

**THE SUBCOMMITTEE ON COURTS, THE INTERNET
AND INTELLECTUAL PROPERTY**

**TESTIMONY OF
THE HONORABLE MANUEL L. REAL
SEPTEMBER 21, 2006**

We are here today because a lawyer who has had a personal vendetta against me for over twenty years filed a complaint accusing me of misconduct in my handling of a bankruptcy case. That lawyer had no personal involvement in the bankruptcy case and his accusations were based solely on his speculation. His accusations are untrue. Though I regret the circumstances that bring me here, I welcome the opportunity to respond to those accusations.

I. PERSONAL BACKGROUND

My parents were immigrants from Spain who came to California and settled in San Pedro, California. I was born and raised in San Pedro and have lived there my entire life. During World War II, I served in the United States Navy and was discharged with the rank of Lieutenant (JG). After the war, I attended the University of Southern California and then Loyola Law School, where I graduated in 1951.

I was an Assistant United States Attorney for three years after law school, and then went into private law practice. In 1964, I was appointed as the United States Attorney for what was then the Southern District of California. I served in that position until 1966, when President Lyndon Johnson nominated me to be a United States District Judge for the Central District of California.

On November 17th of this year, I will have been a United States District Judge for forty years. During that time, I have handled over 31,000 cases and have presided over thousands of civil and criminal trials. From 1982 to 1993, I was privileged to serve as the Chief Judge for the Central District of California. I have also served as an elected member of the Judicial Conference of the United States and as a member of the Ninth Circuit Judicial Council and Judicial Conference.

In my years as a federal judge, I have won various awards, including the Award of Merit from the Urban League, the Distinguished Achievement Award from Loyola Law School, the Foundation for Improvement of Justice Award, and the Los Angeles County School District Award.

In the 1970s, I handled a desegregation case involving the Pasadena public schools and was the first district judge outside of the South to order a public school system to integrate, and I now have a California elementary school named after me. Needless to say, that ruling, along with several other tough decisions I have had to make, generated significant controversy and public attention. Every case that a judge decides disappoints the losing party and leaves one of the litigants unhappy.

In my nearly forty years on the bench, I have had several complaints of judicial misconduct made against me. However, none of them, including the one that brings me here today, has been found to have any merit, and I have never been sanctioned for any judicial misconduct

II. DEBORAH CANTER'S BANKRUPTCY ACTION

Because of the complaint of misconduct and the criticism that followed Judge Kozinski's intemperate dissent to the Judicial Council's opinion dismissing that complaint, my involvement in the bankruptcy action filed by Deborah Canter has been blown out of proportion. In truth, Ms. Canter was just one of the more

than one thousand criminal defendants who have appeared before me, pleaded guilty and been placed on probation.

I have not had any contact with Ms. Canter other than in open court or at open-door probationary meetings in my office, where she was always accompanied by her Probation Officer. Those meetings lasted no more than fifteen minutes. Other than that, I have never met with or spoken to Ms. Canter or received any letter or other written communication from her.

I became involved in Ms. Canter's bankruptcy action solely because lawyers for her father-in-law had illegally filed in her bankruptcy action a confidential Pre-Sentence Report from her criminal case. Pre-Sentence Reports of criminal defendants are not public documents, but rather are confidential records of the court. The Central District Criminal Rules require that the documents be filed under seal. As I was the judge presiding over her criminal action, Ms. Canter's Pre-Sentence Report could only be released by my order. In my nearly forty years on the bench, I had never had another criminal case where someone misused a confidential Pre-Sentence Report.

A. Ms. Canter's Probation

Ms. Canter entered a guilty plea to charges of making false statements and loan fraud. On April 13, 1999, I sentenced her to five years of probation under the supervision of the U.S. Probation Office and ordered her to perform 2,000 hours of community service, which is a significant amount of community service. I also ordered her to report to me with her Probation Officer every 120 days as directed by the U.S. Probation Office. She did not receive preferential treatment, but was treated the same as all criminal defendants who pleaded guilty and whom I placed on the 120-day probation program.

