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December 19, 2006

Mr. Thomas Asreen
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Asreen,

Please find below the following comment for consideration by you and the Court:

## Comment on the change of Local Rule 0.23[1] allowing

## Disposition by Summary Orders
## without any opinion or appended explanatory statement;

## submitted in response to the invitation to the public to comment on it made by the Court of Appeals for the Second Circuit

(http://Judicial-Discipline-Reform.org/docs/CA2_summary_orders_19dec6.pdf)

1. The Court of Appeals, 2nd Circuit, has announced on its website at http://www.ca2.uscourts.gov/ an interim and proposed permanent change to its Local Rule 0.23, which it describes thus:

> **Local Rule 0.23. Dispositions by Summary Order**
>
> (a) Use of Summary Orders
>
> The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

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[1] The provisions of CA2 Interim Local Rule 0.23 were adopted by the Court and the Rule is now superseded by *Local Rule 32.1. Dispositions by Summary Order*, reprinted below from the original at http://www.ca2.uscourts.gov/rules.htm.

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## I. Expediency, the motive of the rule for disposition by summary order, does not justify doing away with precedent and even the appearance of justice done according to law while inducing an increase in judicial capriciousness and unaccountability and causing unequal access to the courts, all of which results in denial of due process of law

2. The fundamental functional mechanism of our legal system is legal precedent. The latter gives notice to the public of what the law has been interpreted to mean and how it has been applied; and how the public, thus informed, can reasonably be expected to conform their conduct to it. Likewise, legal precedent is intended to provide judges with concrete principles for their decision-making as well as with clear boundaries to their exercise of discretion in such decision-making so that they do not proceed on a case by case basis, thereby reaching decisions that are inconsistent, arbitrary, and unpredictable, which frustrate the reasonable expectations of the public, in general, and of its members before them, that is, the litigants, in particular.

3. Disposition by summary order is the antithesis of precedent since it provides no opinion justifying the order so that neither the public can rely on a reasoned statement of the law nor judges can follow or distinguish it in subsequent cases. An appellate court that resorts to it misses the opportunity to impart a lesson to lower courts in an opinion that states what the law is and shows how it is to be applied. Worse still, in the case in which such order is issued, it has the same practical effect of excluding from the courtroom not only the audience and the media, but also the litigants. Thereby it not only offends against the principle that justice must be rendered

in public to be seen to be done,[2] but it also denies the litigants private justice and subjects them to secret justice. It denies them evidence that judges exercising judicial judgment, rather than the clerk performing the non-discretionary task of signing the order, issued it; and if judges signify that they issued the order by signing it, that they took cognizance of the facts and applied the law to arrive at the conclusion that it edicts. By blocking even the appearance of justice and manifesting only the power of an authority, a summary order denies due process of law.[3]

4. For all a summary order states, the judges or the clerk could have arrived at it by as capricious a method as tossing a coin: affirmed if head, denied if tail. That they are likely to end up doing precisely that is predicted by the no-risk rewards principle of behavioral psychology. It states that a person who will derive a benefit from doing a prohibited act will be driven to indulge himself with a force inversely correlated to the dissuasive force of the realistic adverse consequences that he can expect to incur from violating the prohibition. This principle is also known by its popular name: Do it if you can get away with it. Applied to the instant context, it means that judges motivated by expediency will lighten their workload because they can avoid with impunity the hard work of discharging their duty to administer justice in accordance with due process of law, regardless of the harm to the litigants (whether appellants or appellees). Who is going to catch them tossing the coin? Even so, they have *life tenure!* Human nature cannot be ignored in assessing the probabilities that a system run by people will perform as designed.

5. Moreover, an appeal is always a challenge to a judge by assigning error to one or more elements of his decision. Disposition by summary order is an expedient means by which the appellate judges insulate themselves from having any elements of their decision challenged. The practical consequence thereof is that by issuing no opinion, appellate judges drastically reduce, if not extinguish, the already extremely slim, 1 in a 100 chance of litigants having their cases reviewed by the Supreme Court[4] given that a summary order by definition does not provide enough information for that Court to determine whether the challenged decision meets any of its "Considerations Governing Review by Certiorari".[5]

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[2] *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done").

