misconduct form was not on top, „so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?“ Dr. Cordero‘s suggestion that one might read the heading got him nowhere.

b) The complaint form was the wrong one, for its title refers to §372 rather that §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.

c) The complaint had a table of contents, but „complaints have no such thing!“.

d) A major issue was Dr. Cordero‘s inclusion of documents with the Statement of Facts and with the separate bound volume, „What for?! You can‘t do that!“ He explained that those are documents created since his August complaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E-# (E as in Exhibit, which was the title of a separate volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume

accompanying the March complaint the different title "Evidentiary Documents" was used). Subtleties of no significance to Clerk Allen.

e) An „obvious" defect was that Dr. Cordero had bound the complaint, but „a complaint must not be bound; rather, it must be stapled or clipped!" He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that "The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open." However, Dr. Cordero"s reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. „No!, Dr. Cordero, if the Rules do not say that you can do something, then you can"t do it! It is that simple".

9. These are the „unacceptable" features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to comply with her unwritten arbitrary demands to implement „the way things are done with complaints", which he had to discover the hard way after complying

with the written Rules, whether on point or applied by analogy.

C. Clerk Allen's March 24 letter imposes meaningless arbitrary requirements

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

1. Clerk Allen requires the separate volume to be marked "Exhibits"

11. Although Clerk Allen had told Dr. Cordero that she would write in the word "Exhibits", she wrote in her cover letter that "Exhibits should clearly be marked exhibits". As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word "Exhibits" prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked "Exhibits". Rule 2(d) reads thus:

> **(d) Submission of Documents**. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court's judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court's name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges,

as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be „confused" because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS
supporting a complaint
UNDER 28 U.S.C. §351 ABOUT
The Hon. John M. Walker, Jr.,
Chief Judge
of...

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

> The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

> (b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives sides), and the paper size should not be larger than the paper the form is printed on.* (emphasis added)

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what

the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.

18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen‟s letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen‟s top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.

19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court‟s record, what does she do with the copies if it is not to send them to the judges to whom she sends the

Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E-#, or A-#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the „names and addresses" of 85 „witnessing" documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.

26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the

Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero‟s time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.

29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of

the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M-27, below)

31. So Clerk Allen, with Clerk MacKechnie‟s approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by the Rules adopted by this Court‟s judges?! Moreover, why does Clerk Allen have

to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M-28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks" arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

> The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that "Every court of appeals must accept documents that comply with the form requirements of this rule," whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that "By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule", whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules' policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no authority to disregard the law or the rules, but rather the obligation to show the

utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors‟ orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable

37. Enough is enough! The clerks‟ tampering with Dr. Cordero‟s right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero‟s detriment. Here is a sampler:

    a) The January 26 order on Dr. Cordero‟s appeal, docket no. 03-5023, stated, and stills does, that it was the district court‟s decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added).

Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.

d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks‟ normal level of performance or did somebody not want Dr. Cordero to file the petition?

e) Dr. Cordero‟s original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts. (Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)

g) Cf. Rochester court officers‟ disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);

h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A-674 in the Exhibits)

i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A-768 in the Exhibits)

j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrong-doing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

III. Relief sought

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that this Court:

a) declare that Clerks MacKechnie and Allen violate FRAP Rule 25(4) to Dr. Cordero‟s detriment;

b) declare whether said clerks and other officers of this Court did so in concert and following the instructions of their hierarchical superiors;

c) declare whether it can be inferred from their handling of Dr. Cordero‟s complaints of March 2004 and of August 11, 2003, and the foreseeability of the consequences that the clerks and their superiors:

1. intended to delay the submission of Dr. Cordero‟s judicial misconduct complaint and dissuade him from resubmitting it, thereby hindering the exercise of his right 11 U.S.C. §351 to complain about a judicial officer;
2. intended to cause Dr. Cordero to waste his time, effort, and money, and to inflict on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint‟s Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement‟s original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on
April 11, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

Table of Contents
of the Motion of April 11, 2004

Table of Judicial Misconduct Orders

made available by the Court of Appeals for the Second Circuit
two weeks after requested by Dr. Richard Cordero

but docket-sheet record not available, though required under Rule 17(a); and
dissenting opinions and separate statements by CA2 Judicial Council members,
if written, not available