Approximately eighty percent of the criminal defendants that I place on probation are required to report to me every 120 days. I have won awards for my

program of personally supervising probationers through these periodic meetings. I have been told by Probation Officers that they like the program and that the probationers on it have fewer violations. The probationers who report to me know that the judge who sentenced them cares about their efforts and problems in rehabilitating themselves.

I had two 120-day meetings with Ms. Canter before I withdrew the bankruptcy reference. The first meeting was on August 23, 1999, and Ms. Canter was accompanied by her Probation Officer, Randall Limbach.

Before that meeting, Mr. Limbach sent me a short status report disclosing that Ms. Canter was involved in divorce proceedings and was seeking to gain full custody of her daughter. That issue also was mentioned at the 120-day meeting. Status reports are prepared for all probationers and routinely sent to me in advance of the 120-day meetings.

At my second 120-day meeting with Ms. Canter on January 24, 2000, she told me that attorneys for creditors had filed the confidential Pre-Sentence Report in her bankruptcy action and she was concerned that this might discredit her in the eyes of the bankruptcy judge. She also told me that the report had been filed in state court proceedings, but did not tell me which proceedings. At the meeting, Ms. Canter gave me a cover sheet from a document filed in her bankruptcy action.

I told her to contact her Federal Public Defender regarding the misuse of the Pre-Sentence Report. It was my expectation that her Public Defender would file a motion requesting some sanction against the offending lawyers who had misused a confidential court document.

B. The Withdrawal of the Bankruptcy Reference

After my January 24, 2000 meeting with Ms. Canter and her Probation Officer, I issued an order withdrawing the reference of Ms. Canter's bankruptcy action, which I signed on January 27, 2000. This meant that Ms. Canter's

bankruptcy case would be transferred to me for future handling. As a district judge, I am authorized by statute to withdraw the reference of a bankruptcy case. Though this is usually done at the request of a party to the bankruptcy, the statute specifically permits me to do so without such a request. This was the second time I had withdrawn the reference of a bankruptcy case.

I took over Ms. Canter's bankruptcy case because she told me during the 120-day meeting that her Pre-Sentence Report had been improperly filed in her bankruptcy action and I wanted to determine whether this was true.

On February 24, 2000, the bankruptcy file was transferred to my chambers. After the file arrived, I personally reviewed it and saw that a Request for Judicial Notice had been filed attaching Ms. Canter's Pre-Sentence Report as an exhibit.¹ The Request was filed in support of a motion to lift the automatic stay that was imposed when Ms. Canter filed bankruptcy, and which prevented her father-in-law from prosecuting an unlawful detainer action against her. The motion specifically discussed the confidential Pre-Sentence Report. These documents confirmed Ms. Canter's statements during the January 24, 2000 meeting. The Request for Judicial Notice also contained a copy of the complaint in the unlawful detainer action. The bankruptcy file also showed that the automatic stay had been lifted.

I concluded that the Pre-Sentence Report had been improperly used to lift the automatic stay in order to proceed with the unlawful detainer action against Ms. Canter.

I asked my secretary, Loyette Fisher, to find out the status of the unlawful detainer action. She contacted a state court clerk, who faxed her a copy of the

¹ December 30, 1999 Request for Judicial Notice, without attachments except for the cover page of the Pre-Sentence Report, is attached hereto as Exhibit A. In addition to the documents attached hereto, I am concurrently submitting an Appendix of Exhibits that I believe are relevant to the Subcommittee's investigation.

docket sheet showing the status of the lawsuit. I learned from that document that a judgment had been entered in the unlawful detainer action, shortly after the automatic stay was lifted. Based upon this information, I issued an order on February 29, 2000 staying the unlawful detainer action. I entered the stay order to preserve the status quo in the unlawful detainer action pending further proceedings in the bankruptcy action.

Ms. Canter's Federal Public Defender filed a motion regarding the misuse of her Pre-Sentence Report in March 2000. At the hearing on the motion, I was advised that the father-in-law's bankruptcy attorney and the husband's divorce lawyer would "withdraw" all copies of the Pre-Sentence Report filed with the courts.