[3] *Offutt v. United States*, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954) ("Justice must satisfy the appearance of justice").

[4] Supreme Court's *2005 Year-end Report on the Federal Judiciary*; http://www.supremecourtus.gov/publicinfo/year-end/2005year-endreport.pdf

[5] **Supreme Court Rules, Rule 10. Considerations Governing Review on Certiorari**

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial

6. It follows that disposition by summary orders creates unequal access to the courts and to the justice under law that they are supposed to administer: Where the Court resorts to such an order it deprives litigants of effective appellate review, limiting them to access to one instance of justice, that is, the lower court or agency from which the appeal was taken; whereas by issuing an opinion it provides at least the appearance of meaningful access to a second instance afforded by a court of appeals and maintains open the possibility of access to a third instance for review by certiorari in the Supreme Court. This results in 'Unequal Justice by Order'.

7. Hence, the appearance that a summary order gives is that it is a capricious fiat stamped out mechanically and unreflectively as an expedient means to get rid of the case at hand in a manner that escapes accountability and injures third parties. Consequently, a summary order constitutes a denial of due process of law, for an order motivated by expediency does not result in justice according to law, but rather is the deliberate performance of a mockery of justice.

## II. The means of "Justice Through Expediency" that the Court has crafted for the disposition of motions and the placement of appeals on the Non-Argument Calendar provide evidentiary foundation foreshadowing how the Summary Order Rule will be applied in practice to dispose of appeals

8. Disposition by summary order is the functional equivalent of the appellate judges summarily dismissing a case by default for failure of the litigants to file an appellate brief, except that the litigants did file the brief and spent the considerable amount of effort, money, and time necessary to do so. Actually, the judges are not likely to bother with effecting such dismissal by the cumbersome method of tossing a coin for every single case, for that is not expedient enough. Instead, they are likely to have their 'Guidelines for the Clerk's Disposition by Summary Order' applied, which they will either write explicitly for the clerk's eyes only or allow to emerge tacitly through practice for a clerk to apply after catching up with the type of cases that the judges routinely S.O. out of court.

9. If written, these Guidelines could be similar to the non-exhaustive list drawn up by the Court for the clerk to issue orders and judgments without need to obtain a judge's authorization:

CA2 Local Rule §0.18. Entry of Orders by the Clerk

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proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

The clerk shall prepare, sign and enter the following without submission to the court or a judge unless otherwise directed:

(1) orders for the dismissal of an appeal under Rule 42(b) or pursuant to an order of the court or a judge;

(2) procedural orders on consent;

(3) orders on mandate from the Supreme Court of the United States;

(4) judgments in appeals from the United States Tax Court based on a stipulation of the parties;

(5) orders and judgments on decisions by the court in motions and appeals. (See Rule36 of Federal Rules of Appellate Procedure.)

(6) orders scheduling the docketing of the record and filing of briefs and argument, which may include a provision that, in the event of default by the appellant in docketing the record or filing the appellant's brief, the appeal will be dismissed by the clerk;

(7) orders dismissing appeals in all cases where a brief for the appellant has not been filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.

(8) orders of dismissal as provided in Interim Local Rule § 0.29(d).

10. Another foundation for assuming the existence now or emergence in the very near future of the 'Guidelines for the Clerk's Disposition by Summary Order' is that presently under FRAP 27(b) "specified types of procedural motions" are decided by a clerk. That clerk need not be a staff attorney, but instead may be a clerical assistant. As a matter of fact, the CA2's Motion Information Statement, Form T-1080, which is prepared by the movant and 'must precede the memorandum indicating the relief sough and the information and legal argument supporting the motion' (Local Rule 27(a)(1)(B)) does not contain any reference that the motion is to be decided by the judges. On the contrary, the explicit statement is this:

...