(listed in the order in which they were found in the 2003 binder)

	Docket no.	**Review Petition** granted/denied by Judicial Council	**Order** of the Judicial Council[1] signed by	**Disposition** of complaint	**Memorandum** if available, signed by	**Special Committee**
1.	03-8552	denied	Cir. Exec. Milton	dismissed		
2.	03-8512	denied	Cir. Exec. Milton	dismissed		
3.	03-8515	denied	Cir. Exec. Milton	dismissed		
4.	03-8517, 03-8518, 03-8521	denied	Cir. Exec. Milton	dismissed		
5.	**02**-8534	denied	Cir. Exec. Milton	dismissed		
6.	**02**-8539	denied	Cir. Exec. Milton	dismissed		
7.	**02**-8580	denied	Cir. Exec. Milton	dismissed		
8.	**02**-8573, **02**-8574	denied	Cir. Exec. Milton	dismissed		
9.	**02**-8550	denied	Cir. Exec. Milton	dismissed		
10.	03-8523	denied	Cir. Exec. Milton	dismissed		
11.	03-8528	denied	Cir. Exec. Milton	dismissed		
12.	03-8522	denied	Cir. Exec. Milton	dismissed		
13.	03-8517, 03-8518			dismissed	Chief Jdg. Walker	not appointed
14.	03-8516	denied		dismissed	Chief Jdg. Walker	not appointed
15.	03-8513, 03-8514, 03-8515	denied		dismissed	Chief Jdg. Walker	not appointed
16.	03-8512			dismissed	Chief Jdg. Walker	not appointed
17.	03-8509	denied		dismissed	Chief Jdg. Walker	not appointed
18.	03-8508	denied		dismissed	Chief Jdg. Walker	not appointed
19.	03-8523	denied		dismissed	Chief Jdg. Walker	not appointed

[1] Upon consideration thereof by the Council it is ORDERED that the petition for review is DENIED for the reasons stated in the order dated____. [[signed] Karen Greve Milton, Circuit Executive, by Direction of the Judicial Council

20.	03-8504, 03-8505, 03-8506	denied		dismissed	Chief Jdg. Walker	not appointed
21.	03-8502	denied		dismissed	Chief Jdg. Walker	not appointed[2]
22.	03-8501	denied		dismissed	Chief Jdg. Walker	not appointed[3]
23.	**02**-8575	denied		dismissed	Chief Jdg. Walker	not appointed
24.	**02**-8577, **02**-8578, **02**-8579	denied		dismissed	Chief Jdg. Walker	not appointed
25.	**02**-8580	denied		dismissed	Chief Jdg. Walker	not appointed
26.	**02**-8581	denied		dismissed	Chief Jdg. Walker	not appointed
27.	**02**-8582	denied		dismissed	Chief Jdg. Walker	not appointed
28.	**02**-8562	denied		dismissed	Chief Jdg. Walker	not appointed
29.	**02**-8565	denied		dismissed	Chief Jdg. Walker	not appointed
30.	**02**-8571	denied		dismissed	Chief Jdg. Walker	not appointed
31.	**02**-8570	denied		dismissed	Chief Jdg. Walker	not appointed

[2] Reference in the memorandum to "An independent review of the District Court docket sheet in that case reveals that…".
[3] Reference in the memorandum to "an independent review of the transcript of the pretrial conference".

Table of All Memoranda and Orders
of
The Judicial Conference of the United States
Committee to Review Circuit Council Conduct and Disability Orders
sent to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and showing how few §351 complaints are allowed to reach the Judicial Conference as petitions for review of judicial council action

