

United States Court of Appeals for the Second Circuit

06-4780-bk

on appeal from *Cordero v. DeLano*, 05-6190, WDNY

Dr. Richard Cordero,

Appellant and creditor

v.

APPELLANT'S PRINCIPAL BRIEF

David and Mary Ann DeLano

Appellees and debtors in bankruptcy

March 17, 2007

(Excerpt; full brief at

http://Judicial-Discipline-Reform.org/Follow_money/DrCordero_v_DeLano_06_4780_CA2.pdf)

Table of Contents

V. Statement of Issues Presented for Review.....	19
VI. Statement of the Case	23
VII. Statement of Facts	25
A. In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and since then have refused to account for the whereabouts of known concealed assets worth at least \$673,657	25
1. The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme.....	29

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in DeLano and thereby of the right to request documents proving the Debtors’ bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme.....	32
B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him every single document that he requested, and avoided even mentioning the evidence of the Debtors’ concealment of at least \$673,657 and its enabling bankruptcy fraud scheme.....	35
1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation.....	35
2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them.....	38
a) Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal.....	38
b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did every single document that Dr. Cordero requested	41

V. STATEMENT OF ISSUES PRESENTED FOR REVIEW

7. The unifying issue before this Court in this bankruptcy case is whether it too, like the judges below, will deny due process of law to one litigant and impair the integrity of judicial process to the detriment of the public at large in order to avoid that a conscientious review of this case, rather than its cover up through a summary order, may raise the embarrassing questions, and all the more so the incriminating evidence, of what it knows about the bankruptcy fraud scheme involving its WDNY peers and others; since when the Court has known it; and for what motive it tolerates the scheme by refusing, as its peers below did, to order the Appellee Debtors to produce financial documents that will answer the smoking-gun question: Where and for whose benefit is at least \$673,657 of the Debtors' known concealed assets? (SApp:1608) So long as the Court refuses to obtain the facts to answer that question, it aids and abets the cover up of a bankruptcy fraud scheme. The constituent issues are the following:

- a) Judge Larimer so disregarded the law, the rules, and the facts in the proceedings leading up to and in his interlocutory and final decisions and showed such bias as to deny Appellant due process of law and render his decisions unlawful and a nullity.
- b) Whether the Appellee Debtors' motion to disallow Creditor Dr. Cordero's claim was an artifice and the evidentiary hearing was a sham that the

Debtors and Bankruptcy Judge Ninfo employed to justify the predetermined disallowance decision by denying Dr. Cordero *every single document* that he requested from them, even the Debtors' bank account statements, as well as the testimony establishing Dr. Cordero's claim given by Mr. DeLano at the hearing, in order to eliminate him from the Debtors' bankruptcy case before he could prove their involvement in a bankruptcy fraud scheme.

- c) Whether WDNY Local Rule of Civil Procedure 5.1(h) (Add:633), which requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidence before discovery has even started as to make such filing impossible in practice, is thereby void as inconsistent with the notice pleading and enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress, and as a subterfuge crafted in self-interest through the abuse of judicial power to prevent the exposure of judicial involvement in a bankruptcy fraud scheme.
- d) Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process of law, provides for forum shopping, and denies equal protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme.

Table of Notices
to the 2nd Circuit Court of Appeals and Judicial Council
the Circuit Judges, and others
of Evidence of a Bankruptcy Fraud Scheme
in the Bankruptcy and District Courts, WDNY
since May 2, 2003
by
Dr. Richard Cordero

I. Appeal of *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, sub nom. *In Premier Van et al.*, no. 03-5023, CA2:

of May 2, 2003;

writ for mandamus *In re Richard Cordero*, no. 03-3088, CA2, of September 12, 2003;

motion to quash the order of Judge Ninfo of August 30, 2004, to sever a claim from *In re Premier Van et al.*, in order to try it in the bankruptcy case *DeLano*, no. 04-20280, WBNY, thus making a mockery of the appellate process, of September 9, 2004 (Add:D:440);

motion for leave to file an updating supplement of evidence of bias in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury, of November 3, 2003 (D:425);

petition to CA2 for panel rehearing and hearing en banc, of March 10, 2004.