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**ORDER**

**IT IS HEREBY ORDERED THAT** the motion is **GRANTED** **DENIED.**

**FOR THE COURT:**
THOMAS ASREEN, Acting Clerk of Court

**Date**: _____ **By**: _____

**Form T-1080** (Revised 11/01/06).

11. The phrase "For the Court" does not mean that the judges of a panel, let alone those of the panel assigned to the case, actually read the Motion Information Statement, not to mention its supporting memorandum, met, discussed its merits, decided it orally, then the presiding panel member bothered to indicate such decision on another form, sign it, and pass it on to a clerk,

who is the one required to sign the Information Statement and send a copy of it to the movant and opposing counsel. That would not be expedient enough for a Court so keen on expediency.

12. The fact is that FRAP provides thus:

> **FRAP Rule 27. Motions**
>
> **(b) Disposition of a Motion for a Procedural Order.** The court may act on a motion for a procedural order –including a motion under Rule 26(b) [Extending Time]– at any time without awaiting a response, and may, by rule or by order in a particular case, *authorize its clerk to act on specified types of procedural motions*. A party adversely affected by the court's or the clerk's action may file a motion to reconsider, vacate, or modify that action. [*Emphasis added*.]

13. While the motions listed in CA2 Local Rule §0.18 may be procedural, they are not *"specified"* as such and the list is certainly not presented as exhaustive. The full list of motions indicated by the judges to the clerk to be procedural, not to mention those treated by him as such, remains undisclosed to the public. Yet, there must be such a list, whether explicitly or in practice; otherwise, the clerk decides on his own whatever a motion is. Either way the result is the same, for it suffices for the clerk to deem that the motion is on the list for him to decide it.

14. Considering a motion procedural is particularly likely where a motion contains elements that may be deemed procedural as well as others that may be deemed substantive. The fact is that motions in "Justice Through Expediency" only have two outcomes: All or Nothing, as in All if the circle goes around the word "Granted" on the Motion Information Statement and Nothing if it goes around "Denied". Hence, if the relief contains elements that the clerk deems should be granted as well as others that should be denied, he is more likely to deny the whole motion, for in a Court motivated by expediency there is no time to waste doing justice to each element of the relief requested. Nor could the clerk care less what the outcome is given that his bosses, the judges, are satisfied with disposing of the merits of a motion by circling either "Granted" or "Denied", whereby the clerk has to fear no adverse consequence whatsoever from doing just that. The clerk can safely rely on the in-built 50-50 chance of deciding the motion right…or wrong. It just does not matter…at least for the clerk, for the litigants that's something else.

15. This is in line with the clerk, or rather an even more impersonal "Clerk's Office" that is charged under another CA2 rule with determining whether the litigant should be deprived of oral argument:

> **CA2 Local Rule 0.29. Non-Argument Calendar**
>
> (b) To the extent practicable, the Clerk's Office will promptly identify proceedings to be placed on the Non-Argument Calendar and issue scheduling orders for them upon the receipt of the certified record.

16. It can only be assumed that to determine whether a case does not deserve to be heard by the judges, the latter provided the personnel in the "Clerk's Office" with some 'Guidelines'.

17. The Court has also adopted a rule concerning substantive motions:

> **CA2 Local Rule 27(b) Motions to Be Heard at Regular Sessions of the Court.** Motions seeking substantive relief will normally be determined by a panel conducting

a regular session of the court. These include, without limitations, motions seeking…

18. In practice this means that when the clerk, who receives all motions, comes across a 'non-normal' one outside the limits of the list in that subdivision, he may in accordance with "Justice Through Expediency" decide it as he would one in the non-exhaustive list of procedural ones.

19. Even in a 'normal' situation, the judges deciding a substantive motion are not those on ***the*** panel assigned to the case, but rather on "a panel". The panel-at-session need not have read the record of the case to which the motion belongs in order to be familiar with its facts, procedural history, rulings and decisions below so as to evaluate the merits of the motion in its proper context. The movant, of course, can establish that context and argue such merits to the extent allowed by the maximum of 20 pages of the memorandum that must follow the Motion Information Statement. Still, "a panel"s judges must neither deal with the practical consequences or legal implications resulting from the way the motion is decided nor provide any reason for their decision, but merely have to cause either "Granted" or "Denied" to be circled, below which neither they have to affix their signature nor their names are printed. So what do they care where the circle is drawn?