	In re Complaint of	Docket no.	Status	Circuit Council	
1.	George Arshal	82-372-001	Incomplete after p.3	Court of Claims	
2.	Gail Spilman	82-372-002		6th	
3.	Thomas C. Murphy	82-372-003		2nd	
4.	Andrew Sulner	82-372-004		2nd	
5.			Missing?		
6.	John A. Course	82-372-006		7th	
7.	Avabelle Baskett, et al.	83-372-001		Court of Claims	
8.	of bankruptcy judge	84-372-001		9th	
9.	Fred W. Phelps, Sr. et al. v. Hon. Patrick F. Kelly	87-372-001		10th	
10.	Petition No. 88-372-001	88-372-001		not stated	
11.	Donald Gene Henthorn v. Judge Vela and Magistrate Judges Mallet and Garza	92-372-001		5th	
12.	In re: Complaints of Judicial Misconduct	93-372-001		10th	
13.	In re: Complaints of Judicial Misconduct	94-372-001		D.C. Ct. of Appeals	
14.	In re: Complaints of Judicial Misconduct	95-372-001		9th	
15.	In re: Complaints of Judicial Misconduct or Disability [Dist. Judge John H. McBryde]	98-372-001		5th	
16.	In re: Complaint of Judicial Misconduct	01-372-001	Incomplete after p.3	D.C. Ct. of Appeals	
17.	Agenda E-17, Conduct and Disability; March 2003: no petitions for review pending; Committee "is monitoring the status of Spargo v. NYS Comms. on Judicial Conduct, 244 F.Supp.2d 72(NDNY 2003)		p. 2 is missing or p. 1 and 3 are mismatched		
18.	Agenda E-17, Conduct and Disability; September 2003: no petitions for review pending; the Committee "has continued to monitor congressional activity in the area of judicial conduct an disability", p.35				
19.	Agenda E-17, Conduct and Disability; March 2004: no petitions for review for received or pending				

judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules 1-15 approved in September 2003 (JCUS-SEP 03, p. 37) have been deferred until all the civil rules have been revised, which is expected to occur early in 2005. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed in August 2003 to their respective sets of rules.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

SEPTEMBER 23, 2003
WASHINGTON, D.C.

JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE WILLIAM H. REHNQUIST,
PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

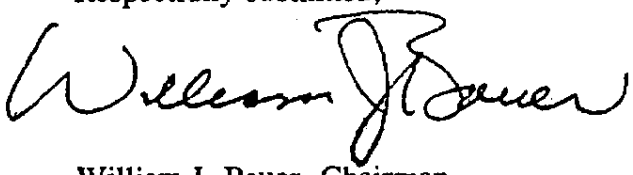
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,



William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

NOTICE

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

AMENDMENTS TO THE JUDICIAL CONDUCT AND DISABILITY ACT

The 21st Century Department of Justice Appropriations Authorization Act, Division C, Title I, Subtitle C, §§ 11041-43 (Pub. L. No. 107-273, 11/2/02), amended the Judicial Conduct and Disability Act, the former 28 U.S.C. § 372(c), in several minor respects. For the most part the provisions of that Act have been preserved verbatim.

The statute makes essentially four changes in the provisions of the Judicial Conduct and Disability Act:

1. As a matter of form, the statute recodifies section 372(c) as sections 351 through 364 of title 28.

and Disability Act, 28 U.S.C. § 372(c)(6)(B), because of the judge's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others." The sanctions consisted of (1) a public reprimand, (2) a one-year suspension from new case assignments, and (3) a three-year suspension from hearing cases in which certain listed attorneys appeared. The court of appeals had affirmed the district court's dismissal of the district judge's challenges to the public reprimand, and had ruled that the district judge's challenges to the one-year and three-year suspensions should have been dismissed as moot.

The denial of certiorari by the Supreme Court would appear to finally put an end to this long-running litigation.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 (section 372(c)(6)) since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,

William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

For further information contact
Public Information Office 202-479-3211

EMBARGOED FOR RELEASE
January 1, 2004, 12:01 a.m. E.S.T.

2003 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

This Year-End Report on the Federal Judiciary is my 18th.

I am pleased to report that the Senate confirmed 55 District Court judges during 2003, leaving only 27 vacancies out of 680 judgeships. At the same time, 13 Court of Appeals judges were confirmed, but 17 nominations remain pending.

…

III. The Year in Review

The Supreme Court of the United States

This year we broke ground on our long-anticipated building modernization program. It is my hope that we remain on schedule and complete the project under budget.

The total number of case filings in the Supreme Court increased from 7,924 in the 2001 Term to 8,255 in the 2002 Term - an increase of 4 percent. Filings in the Court's *in forma pauperis* docket increased from 6,037 to 6,386 - a 5.8 percent rise. The Court's paid docket decreased by 17 cases, from 1,886 to 1,869 - a 1 percent decline. During the 2002 Term, 84 cases were argued and 79 were disposed of in 71 signed opinions, compared to 88 cases argued and 85 disposed of in 76 signed opinions in the 2001 Term. No cases from the 2002 Term were scheduled for re-argument in the 2003 Term. This year the Court reconvened a month earlier than usual to hear a full day's argument in the Bipartisan Campaign Reform Act cases. Written opinions deciding the cases were handed down in December.