II. Judicial misconduct complaint against Judge Ninfo, no. 03-8547, CA2:

A. of September 2, 2003;

letters to the members of the Judicial Council of:

i. February 11 and 13, 2004;

ii. March 22, 2004;

iii. July 30, 2004;

appeal of the dismissal to the Judicial Council, of July 13, 2004.

III. Judicial misconduct complaint against Former Chief Judge John M. Walker, Jr., no. 04-8510, CA2:

A. of March 19 2004;

B. letter to then next chief Judge Dennis Jacobs, of March 24, 2004;

C. letter to Circuit Judge Robert Sack, of March 25, 2004;

appeal of its dismissal to the Judicial Council, of October 4, 2004;

letter to the members of the Council, of October 14, 2004;

letter to each member of the Council requesting that each make a report under 28 U.S.C. §3057(a) to the Acting U.S. Attorney General that an investigation should be had in connection with offenses against U.S. bankruptcy laws.

IV. Appeal of both complaints to the Judicial Conference of the United States:

A. letter to Circuit Justice Ruth Ginsburg, of November 26, 2004;

B. letter to Circuit Judge Ralph K. Winter, Chair of the Committee to Review Circuit Council Conduct and Disability Orders:

i. of January 8, 2005;

ii. of February 7, 2005;

iii. of March 24, 2005.

iv. of March 25, 2005;

V. Comments in response to CA2's invitation for public comments on the reappointment of Judge Ninfo to a second term as bankruptcy judge:

A. of March 17, 2005;

B. of August 4, 2005;

C. letter to each of the members of the CA2 and of the Judicial Council:

i. of March 18, 2005;

ii. of August 4 and 5, 2005;

iii. of September 6, 2005.

VI. Request to the Judicial Council to abrogate WDNY Local Rule 5.1(h) and 83.5 (Add:633) that make it practically impossible to file a RICO claim and to record events that occur in the court and 'its environs':

A. to now Chief Judge Jacobs and to members of the Judicial Council, of January 8, 2006;

B. to the Judicial Council, of January 7, 2006.

VI STATEMENT OF THE CASE

8. **In Bankruptcy Court, WBNY**, Appellee DeLanos filed as debtors a voluntary bankruptcy petition with its schedules under 11 U.S.C. Chapter 13 on January 27, 2004. (D:27-60) Therein they named Appellant Dr. Cordero among their creditors. (D:40). For six months the Debtors and Chapter 13 Trustee George Reiber treated Dr. Cordero as a creditor. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
9. However, their attitude changed when he showed that the Debtors had concealed assets and that Trustee Reiber had failed to investigate them and should be removed. (D:193) Then the Debtors moved to disallow his claim (D:218) and Judge Ninfo scheduled an evidentiary hearing (D:279, 332) only for the Debtors (D:313-315, 325) and the Judge (D: D:278¶1, 327) to deny *every single document* that Dr. Cordero requested (D:287, 317; Tr:188/2-189/18) to establish his claim

and determine the good faith of the Debtors' petition as well as the whereabouts of the known concealed assets that could reveal their participation in a bankruptcy fraud scheme (cf. SApp:1608).