20. As to the clerk that draws the circle and signs the Motion Information Statement with his rubberstamp, what difference does it make to him whether the motion is decided one way or the other? Anyway she is only signing it "For the Court", and neither her legal acumen nor artistic ability in drawing the 'Granting' or 'Denying' circle is going to be the subject of a law review article or considered by the ABA in evaluating her for an open slot on the Supreme Court.

21. Therefore, given the anonymity or unaccountability afforded by the Motion Information Statement coupled with the lack of any consequences, whether positive or negative, for the deciders of the motion, why would either the judges on the panel-at-session or the clerk bother to read the memorandum accompanying the Statement with any degree of diligence that would be either rewarded or punished any more than if they decided the motion by tossing a coin: "Granted" if head, "Denied" if tail? Why read it at all? They must be fully aware that for a Court that has shown to value more highly handling its workload with expediency than giving the public even the appearance of justice being done, any measure is appropriate to dispose of cases…*"Next!"*

22. Therefore, the evidence of how the Court in its quest for expediency has empowered the clerk or anybody in his Office to determine a motion, whether procedural or even substantive, and determine whether a case should not be calendared for oral argument provides the factual foundation for the statement that in the wake of the latest expediency device the Court has written or will soon write or allow to emerge from routine treatment the 'Guidelines for the Clerk's Disposition by Summary Order' to be followed by someone in his Office, preferably not a staff attorney, but rather a clerical assistant, who less apt to apply discretionary criteria dependent on legal principles and implications is more likely to make a quick job of it, which judges motivated by expediency will certainly appreciate and approve.

## III. The 'Guidelines for the Clerk's Disposition by Summary Order' are likely to hinge on three main considerations unrelated to the merits of the case

### A. One or both of the litigants are pro se

23. A pro se litigant is an easy target to be S.O. out of court. For one thing, it is deemed to be so poor that it cannot afford a lawyer. As a result, it is likely to be a lay person who has no formal training in legal research and writing. Hence, its brief will in all probability fail to comply with another of the Court's rules for dispensing "Justice Through Expediency":

> **CA2 Local Rule 28. Briefs**
>
> 1. Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this rule may be disregarded and stricken by the court.

24. To begin with, what is 'compact, logical, concise', and so on is to a large extent in the eyes of the judge. However, the rule provides a ready-made excuse for a judge to indulge her desire for expediency by disregarding the brief, a course of inaction that is only rendered more appealing by the absence of any requirement to explain her disregard of it by reason of its non-compliance, or by any other for that matter, and to so do without fearing any adverse consequence whatsoever.

25. More substantively, there is no 'logical' basis for considering that a brief poorly written is directly correlated to the merits of the case briefed, let alone to the right of a bad writer to have his day in court in a system of "Equal Justice Under Law". This should be obvious to a judge that when taking the "Oath of justices and judges" prescribed under 28 U.S.C. §453 swore to "administer justice without respect to persons, and do equal right to the poor and to the rich".

26. This duty of impartiality would lead a reasonable observer to expect a judge that considered a brief 'not compact, logical, or concise' to make a good faith effort to understand the facts and legal issues at stake; and if the effort did not prove fruitful, to write some specific questions for the litigant to answer specifically. This is perfectly reasonable since asking questions is precisely what a judge does of counsel at oral argument; and at trial he may not only ask questions of counsel, but also of a witness under Federal Rules of Evidence Rule 614(b); and may even submit written interrogatories to the jury under FRCivP Rule 49(b), which provides as follows:

> **FRCivP 49(b) General Verdict Accompanied By Answer To Interrogatories**. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict.

27. However, it appears that writing 'interrogatories, explanations, and instructions' are chores for lower judges. Those of a Court pursuing "Justice Through Expediency" do not have to bother doing that. Instead, they simply execute summarily the death sentence on the pro se litigant's poorly written brief by disregarding or striking it. Never mind that justice for a person that cannot

afford a lawyer is as important as, or more important than, for a rich person, for what little may be at stake in the pro se's case in the judge's estimation may be everything that he has…or had after deduction of the enormous expenditure of money, effort, and time to write pleadings, motions, and briefs for which he may lack the necessary training or intellectual capacity As if the judges cared! After all, it is not as if they really have a duty to be just and fair that could prevail over their power to make their work easier for themselves.