The Federal Courts' Caseload

In Fiscal Year 2003, the federal courts experienced record highs in filings in most program areas, and a decline in only one. Filings in the 12 regional courts of appeals grew 6 percent from 57,555 to 60,847, a record number.[3] Criminal case filings increased 5 percent to an all-time high of 70,642, surpassing the previous record reported in 1932, the year before the Prohibition Amendment was repealed.[4] In contrast, civil filings declined 8 percent to 252,962.[5] Filings in the U.S. bankruptcy courts increased 7 percent from 1,547,669 to 1,661,996, the second consecutive year filings have set a record.[6] The number of persons on probation and supervised release went…

FOR IMMEDIATE RELEASE
June 10, 2004

For Further Information Contact:
Public Information Office
Phone: 202-479-3211

Judicial Conduct and Disability Act Study Committee

Organizational Meeting

June 10, 2004

The Judicial Conduct and Disability Act Study Committee held its initial organizational meeting today at the Supreme Court. The Chief Justice established the Committee, chaired by Justice Stephen Breyer, to evaluate how the federal judicial system has implemented the Judicial Conduct and Disability Act of 1980. (See 28 U.S.C. §§ 351-364.) That Act authorizes "any person" to file a complaint alleging that a federal circuit judge, district judge, bankruptcy judge, or magistrate judge has "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts," or is physically or mentally unable to perform his or her duties. The Act does not itself prescribe ethical standards; nor does it apply to the Supreme Court.

At today's meeting, the Committee decided that it will initially examine as many non-frivolous Act-related complaints as can be identified, along with a statistical sample of all complaints, filed in the last several years. The Committee will use this information to help shape a further course of examination and analysis, eventually leading to Committee recommendations to the Chief Justice.

"The Committee's task is narrow, but important," Justice Breyer said. "The 1980 Act put a system in place so that action can be taken when judges engage in misconduct or are physically or mentally unable to carry out their duties. We need to see how the system is working. The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability."

In addition to Justice Breyer, the Committee members are: Judge J. Harvie Wilkinson (U.S. Court of Appeals for the Fourth Circuit); Judge Pasco M. Bowman (U.S. Court of Appeals for the Eighth Circuit); Judge D. Brock Hornby (U.S. District Court for the District of Maine); Judge Sarah Evans Barker (U.S. District Court for the Southern District of Indiana); and Sally M. Rider (administrative assistant to the Chief Justice).

The Committee will use staff drawn from the Administrative Office of the United States Courts and the Federal Judicial Center. The staff will develop a research plan based both on statistical sampling and interviews, including interviews of judges, administrators, and practicing lawyers, such as prosecutors and defense attorneys. It will examine complaints submitted by members of the public to other institutions, including Congress, and will develop methods for obtaining information from members of the public. Although the Committee will proceed publicly where useful and appropriate, it recognizes the statutory requirement to maintain confidentiality of records and complaints. (See 28 U.S.C. § 360.) It will likely take eighteen months to two years for the Committee to complete its work. The Committee will meet again in the fall.

Last Updated: June 10, 2004
Page Name: http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html

[Previous Doc in Result List] [Next Doc in Result List]

U.S. House of Representatives
Committee on the Judiciary
F. James Sensenbrenner, Jr., Chairman

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www.house.gov/judiciary
News Advisory
For immediate release
Contact: Jeff Lungren/Terry Shawn
May 26, 2004
202-225-2492

Sensenbrenner Statement Regarding New Commission on Judicial Misconduct

WASHINGTON, D.C. - U.S. Supreme Court Chief Justice William Rehnquist yesterday announced the creation of a judicial commission, headed by Supreme Court Justice Stephen Breyer, to look into the implementation of the Judicial Conduct and Disability Act of 1980 concerning judicial misconduct and discipline. House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) released the following statement:

"I am pleased and encouraged by this announcement. Chief Justice Rehnquist should be commended for his willingness to work with the Congress and address this issue in a serious manner. Chief Justice Rehnquist made a wise choice in asking Justice Breyer to head this commission and I´m grateful Justice Breyer has agreed to serve as head of this panel. Justice Breyer´s devotion to the law combined with his exemplary standards of character and integrity will provide this commission with the qualities needed to complete its work."