10. At the evidentiary hearing held on March 1, 2005, Judge Ninfo dismissed Mr. DeLano's testimony that established the claim of Dr. Cordero so as to disallow his claim and deny him standing to participate further in the case. (Pst:1281§§c-d) After his decision of April 4, 2005, was filed (D:3), Dr. Cordero appealed to the District Court, WDNY (D:1). Then upon the recommendation of the trustee (Add:937-939; cf. 953§I), Judge Ninfo confirmed the Debtors' repayment plan that discharged 78% of their debt (Add:941; cf. 962§II). The Debtors were discharged by Judge Ninfo's order of February 2, 2007. (D:508o)

11. **In District Court, WDNY**, Judge Larimer repeatedly tried to prevent Appellant Dr. Cordero from obtaining the transcript of the evidentiary hearing by setting a brief-filing deadline (Add:692, 695, 831, 836, 839) before the court reporter had had time even to respond to his request for the transcript (Add:681).

12. Likewise, the Judge denied *every single document* (Add:1022) that Dr. Cordero requested (Add:951), including the Debtors' bank account statements that could establish the whereabouts of known concealed assets worth at least \$673,657 (SApp:1608), just as he denied (Add:1019, 1155) every substantive motion

(Add:853, 881, 911, 993, 1097) aimed at exposing the participation of the Debtors, court officials, and trustees in a bankruptcy fraud scheme.

13. Judge Larimer disposed of the appeal in a decision (SApp:1501) without stating any legal principle, let alone a controlling one, and without discussing any of the four issues presented by Appellant or even a single one of his brief's 15 headings dealing with their factual and legal elements (Pst:1254). Instead, he discussed two issues "preserved" by the Appellees, who had filed no cross-appeal and, as a result, could present no issues on appeal.
14. Appellant timely filed a notice of appeal (SApp:1505-1507) and on October 21, 2006, mailed his list of issues to be presented and designation of items in the record on appeal (SApp:1508). The 10 days provided under FRAP 6(b)(2)(B)(ii) for Appellees to designate other parts of the record that they believed necessary expired without their making any such designation or filing any other paper. Therefore, to the extent that this Court feels like showing respect for the rules of procedure any more than it allows the WDNY court not to do so, it must consider only and all issues presented by Appellant.

VII. Statement of Facts

A. In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and

since then have refused to account for the whereabouts of known concealed assets worth at least \$673,657

15. Mr. David DeLano, a 39-year veteran of the financing and banking industries still employed in the bankruptcy department of M&T Bank, and Mrs. Mary DeLano, a Xerox technician, filed a voluntary bankruptcy petition on January 27, 2004, in Bankruptcy Court, WBNY. It included their debt repayment plan to have 78% of their debt discharged in three years (D:59), just in time to travel light into their retirement. They invoked 11 U.S.C. Chapter 13, thereby avoiding the liquidation of any of their assets that would have resulted from filing under Chapter 7. Their petition was accompanied by Schedules A-J (D:29-45), signed by them under penalty of perjury (D:46) and verified by Christopher K. Werner, Esq., their bankruptcy attorney with 28 years' experience (D:28). Therein they listed 21 creditors, 19 as unsecured (D:38), including 18 credit cards and Dr. Cordero (D:40). The latter's claim against Mr. DeLano had arisen in the still pending adversary proceeding under FRBkrP 7001 et seq. *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY (Add:712).
16. The DeLanos' sworn declarations in their Schedules are most suspicious even for a lay person. Indeed, they declared that:
17. a) They only had \$535 in cash and bank accounts. (D:31) Yet their 1040 IRS forms for 2001-03 show that they earned \$291,470 in just the three years

preceding their filing. (D:47; 186-188; SApp:1608) Since they petitioned for debt discharge due to inability to pay, it would appear reasonable to ask that they account for the whereabouts of their earnings by producing supporting documents, such as bank account statements, so obviously apt to establish the good faith of any petition. This is precisely what Dr. Cordero wanted to have them do when he made repeated requests of the Debtors (D:288¶3), the trustees, and the courts (Pst:1261)

17.b) Nevertheless, to date Trustee Reiber (D:193§I), Judge Ninfo (D:278¶1, 327; Tr:189/11-22), Judge Larimer (Add:1022; SApp:1504), and this Court (SApp:1623, 1678) have refused to require the Debtors to provide their bank account statements to ascertain the whereabouts of \$291,470 in earnings unaccounted for. As to the Debtors, to avoid producing such statements, they have incurred attorneys' fees, and their attorneys have been willing to provide them with legal services, worth at last count \$27,953 (Add:938, Pst:1174), and Judge Ninfo has approved their payment (Add:942). What is more, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's motions and appeals.

