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January 10, 2007

A Case Showing How Federal Judges Disregard Not Only Conduct Guidelines, But Also Duties Imposed on Them By Law and Their Own Implementing Local Rules

by

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On August 8, 2003, Dr. Richard Cordero, Esq., filed a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §351 et seq.) with then Chief Judge John M. Walker, Jr., of the U.S. Court of Appeals for the Second Circuit (CA2). It provided evidence of a bankruptcy judge's and other officers' series of acts of bias and disregard for the law, the rules, and the facts so consistently against an out-of-town party and in favor of the local parties as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing to protect a bankruptcy fraud scheme and the schemers.

That complaint was initially rejected by a CA2 clerk on the allegation that it did not comply with formal requirements, even though Federal Rules of Appellate Procedure Rule 25(a)(4) provides that "The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice". One such local rule is Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers 28 U.S.C. §351 et seq., (Local Rules) providing, among other things, that "The clerk will promptly send copies of the complaint to the chief judge of the circuit..." As a result of the clerk's disregard for such provisions and her efforts to make it harder to file such a complaint, Dr. Cordero had to reformat not only the complaint itself, but also all the evidentiary documents supporting it. Thus, the complaint was not filed until August 27, 2003. To no avail.

Indeed, Chief Judge Walker was required under 28 U.S.C. §352(a) to "expeditiously review" such complaint. What is more, he was under such duty also under his own Court's Local Rule 4(e), which provides that "If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee". For its part, Rule 7(a) requires that "The clerk will promptly cause to be sent to each member of the judicial council" copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules is that action will be taken expeditiously. Disregarding such duty under the Act and the Local Rules, the Chief Judge let well over six months pass by without taking any action on the complaint. Even in the absence of any such duty, the chief judge of a federal circuit should have investigated a complaint that cast doubt on the integrity of a judge and the fairness of justice that he administered within circuit headed administratively by that chief. That not having occurred at all and given the resulting condonation in practice of misconduct, the bankruptcy judge together with the other officers went on to engage in even more flagrantly wrongful conduct.

Consequently, Dr. Cordero filed a complaint against Chief Judge Walker, addressing it on March 19, 2004, as required by law and the Local Rules, to the next judge eligible to become

the chief judge, to wit, Circuit Judge Dennis Jacobs, who is currently the CA2 chief judge. He acted no better: It was not until its seventh month that he dismissed on September 24, 2004, the complaint against his peer, after he had also dismissed on June 8 the first one, more than nine months after it had been belatedly and reluctantly filed by his Court's clerk in August 2003. So much for respect for a statutory and regulatory duty, not just a guideline, to deal 'promptly and expeditiously' with a judicial misconduct complaint.

Some readers may want to assess for themselves the factual and legal merits of the initial complaint so as to determine whether the dismissal of either complaint was justified. To that end, they can read the Statement of Facts at <http://Judicial-Discipline-Reform.org/StatFacts1.htm>, which can also be downloaded through http://Judicial-Discipline-Reform.org/docs/Statement_of_Facts_Table_of_Cases.pdf

Other readers may wonder why judges who are supposed to show the highest regard for the concept of legal duty that they enforce upon others, instead show so blatantly disregard for their own duty under the law and its implementing regulatory provisions as well as for judicial conduct guidelines. Some of the latter are contained in the Report of the Judicial Conduct and Disability Act Study Committee, chaired by U.S. Supreme Court Associate Justice Stephen Breyer, which recommend, inter alia, that judges respond to judicial misconduct complaints within 60 days. A key element to answering such readers' query is found in the dynamics of judicial conduct that both lead to and result from the fact that in 218 years since the ratification of the U.S. Constitution of 1789 only 7 federal judges have been impeached and removed from office. Knowledge that only one federal judge is removed from office every 31 years on average engenders in the judges a realistic sense of impunity and allows them to proceed as what they are as a matter of fact: members of the only group in our country that is above the law.

A discussion of those dynamics and the fact that a federal judgeship has become a safe haven for wrongdoing is found in the article "The Supreme Court Justices and the Chief Judges Have Semi-annually Received Official Information About the Self-immunizing Systematic Dismissal of Judicial Conduct Complaints, But Have Tolerated It With Disregard for the Consequent Abuse of Power and Corruption", and in the supporting official statistics of the Administrative Office of the U.S. Courts. They can be downloaded, respectively, from http://Judicial-Discipline-Reform.org/docs/SCT_knows_of_dismissals.pdf and http://Judicial-Discipline-Reform.org/docs/Statistics_of_systematic_dismissals.pdf.

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