I was still concerned that the Pre-Sentence Report had influenced the state divorce court judge's rulings regarding spousal support and child custody issues. Therefore, I ordered the parties to find out whether the Pre-Sentence Report had been considered by that judge in making rulings and, in the meantime, continued the hearing until July 2000. The parties subsequently filed a status report saying they had a conference call with the state court judge who said the Pre-Sentence Report had not influenced him. Accordingly, I canceled the July hearing.

In June 2000, the Canters sought to revive the unlawful detainer action by filing a motion to vacate the order staying that action. I denied the motion because there were two pending actions (the state court divorce action and the bankruptcy action) where the parties were contesting the ownership of the house and I concluded that the determination of that issue should be made in one of those actions.

In May 2001, Ms. Canter's father-in-law filed a second motion to vacate the February 20, 2000 stay order. His attorneys now argued that the state divorce court had determined the issue of ownership of the house and, therefore, the stay

should be lifted so the unlawful detainer action could proceed. They also filed a motion to dismiss the adversary complaint filed in the bankruptcy action by Ms. Canter in which she contended she had an ownership interest in the house.

At the June 2001 hearing, I granted the motion to dismiss the adversary complaint, but gave Ms. Canter an opportunity to file an amended complaint. I did so because I concluded that while the state divorce court had found that Ms. Canter did not have a community property interest in the house, she might be able to allege a claim based upon other legal theories. I denied the motion to vacate the stay because I had given Ms. Canter an opportunity to amend her adversary complaint. I felt that, if she still failed to state a claim in the amended pleading, the father-in-law could simply re-file the motion to vacate the stay.

At the end of this hearing, the attorney for Ms. Canter's father-in-law, Herbert Katz, asked me to state the reasons for my ruling. I told him "because I said so" or words to that effect. Later, I would get much criticism for that comment. However, I had given Mr. Katz a full opportunity to make an oral argument regarding the motion, and did not want to engage in further argument with him over my reasons for denying it. It has never been my practice to explain the reasons for my rulings on motions like this one and I have made similar comments to many other lawyers.

Sometime in the previous month, May 2001, I had a conversation with Judge David Carter regarding the possible transfer of the Canter bankruptcy to him.

I had two concerns that led me to consider transferring the case. First, Judge Carter was handling Anna Nicole Smith's bankruptcy case that raised similar issues as Ms. Canter's adversary complaint. Second, I felt there was a possibility that Ms. Canter's adversary complaint might be tried and I was uncomfortable about trying the case because she was a probationer. Though I had discontinued

my 120-day meetings with Ms. Canter when I took over her bankruptcy case, she was still one of my probationers.

On July 9, 2001, I signed the order transferring Ms. Canter's bankruptcy action to Judge Carter.

In my discussions with Judge Carter, I did not suggest to Judge Carter how he should handle the case after the transfer. I had nothing further to do with Ms. Canter's bankruptcy after ordering the transfer of the case to Judge Carter.

III. MR. YAGMAN'S COMPLAINT OF JUDICIAL MISCONDUCT

Ms. Canter's father-in-law appealed my order staying the unlawful detainer action. On August 15, 2002, the Court of Appeals issued an opinion stating I had abused my discretion when I withdrew the reference in Ms. Canter's bankruptcy action without "good cause" and ordered a stay of the unlawful detainer action. Ms. Canter's bankruptcy lawyer filed a brief in that appeal, but did not tell the Court of Appeals my reason for withdrawing the reference. Therefore, the Court of Appeals did not know about my concern over the misuse of Ms. Canter's Pre-Sentence Report in the bankruptcy action when the court concluded that I did not have "good cause" to do so.

A Los Angeles lawyer, Stephen Yagman, read the Court of Appeals' opinion in the Canter bankruptcy action and filed a complaint against me in March 2003, accusing me of misconduct in my handling of that case. Mr. Yagman was not a party to the bankruptcy action or the lawyer for any party in that proceeding or any other lawsuit involving Ms. Canter, and he knew nothing about the facts of the case.