17.c) Given that under their plan the DeLanos had to commit all their disposable earnings to debt repayment and that they have not needed to

request a modification of that plan, where did they come up and “continue” to come up with that kind of money and how did Att. Werner and Palmer, members of the same firm, know that the Delano Debtors could pay them despite their declaration that they only had \$535 in cash and *on account*?

18. Even more suspiciously incongruous, the DeLanos declared only one piece of real property (D:30), to wit, the home that is presently their address at 1262 Shoecraft Road, Webster (Town of Penfield), NY 14580. They bought it in 1975, when they took out on it a \$26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it is only \$21,416 and the mortgage that they carry on it is \$77,084...after making mortgage payments for 30 years! *Mind-boggling!* (Add:1058¶54) Worse still, during that same period the DeLanos received a total of \$382,187 through a string of mortgages! (SApp:1608; D:341-354) Where did that money go, for whose benefit, and where is it now?
19. Moreover, the Debtors declared credit card borrowings totaling \$98,092 (D:41), while they set the value of their household goods at only \$2,810! (D:5/4-8; Add:888§§c-e) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years. This is particularly so if they are two professionals and have not experienced a home disaster or long-term catastrophic illness. Such are the DeLanos, who did not incur either or similar loss or expense,

as shown in Trustee Reiber's shockingly unprofessional Findings Report (Add:937-939), which was approved by Judge Ninfo (Add:941) and Judge Larimer (Add:1022) despite Dr. Cordero's analytical objections (Add:951, 1038).

1. The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme

20. From the very beginning, it became evident that nobody was going to question whatever declarations the DeLanos had made in their January 2004 petition and schedules...or allow anybody else to do so. Thus, the meeting of the DeLanos' creditors was held on March 8, 2004, pursuant to 11 U.S.C. §341. (D:23) Mr. DeLano and Trustee Reiber could have expected that no creditor would attend, for creditors hardly ever show up at these meetings unless the amount of their claims is high enough to make travel and representation expenses cost-effective in light of what they can expect to receive on the dollar of debt owed them. Nor could they have expected that the only individual, as oppose to institutional, creditor that they had named in their schedules, namely, Dr. Cordero (D:40), would travel hundreds of miles from New York City to Rochester to attend.
21. Consequently, they were expecting a pro forma §341 meeting that would merely rubberstamp the DeLanos' debt repayment plan and get it ready for confirmation later that afternoon by Bankruptcy Judge Ninfo. So much so that in violation of

his duty under C.F.R. §58.6(a)(10) to conduct the meeting personally, Trustee Reiber had his attorney, James W. Weidman, Esq., conduct it right there in a room of the office of his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt. She knew and tolerated that violation...and how many others?

22. But the unexpected did happen: Creditor Dr. Cordero showed up and was the only one in attendance. (D:68) Hardly had he finished identifying himself and handing out a copy to Attorneys Werner and Weidman of his written objections to the confirmation of the DeLanos' plan (D:63), when Att. Weidman unjustifiably asked him whether and, if so, how much he knew about the DeLanos' having committed fraud. Dr. Cordero would not reveal what he knew. Rather than risk allowing the DeLanos to incriminate themselves or commit perjury while being examined under oath, as §343 requires, and having their answers officially tape recorded, Mr. Weidman protected them by putting an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II) At the confirmation hearing before Judge Ninfo, Dr. Cordero objected to the conduct of both Att. Weidman and Trustee Reiber, who ratified his attorney's conduct, but the Judge excused them as merely engaging in "local practice", thus disregarding what the law of the land of Congress provided. (D:98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)

23. This blatant conduct revealed confidence born of coordination. Its objective was

twofold: To protect the DeLanos from being exposed as bankruptcy fraudsters, and thereby protect themselves from being incriminated as their supporters (D:379§3) in its enabling mechanism: a bankruptcy fraud scheme. (D:458§V; Add:621§1).