"The 1980 Act, which was amended during the 107th Congress, is based on a self-governing construct that allows the judicial branch large deference to police itself regarding matters of judicial misconduct and discipline. This system worked quite well during the 1980's. For instance, on three separate occasions, a judicial branch investigation recommended a federal judge be impeached for misconduct. Congress followed these recommendations in each case by impeaching these judges. Since then, however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."

Background on Judicial Conduct and Disability Act of 1980

Individuals who believe a U.S. circuit or district court judge has indulged in misconduct may file a complaint against the judge in the relevant circuit. The chief judge of the circuit is empowered

to dismiss frivolous complaints or those that relate to the merits of a decision. More serious complaints are subject to review by an investigatory committee selected by the chief judge of the circuit and further review may be warranted by judicial councils empaneled for that purpose. The councils and the Judicial Conference, the leadership arm of the federal judiciary, are given wide latitude to take any necessary corrective action, including the authority to recommend that a judge be impeached.

The 1980 Act does not apply to Supreme Court justices. The authority to create this process as a way to instill ethical behavior within the lower federal courts is explicit under Article III of the Constitution. Constitutional questions would arise under the separation of powers doctrine to apply the same construct to Supreme Court justices.

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[Previous Doc in Result List] [Next Doc in Result List]

Dr. Richard Cordero

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August 11, 2003

STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230 [www.nywb.uscourts.gov], which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as last December 26 and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. At those hearings Dr. Cordero

[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#.

will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23 hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a

moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-48, 49; 109, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

B. The Court Reporter tries to avoid submitting the transcript of the hearing

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

Dr. Richard Cordero

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

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

February 2, 2004

Hon. John M. Walker, Jr.
Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

I respectfully point out that Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules is that action will be taken expeditiously.

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge shall transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall **promptly**- (A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added).

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023 [www.ca2.uscourts.gov], supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

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

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

Dr. Richard Cordero

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and order granting the motion to update evidence of bias.

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,
Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Patricia C. Allen, Deputy Clerk

Enclosures

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

The DeLano Bankruptcy Petition

A test case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for confirmation by the bankruptcy court

1. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (docket no. 04-20280; 74, infra). The figures in its schedules and the surrounding circumstances should have readily alerted the trustee and his attorney to the suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., approved the petition and were about to submit its repayment plan on March 8 to the court for confirmation when Dr. Richard Cordero, a creditor, submitted written objections to confirming that plan. Even so, the Trustee and his attorney vouched in open court for the petition‟s good faith. The U.S. Trustees kept Trustee Reiber on the case despite Dr. Cordero‟s request for his removal. Judge for yourself from the following salient figures and circumstances whether they all instead had reason to suspect the petition‟s good faith:

   a) Mr. DeLano has been *a bank officer for 15 years!*, or rather more precisely, a **loan** bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). He had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist on one of its machines.

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

   c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

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

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

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

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

   h) declared earnings in 2001 of $91,229, in 2002 of $91,655, and in 2003 of $108,586;

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

   j) their cash in hand or on account declared in their petition was only $535.50;

   k) the rest of their personal property is just two cars worth $6,500;

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

m) make a $10,000 loan to their son and declare it uncollectible;

n) but offer to repay only 22 cents on the dollar without interest for just 3 years;

o) refused for months to submit any credit card statement covering any length of time „because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies";

p) however, the DeLanos:

(1) must still receive the **monthly** statement from each of the 18 credit card issuers in Schedule F, given that on April 16, their attorney, Christopher Werner, Esq., stated to the court: "Debtors have maintained the minimum payments on those obligations";

(2) must have consulted in January 2004, such statements to provide in Schedule F the numbers of their accounts with those issuers and their addresses; and

(3) must know –Loan Officer DeLano must no doubt be presumed to know- that they have an obligation to keep financial documents for a certain number of years;

q) despite Dr. Cordero"s requests for financial documents of March 4 and 30, April 23, and May 23, and the Trustee"s of April 20 and May 18, the DeLanos provided only some financial documents on June 14, so late that the Trustee moved on June 15 for dismissal for "unreasonable delay", and what they did provide is incomplete and incriminatory:

(1) only 1 statement of each of only 8 credit card accounts,

(2) those statements are missing the section that shows from which provider of goods and services a purchase was made and for what amount, which is indispensable information to establish the timeline of debt accumulation and its nature;

(3) the statements are not even the latest ones of May and June 2004, but rather are of between July and October 2003! Why would the DeLanos ever do such thing?!;

(4) the credit bureau report submitted for Mr. DeLano and the one for Mrs. DeLano are from only one bureau, namely, Equifax, even though the DeLanos must know that none of the reports of even the other two major bureaus, that is, Trans Union and Experian, is exhaustive by including all accounts or up to date as to each account, but rather their reports are complementary;

(5) worse yet, the Equifax reports submitted are missing pages, even pages that must contain information on accounts, such as outstanding balance and payment history;

(6) the figures in the three IRS 1040 forms for 2001, 2002, and 2003 do not coincide with the information on earnings in the DeLanos" bankruptcy petition of January 26, 2004.

2. A comparison between those credit card statements, the Equifax reports, the bankruptcy petition, and the court-developed claims register and creditors matrix calls into question the petition"s good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.

3. Indeed, in Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let"s assume that in 1989 the combined income of him and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let"s assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what

they owned before 1989, let alone their credit card borrowing. Where did the money go? Where is it? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?

4. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants‟ financial documents, have thought that it would be deemed in good faith to submit such objectively incomplete documents? Did he have any reason to expect Trustee Reiber not to analyze them? Did the Trustee and Attorney Weidman ask themselves that? How did they ascertain the timeline of debt accumulation and its nature if they did not even have those documents before readying the petition for submission to the court?

5. Did the Trustee and his Attorney ever get the hint that the figures in the petition and the surrounding circumstances made no sense or were they too busy with their other cases, which according to Pacer are 3,909, as well a the in-take of new ones to ask any questions and request any supporting documents? How many other cases did they also accept under the motto "don‟t ask, don‟t check, just cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?

6. Assistant U.S. Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini have allowed Trustee Reiber to hold on to this case despite Dr. Cordero‟s reasoned request of March 30 for his replacement. Only because of his repeated assertion of his right to examine financial information about the DeLanos has Trustee Reiber requested documents. Yet, the Trustee‟s late request of April 20 was insufficient, covering just 8 accounts out of 18 for only three years out of 15. Although Trustee Reiber received only a few on June 14, as of July 6 he had not even realized how incomplete the 8 pages of bank statements and 11 pages of Equifax reports were, let alone analyzed them and detected their grave implications for the petition‟s good faith. He refuses to subpoena the missing documents. Hence, the U.S. Trustees must take notice of his ineffective and halfhearted effort to "investigate" the DeLanos. They must not disregard any longer his obvious conflict of interest: It is in Trustee Reiber‟s interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, and himself for approving such a questionable petition and vouching for its good faith in open court on March 8, thereby casting doubt on his myriad other cases.

7. Indeed, if a case as meritless as the DeLanos‟ passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber‟s other cases, which could lead to his and his agent-attorney‟s suspension and removal. Were those penalizing measures adopted, they would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from U.S. Trustees Schmitt and Martini. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

8. What were they all thinking!? Whatever it was, from their perspective now their best self-protection is not to set in motion an investigative process that can spin out of control and end up crushing them. Will the Judicial Council let them get away with it or will it appoint a special committee –better yet, make a referral to the FBI- to investigate the DeLano test case and the thousands like it that undermine the integrity of the judicial system and the public trust in it?

Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):

DAVID G DELANO
1262 SHOECRAFT ROAD

WEBSTER, NY 14580

AKA:

Joint: MARY ANN DELANO
1262 SHOECRAFT ROAD

WEBSTER, NY 14580

Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
January 27, 2004	XXX-XX-3894 XXX-XX-0517

Individual debtors must provide picture identfication and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):

CHRISTOPHER K WERNER, ESQ
BOYLAN, BROWN, ET AL
2400 CHASE SQUARE
ROCHESTER, NY 14604-0000

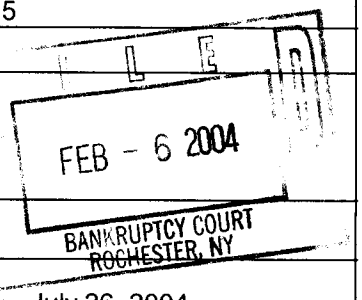
Telephone Number: (716) 232-5300

Bankruptcy Trustee (name and address):

George M. Reiber
3136 South Winton Road
Suite 206
Rochester, NY 14623

Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.



Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM

Location: U.S. Trustees Office
6080 U.S. Courthouse
100 State Street
Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004

For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM

Location: U. S. Bankruptcy Court
1400 U.S. Courthouse
100 State Street
Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court
100 State St.

Rochester, NY 14614

Website: http://www.nywb.uscourts.gov

Clerk of the Bankruptcy Court:
PAUL R. WARREN

DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court		U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee		George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor		DAVID G DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint		MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001	CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005	AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021	DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014	CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023	HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004	GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026	MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019	DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022	FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008	BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012	CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020	DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY E Morton

XCM - Indicates notice served via Certified Mail

Useful addresses for investigating

the judicial misconduct and bankruptcy scheme

(see also other addresses at 83-84, supra)

1.	George M. **Reiber**, Esq. **Chapter 13 Trustee** [in DeLanos' case… South Winton Court […no. 04-20280] 3136 S. Winton Road, Suite 206 Rochester, NY 14623 tel. (585) 427-7225 fax (585) 427-7804
2.	David G. and Mary Ann **DeLano** [Debtors] 1262 Shoecraft Road Webster, NY 14580
3.	Christopher K. **Werner**, Esq. [DeLanos's … Boylan, Brown, Code, […attorney] Vigdor & Wilson, LLP 2400 Chase Square Rochester, NY 14604 tel. (585) 232-5300 fax (585) 232-3528
4.	Kathleen Dunivin **Schmitt**, Esq. **Assistant U.S. Trustee** Federal Office Building, Room 6090 100 State Street, Room 6090 Rochester, New York 14614 tel. (585) 263-5812 fax (585) 263-5862
5.	Ms. Deirdre A. **Martini** **U.S. Trustee for Region 2** Office of the United States Trustee 55 Whitehall Street, 21st Floor New York, NY 10004 tel. (212) 510-0500 fax (212) 668-2255
6.	Hon. Judge John C. **Ninfo**, II **Bankruptcy Judge** United States Bankruptcy Court 1400 United States Courthouse 100 State Street Rochester, NY 14614 tel. (585) 613-4200
7.	Hon. David **Larimer** U.S. **District Judge** United States District Court 2120 U.S. Courthouse 100 State Street Rochester, NY 14614-1387 tel. (585) 263-6263
8.	Kenneth W. **Gordon**, Esq. **Chapter 7 Trustee** [in the Premier Van Lines Gordon & Schaal, LLP […case **01-20692**] 100 Meridian Centre Blvd., Suite 120 Rochester, New York 14618 tel. (585) 244-1070 fax (585) 244-1085
9.	Mr. David **Palmer** 1829 Middle Road [Debtor in Premier Van Rush, NY 14543 […Lines case **01-20692**]
10.	Hon. John M. **Walker**, Jr., Chief **Judge** Hon. Dennis **Jacobs** [next eligible chief judge] Ms. Roseann MacKechnie **Clerk of Court** Mr. Fernando Galindo **Chief Deputy** Clerk **Court of Appeals** for the Second Circuit Thurgood Marshall United States Courthouse 40 Foley Square, Room 1802 New York, NY 10007 tel. (212) 857-8500
11.	**Justice** Stephen **Breyer** Ms. Cathy Arbur (202)479-3050 Public Information Office **Supreme Court** of the United States 1 First Street, N.E. Washington, D.C. 20543 tel. (202)479-3000
12.	Mr. Leonidas Ralph Mecham **Director** William Burchall, Esq. **General Counsel** Jeffrey Barr, Esq. **Deputy** General Counsel **Administrative Office** of the U.S. Courts Office of the General Counsel One Columbus Circle, NE, Suite 7-290 Washington, DC 20544 tel. (202) 502-1100 fax (202) 502-1033
13.	Ms. Wendy Janis United States **Judicial Conference** (202)502-2400