### B. The amount in controversy falls below the judges' attention-worthy amount

28. Just as under 28 U.S.C. §1332(a), parties can sue in district court under diversity of citizenship only if the amount in controversy exceeds $75,000, the Court is likely to set an amount below which they will not bother to read the record of the case before them close enough -if at all- to be able to write an opinion. The judges can have the clerk ascertain the amount in controversy by simply examining the litigants' filed District Court Civil Cover Sheet Form JS 44, Section VII, $ Demand, or an agency's equivalent form, which is transmitted to the Court as part of the record. Their attention-worthy amount will not be revealed to the public, for judges do not have authority under any court rules or statute to deny appellate review based on a dollar amount that they establish on their own. So they will set it in the 'Guidelines for the Clerk's Disposition by Summary Order' that they will give only to the clerk explicitly in writing or through practice.

29. By contrast, the judges have disclosed the recently increased appeal fee of $455. Litigants must pay it, augmented by the cost of research and writing, without knowing that if the amount in controversy falls short of the judges' attention-worthy amount, their return will be, not justice in accordance with law as expected, but an S.O. form with the clerk's rubberstamped signature. That amounts to fraud in the inducement and breach of contract for service…does it lead to a class action too?

### C. Issues that can embarrass the judges

30. Judges motivated by "Justice Through Expediency" must stick together, for if one were indicted for wrongdoing -a natural progression of expediency- she could trade up in a plea bargain that could include, among other things, revealing why the Summary Order Rule was adopted and how it is applied in practice. Aside from giving rise to other indictments, such revelation by an insider could not only deeply embarrass the Court, but conceivably also force it to accept back the cases S.O.'ed out of court so as to dispose of them with an opinion. Therefore, any appeal that contained attacks on a judge or a court, or issues that could be so construed, such as bias, failure to disclose a financial conflict of interest or to file truthful financial disclosure reports, bribery, etc., would call for solidarity among judges and, thus, for disposition by summary order.

31. The foundation for the implication that judges are more interested in showing comity toward their brethren than in administering "Equal Justice Under Law" "without respect for person", as they swore to do when taking the oath of office, is found in the official statistics of the Administrative Office of the U.S. Courts. They show the judges' systematic dismissal of judicial misconduct complaints

filed with chief judges of courts of appeals[6] under the Judicial Discipline and Disability Act of 1980, 28 U.S.C. §351 et seq.

32. While in only the 12 regional courts of appeals there were 68,473 filings in 2005; and 8,588 filings in the Supreme Court in 2004, in 2003, 2004, and 2005 not a single complaint made it to the highest body under §354(b) of the Judicial Discipline Act, namely, the Judicial Conference of the U.S.[7] (cf. 28 U.S.C. §331) In a country so litigious as ours? *Impossible!* This was the result of coordination among the judges in the judicial councils of the circuits (cf. id. §332) to refuse to refer any complaint up for review by the Conference. In fact, the councils pretend that during the 12-month period ending September 30, 2005, a mere 642 complaints were filed. Although not a single one of those complaints was withdrawn, the judges took the following actions in the following number of complaints[8]:

| | |
|---|---|
| "Directed Chief District Judge to Take Action (Magistrate Judges only) | 0 |
| Certified Disability | 0 |
| Requested Voluntary Retirement | 0 |
| Ordered Temporary Suspension of Case Assignments | 0 |
| Privately Censured | 0 |
| Publicly Censured | 0 |
| Ordered Other Appropriate Action | 0" |

33. What flagrant, coordinated wrongdoing by the judges! They disregarded their duty under the Act to discipline themselves while knowingly and irresponsibly leaving complainants at the mercy of the bias, abuse of power, and disregard for the facts and the law committed by the judges complained against. Among them are also the circuit and district judges composing the Judicial Council of the Second Circuit who, like the other councils, disregarded and dismissed each and every complaint filed with it. This provides the factual basis for the statement that the circuit judges will likewise have no scruples to dismiss any appeals that may embarrass them and to that end will expediently resort to the subterfuge of summary orders.