24. Dr. Cordero requested and kept requesting the trustees that the DeLanos be required to produce documents supporting their petition's incongruous, implausible, and suspicious declarations. For six months they had treated and went on treating him as a creditor while stonewalling on his request for those incriminating documents. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
25. What is more, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:74), although 11 U.S.C. §341(c) contemplates an indefinite series of meetings and FRBkrP 2004(b) provides for a very broad scope of examination (D:283; Pst:1262¶13 et seq.).
26. Meantime, they produced a few documents (D165-188) and Dr. Cordero analyzed them in light of their petition and its schedules. This resulted in his Statement of July 9, 2004 (D:193), which he sent to Judge Ninfo. It charged the Debtors with bankruptcy fraud, specifically concealment of assets, and requested that the Judge order them to produce all the other documents that Dr. Cordero

had requested but that they had failed to produce with the connivance of Trustee Reiber, whose removal he requested. (D:196§§IV-V; 207, 208) Everything changed after that, as the schemers coordinated how to eliminate Dr. Cordero.

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in *DeLano* and thereby of the right to request documents proving the Debtors' bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme

27. Filed on July 22, 2004 (D:218), the motion to disallow was heard on August 25 by Judge Ninfo. He manipulated Dr. Cordero's request for documents (D:234§§II & IV) and disregarded his arguments showing the motion's defects of untimeliness, laches, and bad faith (§79 below; D:253§§V & VI) as well as the presumption of validity in favor of the claim (D:256§VII). Then the Judge ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in *Pfuntner*, that is, the case that gave rise to his claim against Mr. DeLano (Add:534/after entry 13) and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).

28. However, when Dr. Cordero requested evidentiary documents (D:287, 310, 317), the DeLanos (D:313, 325) and Judge Ninfo (D:327) denied him *every single document* that he requested. Dr Cordero was being set up to walk empty-handed into the evidentiary hearing! where he would fall victim of their divide and

conquer stratagem that would force him to prove his claim against Mr. DeLano out of context due to the absence of all the other parties and issues. (D:444§§I-II)

On December 15, 2004, Judge Ninfo set its date. (D:332)

29. The evidentiary hearing was held on March 1, 2005. On that occasion, Judge Ninfo abandoned his duty impartially to take in evidence and instead behaved as Chief Advocate for Mr. DeLano, who is represented in *Pfuntner* by Michael Beyma, Esq., a partner at Underberg & Kessler (Add:532), the law firm of which Judge Ninfo was a partner at the time of taking the bench (Add:636).
30. Att. Beyma was present at the hearing together with Att. Werner, who at the time had appeared before Judge Ninfo in over 525 cases, according to PACER. (Add:891¶12; Pst:1281§c) Actually, that number pales by comparison to the 3,909 *open* cases that Trustee Reiber had on April 2, 2004 (D:92§C, 302), of which 3,907 were before Judge Ninfo! (Add:1107§24) Such abnormally high frequency of appearances engenders close personal relationships, the blurring of inhibitions, and the sense of friendship betrayed unless everybody tells the others what he or she is doing, i.e., unless they coordinate their acts. (D:361¶¶13-16, 431§C)
31. It follows that the evidentiary hearing in *DeLano* was for the schemers an organizational affair where they had to protect one of their own from an ‘out-of-town citizen’ whose inquiries in defense of his claim threatened to expose their