In 1984, I sanctioned Mr. Yagman \$250,000, the amount of the other side's attorneys' fees, for his persistent and willful disregard of the federal rules and his outrageous courtroom behavior in a defamation case I was handling. *Matter of Yagman*, 796 F.2d 1165 (9th Cir. 1986). Though the Court of Appeals reversed the

sanction portion of my order, Mr. Yagman has had a personal vendetta against me ever since.

I am not the only one. Mr. Yagman has a practice of making outrageous statements against federal judges whom he does not like so that they will disqualify themselves from hearing his cases. Sometimes this is successful. As an example, Mr. Yagman accused another district judge of being “drunk on the bench,” “anti-Semitic,” and “dishonest.” A three-judge disciplinary panel found those accusations to be patently false and suspended Mr. Yagman for two years, finding that he had made the comments for the specific purpose of getting the judge to recuse himself in future cases. *Standing Committee v. Yagman*, 856 F. Supp. 1384, 1395 (C.D. Cal. 1994).

Mr. Yagman appealed and the Ninth Circuit reversed on First Amendment grounds in an opinion written by Judge Alex Kozinski. *Standing Committee v. Yagman*, 55 F.3d 1430 (9th Cir. 1995).

Mr. Yagman was also suspended from practicing law by the California State Bar on two different occasions, and again by the New York State Bar. In June of this year, he was indicted by the U.S. Attorney on nineteen counts of income tax evasion, bankruptcy fraud, and money laundering.

What was Mr. Yagman’s complaint against me? Mr. Yagman said he read the Court of Appeals opinion in Ms. Canter’s bankruptcy and then learned from the court’s records that Ms. Canter was one of my probationers. Based on this alone, Mr. Yagman accused me of acting improperly in “oddly” putting a “comely” female criminal defendant on probation “to himself, personally” and in withdrawing the bankruptcy reference in order to “benefit an attractive female.”² Both accusations were entirely untrue.

² Complaint No. 03-89037, attached hereto as Exhibit B.

Pursuant to the Ninth Circuit Rules on Complaints of Judicial Misconduct, Mr. Yagman's complaint was reviewed by Chief Judge Mary M. Schroeder and, on July 14, 2003, the Chief Judge entered an order dismissing the complaint.³

The Chief Judge found that Mr. Yagman's "allegations of inappropriate conduct were not substantiated," since Mr. Yagman had not provided any proof to support his allegation. In addition, the Chief Judge found that my decisions in the bankruptcy case had already been reviewed by the Court of Appeals and, therefore, Mr. Yagman's complaint had to be dismissed under the Ninth Circuit Rules.

Mr. Yagman filed a petition for review of the Chief Judge's dismissal with the Judicial Council on August 7, 2003. In that petition, Mr. Yagman questioned whether his complaint had been adequately investigated and again accused me of being "salaciously cozy" with Ms. Canter. In response to Mr. Yagman's criticism, the Judicial Council conducted its own investigation of the facts underlying Mr. Yagman's complaint. The Judicial Council's staff, under the personal direction of Judge Kozinski, interviewed at least *fifteen* witnesses regarding Mr. Yagman's allegations.

After conducting this investigation, the Judicial Council remanded the complaint to the Chief Judge for further investigation and directed her to investigate whether I entered my orders in the bankruptcy case based upon an improper *ex parte* communication with Ms. Canter. The Judicial Council did this because Ms. Canter's former bankruptcy attorney, Andrew Smyth, had told one of the Judicial Council's investigators that his wife, who was also his secretary, told him she had helped Ms. Canter prepare a letter to me asking for my help in preventing her eviction and that Ms. Canter said she delivered the letter to me.

³ Chief Judge Schroeder's July 14, 2003 Order and Memorandum, attached hereto as Exhibit C.