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[6] These statistics are found in the 1997-2005 "Reports of Complaints Filed and Action Taken Under Authority of 28 U.S.C. §§351-364 and 372(c) During the 12-Month Period Ending September 30, [of the year reported on]", Supplemental Tables, Tables S-22-24, in *Judicial Business of the United States Courts, Annual Reports of the Director*, by Leonidas Ralph Mecham, Director of the Administrative Office of the U.S. Courts.

[7] *Judicial Business 2005*, pg. 35, Table 11. Judicial Complaints Filed, Concluded, and Pending, Fiscal Years 2003, 2004, and 2005, at http://www.uscourts.gov/judbus2005/front/judicialbusiness.pdf

[8] See footnote 5.

### 1) A case with the potential no just to embarrass, but also to incriminate judges is the appeal *In re Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780, CA2, and is thereby a prime candidate for dismissal through the subterfuge of a summary order[9]

34. The central composite issue of this case readily shows its embarrassing potential:

a. Whether Bankruptcy Judge John C. Ninfo, II, WBNY, and District Judge David G. Larimer, WDNY, together with other officers of the court, U.S. and private bankruptcy trustees, and a 39-year veteran of the banking and financial industries that allegedly went bankrupt while remaining in the employment of a major bank precisely in its bankruptcy department, have participated in a bankruptcy fraud scheme that by denying Dr. Cordero *every single document* that he requested during discovery, including documents as obviously pertinent to ascertaining the good faith of any bankruptcy petition as the statements of bank accounts and debit cards, have protected the concealment of assets by the 'bankrupt' and his wife, who at the time of their bankruptcy filing on January 27, 2004, claimed to have only $535 in cash and on account, yet their own 1040 IRS forms for 2001-03 and even the incomplete mortgage documents that they produced show that they earned or received over $670,000, whose whereabouts are still unknown due to the judges' participation in a cover up;

b. whether such bankruptcy fraud scheme and the broader coordinated wrongdoing of which it forms part have been tolerated or supported both by Former CA2 Chief Judge John M. Walker, Jr., who as member of the panel in the related case *In re Premier Van Lines*, 03-5023, CA2, filed on May 2, 2003, and dismissed on January 26, 2005, upon the pretext of the Court's lack of jurisdiction, was repeatedly informed of the scheme and its developing cover up; and by Current Chief Judge Dennis Jacobs, who dismissed without any investigation two related misconduct complaints -03-8547 and 04-8510, CA2- containing additional evidence of such coordinated wrongdoing as well as the scheme and cover up, and

c. whether Chief Judges Walker and Jacobs together with other judges of this Court that were also individually informed of the bankruptcy fraud scheme and its cover up have further tolerated or supported such scheme and cover up through the reappointment of Judge Ninfo to a new 14-year term and their disregard of their duty under 18 U.S.C. §3057(a) to report, as requested repeatedly, the evidence of bankruptcy fraud to the U.S. Attorney General.

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[9] *In re Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780, CA2; http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_CA2.pdf. As expected, CA2 resorted to a summary order to get rid of this incriminating appeal; id.

The petition for rehearing was denied likewise summarily; http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_CA2_rehear.pdf.

The petition to the U.S. Supreme Court for a writ of certiorari to CA2 can be found at http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCt_petition_3oct8.pdf. Certiorari was denied. A petition for rehearing of the denial of certiorari based on the intervening adoption by the Judicial Conference of the U.S. of the Code of Conduct for U.S. Judges on March 17, 2009, can be found at http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf.

35. If the pending appeal were to establish the concealment of assets by the bankrupt-appellees and the participation of Judges Ninfo and Larimer in the bankruptcy fraud scheme, the question would inevitably arise why the evidence thereof has been systematically disregarded for years by Chief Judges Walker and Jacobs. In the same vein, if the appealed order of Judge Larimer were affirmed in a written opinion, the latter would keep open the possibility that the petition for certiorari to the Supreme Court would be granted and the scheme exposed. Hence, the disposal of the appeal by a summary order succinctly affirming the order would be the optimal solution from the point of view of the judges' self-preservation interest. It would also demonstrate how the summary order rule is a subterfuge for the judges to avoid issues that can embarrass them, to be used with no concern for the concomitant denial of due process and injury to the litigants.