participation in the scheme. (Add:603¶¶32-33) Defensively, they predetermined that the hearing would end with the disallowance of his claim. This explains why they did not bring either a copy of the motion to disallow that Att. Werner himself had raised or of Dr. Cordero's claim that they were challenging. (Pst:1288§e) They only needed to rely on their coordination, which included Attorneys Beyma and Werner signaling answers on three occasions to Mr. DeLano as he was on the stand under examination by Dr. Cordero, and Judge Ninfo preposterously pretending that he had not seen them do so in front of his eyes in the courtroom. (Pst:1289§f) Would those attorneys have ever dare so to attempt to suborn perjury had they been before a judge they knew not to be a participant of the scheme after the case had been transferred to a U.S. court in Albany, NY? Of course not!

32. At the evidentiary hearing, Mr. DeLano was the only witness examined and Dr. Cordero the only one to introduce evidence. Mr. DeLano made consistent admissions against self-interest to the effect that as the M&T Bank bankruptcy officer in charge of liquidating the assets of a bankrupt client in the business of storing third parties' property, including Dr. Cordero's, he had injured Dr. Cordero. (Pst:1281§d) Thereby Mr. DeLano established Dr. Cordero's claim against him. So clear and understandable was his testimony that Att. Werner, with 28 years' experience, felt no need to rehabilitate him or correct it, but on the

contrary, validated his testimony at the end of the hearing thus:

I believe Mr. DeLano has given a fair statement of his position and facts, your Honor. I have no questions. (Tr:187/23-25)

33. Nevertheless, Judge Ninfo arbitrarily disregarded Mr. DeLano's testimony as "confused" in order to reach at the evidentiary hearing the predetermined decision of disallowance. (Tr:182/14-183/18; Pst:1281§§c-d) He confirmed it in his written decision, where he repeated that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision (D:20). Dr. Cordero challenged that decision, dated April 4, 2005, on appeal to the District Court, WDNY, on April 11, 2005 (D:1).

B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him *every single document* that he requested, and avoided even mentioning the evidence of the Debtors' concealment of at least \$673,657 and its enabling bankruptcy fraud scheme

- 1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation**

34. The Bankruptcy Court filed Appellant Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal (Add:690) on April 22, 2005, and on that very same day the Court sent it upstairs to District Judge David G. Larimer,

who on that very same day dropped everything else he was doing and rushed to schedule Dr. Cordero's appellate brief for filing within 20 days (Add:692). The Judge knew that the record should not have been transmitted to him because it was incomplete and, thus, not in compliance with FRBkrP 8007: There had not been time under FRBkrP 8006 for the Appellees to have their 10 days to file their additional issues and items, which they filed only on May 2, 2005. (Add:711)

35. Nor had there been time for Court Reporter Mary Dianetti even to respond to Dr. Cordero's transcript request made in his letter to her of April 18 (Add:681), as provided for under FRBkrP 8006. Also pursuant to it, he sent a copy of that letter to the Bankruptcy Court together with his Designation and Statement, which bore the same date of April 18, 2005. The Bankruptcy Court selectively docketed the latter, but failed to docket the transcript-requesting letter to Reporter Dianetti...just as Judge Larimer failed to wait until the transcript had been filed, thus making the record complete, before scheduling Dr. Cordero's brief. It was pitcher-catcher coordination to deprive an appellant of an incriminating transcript!, which showed his Downstairs Peer, Bankruptcy Judge Ninfo, engaging in bias, arbitrariness, and denial of due process, and Mr. DeLano establishing the claim by admitting that his handling of Dr. Cordero's property could have injured Dr. Cordero. (Pst:1281§d)

36. Such non-docketing once more of incriminating documents (D:231, 234¶¶14-17;

106, 108, 217; Add:1081) is evidence itself of an unlawful practice by courts that have no respect for the rules, such as FRBkrP 5003, 5005(a)(1), and FRCivP 79, or for the purpose of the docket, that is, to give public notice of every event in a case and thereby contribute to the administration of justice in public. (cf. FRBkrP 5001(b); FRCivP 77(b))