During the summer of 2004, Chief Judge Schroeder again reviewed Mr. Yagman's complaint, this time in light of the additional issues raised in the Judicial Council's remand order. Her investigator spoke to Ms. Canter, who denied that she had ever written or delivered a letter or any other document to me or had had any *ex parte* communications of any kind with me.⁴ My counsel also filed a brief with Chief Judge Schroeder, attaching the declaration of Ms. Canter's Probation Officer relating the discussions regarding the misuse of the confidential Pre-Sentence Report that occurred during my January 24, 2000 meeting with Ms. Canter, and a declaration from my secretary confirming that I had not received any *ex parte* communication from Ms. Canter.⁵

After a review of this information, Chief Judge Schroeder again dismissed the complaint.⁶

In her order of dismissal, the Chief Judge noted that the Judicial Council's remand order had "focused on the *ex parte* nature of communications between the judge and the defendant/debtor" and, therefore, she had made an additional inquiry, "including sworn declarations and other documentary evidence." Based upon that information, the Chief Judge concluded that "there is no basis for a finding that credible evidence exists of a letter or other 'secret communication' having passed between the defendant/debtor and the district judge."

Mr. Yagman appealed the Chief Judge's second order of dismissal to the Judicial Council. On September 29, 2005, the Judicial Council denied his petition

⁴ September 9, 2004 Declaration of Deborah Canter, attached hereto as Exhibit D.

⁵ August 5, 2004 Declaration of Randall Limbach and August 6, 2004 Declaration of Loyette Lynn Fisher, attached hereto as Exhibits E and F.

⁶ Chief Judge Schroeder's November 4, 2004 Supplemental Order and Memorandum, attached hereto as Exhibit G.

for review.⁷ The majority's opinion specifically dealt with the issue of whether there had been an *ex parte* communication with Ms. Canter, stating:

The Judicial Council's remand to the Chief Judge indicated concern that the district judge may have received an improper *ex parte* letter from the probationer, and that the withdrawal of the reference may have been based upon information contained in the alleged letter. *After an investigation, the Chief Judge found that no such letter had been transmitted to, or received by, the district judge. We will not upset that factual finding.*

425 F.3d at 1181 (emphasis added).

The Judicial Council's majority opinion (joined by seven of the ten judges on the Judicial Council) affirmed the Chief Judge's dismissal of Mr. Yagman's complaint. *Id.* at 1182. Three judges dissented, including Judge Kozinski who wrote what I believe to be an intemperate, thirty-nine-page dissenting opinion, reflecting his conclusion that I had committed misconduct. The other two judges who dissented did not join in Judge Kozinski's opinion.

Mr. Yagman requested the Judicial Conference of the United States to review the Judicial Council's opinion. On April 28, 2006, the Judicial Conference Committee issued a decision on that appeal, holding that "Congress gave the Judicial Council final review authority" over the Chief Judge's order of dismissal.

Immediately after the Judicial Council issued its opinion affirming the second dismissal of Mr. Yagman's complaint, he filed a second complaint against me. In his new complaint, Mr. Yagman alleged that I was untruthful in my

⁷ *In Re Complaint of Judicial Misconduct*, 425 F.3d. 1179 (9th Cir. 2005), attached hereto as Exhibit H.

response to the Judicial Council's inquiries regarding whether I had an improper *ex parte* communication with Ms. Canter.

A Special Committee appointed by Chief Judge Schroeder held hearings on Mr. Yagman's second complaint in August and I anticipate that the committee will issue a report and recommendation to the Ninth Circuit Judicial Council in the near future.

IV. MR. YAGMAN'S ACCUSATIONS ARE UNTRUE

In his dissent from the Judicial Council's opinion affirming the dismissal of Mr. Yagman's first complaint, Judge Kozinski stated at length why he concluded that there had been an improper *ex parte* communication with Ms. Canter that led me to withdraw the reference and enter the order staying the unlawful detainer action. Judge Kozinski principally relied on the following assumptions to reach those conclusions:

- Judge Kozinski concluded that my October 9, 2003 memorandum to the Judicial Council shows that I acted based upon an *ex parte* communication. 425 F.3d at 1185-87.
- Judge Kozinski believed the story reported by Ms. Canter's former lawyer, Andrew Smyth, that his wife, Michelle Smyth had typed a letter for Ms. Canter and that Ms. Canter later told his wife she had given it to the judge. *Id.* at 1189-90.
- Judge Kozinski concluded that because the judgment in the unlawful detainer action was entered after the January 24, 2000 120-day meeting, there had to have been an *ex parte* communication from Ms. Canter in order for me to know that the judgment had been entered. *Id.* at 1190-92.