36. Indeed, disposition by summary order gives rise to bias toward affirmance of the judgment or order appealed from to the detriment of appellants. This is so because affirmance supports the assumption that the Court either concurs with all the findings of facts or conclusions of law of the court or agency below or found none to be so erroneous as to warrant reversal. By contrast, even a summary 'reversed and remanded for proceedings' order issued by a Court at least minimally respectful of its duty to administer justice pursuant to law and to avoid waste of valuable judicial resources, not to mention of the litigants' money, time, and efforts, would have to identify the reversible error so as to prevent that a lower court or agency left with no indication of what error it is supposed to have committed would hold new proceedings only to commit the same error all over again. However, identifying such error would require both reading the record close enough to realize that an error had been committed, and then writing down some cogent statement of the legal grounds for considering it such. That is hard work for judges motivated by "Justice Through Expediency". Hence, to avoid such work, they would be more prone to affirming the challenged judgment or order and be done with it. *Next!*

## IV. Requested action

37. Therefore, Dr. Cordero respectfully requests that this Court abrogate the interim summary order rule, desist from making it permanent, and instead state publicly that an indispensable element of due process of law conducted in public to be seen done by judges that hold themselves accountable for their decisions is the disposition of any case or proceeding through a judgment or order accompanied by an opinion fully explaining the factual considerations and legal grounds on which it rests.

Dr. Richard Cordero, Esq.

**UNITED STATES COURT OF APPEALS**
**for the**
**SECOND CIRCUIT**

## NOTICE OF RULE CHANGE

The United States Court of Appeals for the Second Circuit hereby gives notice of interim changes and proposed permanent changes in its Local Rules, and invites comment thereon. The new rule will go into effect immediately on an interim basis. Comments should be submitted in writing no later than December 29, 2006. Comments may be mailed to, or filed with:

Thomas Asreen
Acting Clerk of the Court
United States Court of Appeals for the Second Circuit
40 Foley Square, Room 1802
New York, NY 10007

The Interim and proposed permanent Local Rule 0.23 is as follows. (Comparison of text with preexisting Local Rule 0.23 is set forth below.)

**Local Rule 0.23. Dispositions by Summary Order**

(a) Use of Summary Orders

The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order do not have precedential effect.

(c) Citation of Summary Orders

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend

Summary orders filed after January 1, 2007, shall bear the following legend:

SUMMARY ORDER

> Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

**********

Comparison of Interim Rule with preexisting Local Rule:

**Local Rule 0.23. Dispositions ~~in Open Court or~~ by Summary Order**

(a) Use of Summary Orders

The demands of ~~an expanding~~contemporary case loads require the court to be ~~ever~~ conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by ~~a written opinion, disposition will be made in open court or~~an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order.

~~Where decision is rendered from the bench, the court may deliver a brief oral statement, the record of which is available to counsel upon request and payment of transcription charges. Where disposition is~~ instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order~~, the court may append a brief written statement to that order. Since these statements do not constitute formal opinions of the court and are unreported or not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before~~ do not have precedential effect.

(c) Citation of Summary Orders

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend

Summary orders filed after January 1, 2007, shall bear the following legend:

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

**UNITED STATES COURT OF APPEALS**
**for the**
**SECOND CIRCUIT**

**At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17th day of November, two thousand and six,**

**PRESENT:** Hon. Dennis Jacobs, *Chief Judge*
Hon. Guido Calabresi
Hon. José A. Cabranes
Hon. Chester J. Straub
Hon. Rosemary S. Pooler
Hon. Robert D. Sack
Hon. Sonia Sotomayor
Hon. Robert A. Katzmann
Hon. Barrington D. Parker
Hon. Reena Raggi
Hon. Richard C. Wesley
Hon. Peter W. Hall


**IT IS HEREBY ORDERED**, that the Local Rules of the United States Court of Appeals for the Second Circuit are hereby amended on an interim basis effective immediately by the adoption of Interim Local Rule 0.23, which is set forth below and replaces the current Local Rule 0.23. The Court proposes furthermore to adopt Interim Local Rule 0.23 on a permanent basis following publication for notice and comment. The Clerk of the Court shall publish the new Interim Rule and Proposed Permanent Rule inviting comment to be submitted by December 29, 2006. Anyone wishing to comment should do so, in writing, to the Clerk of Court, 40 Foley Square, Room 1802, New York, NY 10007.