37. Dr. Cordero filed an objection and requested that the brief be scheduled for filing only after the transcript had been filed (Add:695). Judge Larimer, pretending that Dr. Cordero had requested a time extension, rescheduled the brief for filing by June 13. (Add:831) Dr. Cordero had to write a motion to request the Judge to comply with the law. (Add:836) Only then did Judge Larimer order that “Appellant shall file and serve his brief within twenty days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court”. (Add:839) It took 10 letters to and from Court Reporter Mary Dianetti (Add:912) and several motions to Judge Larimer (Add:911, 951, 993, 1031) for the transcript to be filed seven months later! (Add:1071)
38. What trust can you have that a judge is going to decide a case according to law, let alone impartially, when from the outset he disregards it so blatantly?...and for the second time! Indeed, in January 2003, Judge Larimer, acting likewise in coordination with the Bankruptcy Court, disregarded the rules to schedule Dr. Cordero’s brief despite the incompleteness of the record and before even an

arrangement with Reporter Dianetti had been reached, and months before the transcript was finally filed. (Add:1086¶16) This occurred precisely in the case underlying the instant one, namely, *Pfuntner v Trustee Gordon et al*, 02-2230 in Bankruptcy Court, from where it was appealed, sub nom. *Dr. Cordero v. Trustee Gordon*, 03cv6021L, WDNY. (Add:1011§A)

2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them

a) Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal

39. While making arrangements for the transcript, Reporter Dianetti refused to certify that the transcript of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero moved before Judge Larimer for her to be referred to the supervising authority of reporters under 28 U.S.C. §753, to wit, the Judicial Conference of the United States (Add:911), for it to investigate her refusal to certify the transcript's reliability. The Judge denied the motion as concerning a "tempest in a teapot" and ordered Dr. Cordero to obtain the transcript from Reporter Dianetti. He also added that "Cordero has no right to "condition" his request in any manner" (Add:991), mindless of the obvious fact that Reporter Dianetti was asking for \$650 in advance and that as a matter of basic contract law Dr. Cordero did have the right

to “make satisfactory arrangements” (FRBkrP 8006) at arms length for the product that he would receive in exchange.

40. Dr. Cordero moved for reconsideration (Add:993), but Judge Larimer denied the motion, likewise without discussing a single one of Dr. Cordero’s factual and legal arguments. Instead, the Judge warned him that if he did not request the transcript within 14 days, his case could be dismissed (Add:1019). Thereby he revealed that it did not matter to him whether he or Dr. Cordero received a transcript that was inaccurate, incomplete, or tampered-with, for he did not need to rely on it to know how he would decide the appeal from Peer Ninfo’s decision.
41. The transcript that Reporter Dianetti filed was of shockingly substandard quality. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Why would Judge Larimer keep such Reporter on her job? Consider this.
42. Reporter Dianetti received Dr. Cordero’s payment on November 2 and already on November 4, 2005, she filed it and sent a copy to him. She neither could have transcribed 192 pages in little over a day nor would have transcribed them while still making payment arrangements with Dr. Cordero on the off chance that he

would pay for the transcript despite her refusal to agree that she would certify its accuracy, completeness, and tamper-free condition. This means that she had already transcribed it on somebody else's instructions, somebody who wanted to know what had happened at the evidentiary hearing before Judge Ninfo on March 1, 2005, in order to decide how to handle it, and who upon learning about its incriminating contents tried to keep it from the record, even by violating the rules and Dr. Cordero's right to it.

43. Hence, Judge Larimer must have known that Reporter Dianetti's transcript was of substandard quality, just as he knew her transcript was that she certified as of March 12, but mailed to Dr. Cordero only on March 26, 2003, in the appeal to his Court from Judge Ninfo's decision in *Pfuntner*. (¶38 above; D:234¶14.b; Add:559¶4, 920¶26)
44. Likewise, Judge Larimer was informed (Add:953§I) of the shockingly unprofessional Findings Report that Trustee Reiber (Add:937-939) submitted to Judge Ninfo (Add:1041§I) to recommend the approval of the DeLanos' debt repayment plan (D:59).
45. Nevertheless, he refused to take any corrective action against either of them (Add:991, 1019, 1021, 1155), just as Judge Ninfo did (Add:1094). This shows that what matters to them is not the quality of their work, but rather their willingness to follow instructions as participants in, or to work in line with, the

bankruptcy fraud scheme. In exchange, they could count on the Judges' protective bias toward them. This explains why none of Dr. Cordero's motions requesting the replacement and investigation of Reporter Dianetti (Add:911, 973¶¶60.1.c, 3; 993) and Trustee Reiber (D:243¶34.d; Add:882§II, 973¶¶60.1.d-e, 4; 1121¶61.e, 1062¶66.b) caused them to bother to file even a Stick-it note of objection. Yet, each of those motions put their careers at risk. But they knew why the motions would not be granted.

b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did *every single document* that Dr. Cordero requested

46. Similarly, there was no opposition to Dr. Cordero's motions requesting either production of documents by Assistant U.S. Trustee Schmitt (D:244¶e; Add:973¶60.1.a-b) and the DeLanos (SApp:1606, 1637), or nullification of the confirmation of the DeLanos' plan (Add:1121¶61.a-c). Yet, if any of those motions had been granted by default, these non-movants would have risked the penalties of bankruptcy fraud: up to 20 years' imprisonment and devastating fines of up to \$250,000 (18 U.S.C. §§152-157, 1519, and 3571)...but they *are* schemers! They too did not have to bother to respond, for they knew that if ever Judges Larimer or Ninfo had granted any of those motions, they would have incriminated themselves in the bankruptcy fraud scheme.

47. Consequently, Judges Larimer and Ninfo denied Dr. Cordero *every single document* that he requested. (Add:951, 1022; Table on Pst:1261) Neither was interested in obtaining those documents in order to render decisions based on facts, for both already knew that the DeLanos had committed bankruptcy fraud. Their interest was in preventing Dr. Cordero from obtaining the documentary evidence that would expose such fraud. To secure their interest, they had no qualms about disregarding FRBkrP 7026 et seq. and FRCivP 26 et seq. (D:278§2) so that Dr. Cordero could not discover the whereabouts of the Debtors' known concealed assets worth at least \$673,657 (SApp:1608) and end up incriminating all of them in the scheme. Therefore, they engaged in a cover up.
48. In the same vein, this Court refused twice and with no comments (SApp:1623, 1678) to order any of these parties to produce any of the documents requested by Dr. Cordero (SApp:1606, 1637). If this Court ordered those documents produced, they would lead to the DeLanos' known concealed assets and the DeLanos would be but the first dominoes to fall.
49. Hence, pattern evidence shows that Judge Larimer, Judge Ninfo, other court officers, the trustees, the Court Reporter, and the Debtors coordinated their conduct to deprive Dr. Cordero of the transcript and discoverable incriminating documents. In so doing, the judges denied Dr. Cordero due process of law.

50. Interestingly enough, under RICO, 18 U.S.C. §1961(5), two acts of racketeering activity within ten years form a pattern. Not coincidentally, the District Court has resorted to the subterfuge of WDNY Local Rule 5.1(h) (Add:633) to make filing a RICO claim all but impossible by demanding exceedingly numerous and detailed pre-discovery factual assertions. (§IX.C below) Judge Larimer did not even mention that issue presented by Appellant Dr. Cordero. Nor did he show awareness of Appellant's three other issues, including how the elimination by the judges of three-judge bankruptcy appellate panels in the Second Circuit facilitates the running of a bankruptcy fraud scheme. (§IX.D below) As a result, Judge Larimer left the appeal undecided.