**Interim Local Rule 0.23. Dispositions by Summary Order**

(a) Use of Summary Orders

The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order do not have precedential effect.

(c) Citation of Summary Orders

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend

Summary orders filed after January 1, 2007, shall bear the following legend:

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

**IT IS SO ORDERED.**

FOR THE COURT:
/s/Thomas Asreen
Thomas Asreen
Acting Clerk of Court

*or if the Appendix, exclusive of the orders, opinions, and judgments being appealed, would exceed 300 pages, the parties must provide the court with a Special Appendix, including*

*(A) the verbatim text, with appropriate citation, of any such rule of law, and*

*(B) such orders, opinions and judgments being appealed.*

*The inclusion of such materials in a Special Appendix satisfies the obligations established by FRAP Rules 28(f) and 30(a)(1).*

*(2)* ***Form of the Special Appendix.*** *The Special Appendix may be presented either as an addendum at the end of a brief, or as a separately bound volume (in which case it must be designated "Special Appendix" on its cover). The Special Appendix must conform to the requirements of Local Rule 32(b) relating to the Form of Appendix, with the exception that its pages must be sequentially numbered beginning with SPA-1.*

## Rule 32.1. Citing Judicial Dispositions

**(a) Citation Permitted.** A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

**(b) Copies Required.** If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment or disposition with the brief or other paper in which it is cited.

## *Local Rule 32.1. Dispositions by Summary Order*

***(a) Use of Summary Orders.*** *The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.*

***(b) Precedential Effect of Summary Orders.*** *Rulings by summary order do not have precedential effect.*

***(c) Citation of Summary Orders.***

*(1) Citation to summary orders filed after January 1, 2007, is permitted.*

*(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."*

*(B) Service of Summary Orders on Pro Se Parties: A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.*

*(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.*

***(d) Legend.*** *Summary orders filed after January 1, 2007, shall bear the following legend:*

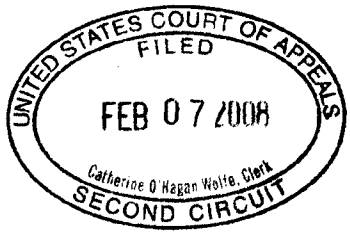
*SUMMARY ORDER*

*Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.*

W.D.N.Y.
05-cv-6190
Larimer, J.

# United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of February, two thousand eight.




Present:

Hon. Sonia Sotomayor,
Hon. Debra Ann Livingston,
*Circuit Judges*,
Hon. Gregory W. Carman,*
*Judge, U.S. Court of International Trade.*

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Dr. Richard Cordero,

*Creditor-Appellant*,

v. 06-4780-bk

David DeLano, Mary Ann DeLano,

*Debtors-Appellees.*

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George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's *sua sponte* authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005); *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____

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*The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

SAO-LB

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**
**THURGOOD MARSHALL U.S. COURT HOUSE**
**40 FOLEY SQUARE, NEW YORK, N.Y. 10007**

**Catherine O'Hagan Wolfe**
**CLERK OF COURT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9th day of May two thousand and eight,

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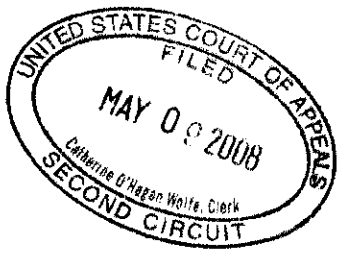
Dr. Richard Cordero,

Creditor-Appellant,




v.

06-4780-bk

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

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Appellant Dr. Richard Cordero, having filed a petition for panel rehearing, and for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: _____
Frank Perez, Deputy Clerk

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