These assumptions are wrong and I will explain to the Subcommittee why they are wrong.

A. The October 9, 2003 Memorandum

As part of the Judicial Council's consideration of Judge Schroeder's dismissal of Mr. Yagman's original complaint, Judge Kozinski wrote to me on September 10, 2003, asking me to explain why I withdrew the reference, why I entered the stay order, and whether I had any communication with Ms. Canter regarding these or related issues.

When I received this letter, I was angry over Judge Kozinski's inquiry. I was angry for three reasons: First, Mr. Yagman had sent Judge Kozinski a copy of the first complaint in violation of the Ninth Circuit Rules, leading me to conclude that there was some connection between Judge Kozinski and Mr. Yagman. Second, I believed that Judge Schroeder had properly dismissed Mr. Yagman's complaint. Third, Mr. Yagman had accused me of having a "salaciously cozy" relationship with Ms. Canter at the time of my marriage to Elizabeth Sykes in March 2000.

In preparing my response to Judge Kozinski's September 10, 2003 letter, I did not review Ms. Canter's bankruptcy file because the file had been transferred to Judge Carter in July 2001, and I did not consult with any of my staff or law clerks regarding the response. As a result, my response to Judge Kozinski's letter is inaccurate in its chronology of what I knew when I withdrew the reference and imposed the stay order.

In my October 9, 2003 memorandum, I responded to the question "why did you withdraw the reference" by stating, in part, that "a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents . . . [and] [s]he was contesting her right to occupancy in the divorce court." Eventually, I did learn of these facts, but only at a later date from pleadings filed in the case. I did not know this information when I issued the order

withdrawing the reference, since it had not come up at my January 24, 2000 meeting with Ms. Canter and Mr. Limbach. Mr. Limbach confirmed what was discussed at this meeting in his declaration. (Exh. E.)

In the October 9, 2003 memorandum, I also said that I learned of the unlawful detainer action at one of my 120-day meetings with Ms. Canter. This, too, is inaccurate. I did not discuss the unlawful detainer action with Ms. Canter at either of the 120-day meetings I had with her. Mr. Limbach, Ms. Canter's Probation Officer, also confirmed this in his declaration. (Exh. E.) I first learned of the unlawful detainer action when I reviewed the bankruptcy file in late February 2000.

Though the October 9, 2003 memorandum is inaccurate as to the timing of when I learned certain information, it does accurately reflect my concern that Ms. Canter's Pre-Sentence Report had been improperly used in the state divorce action and in the bankruptcy action. I learned of this during my January 24, 2000 meeting with Ms. Canter and this was my motivation for withdrawing the reference and issuing the stay order.

Judge Kozinski's conclusion, therefore, that my October 9, 2003 memorandum confirms that an *ex parte* communication with Ms. Canter "must have" occurred is wrong. It is wrong because my memorandum's recitation of the information I had available when I took those actions is incorrect. The memorandum is incorrect because I reacted emotionally when I received Judge Kozinski's inquiry and prepared my response without adequate research or reflection.

I now realize that my failure to respond more carefully and accurately to Judge Kozinski's initial inquiry was a mistake. If I had done so, I doubt that we would be here today.

B. Michelle Smyth's Story

The second “fact” relied upon by Judge Kozinski to support his conclusion that I withdrew the reference and imposed the stay based on an *ex parte* communication was the story of Michelle Smyth, the secretary and wife of one of Ms. Canter’s former lawyers. Ms. Smyth told Judge Kozinski’s investigator that she had helped Ms. Canter prepare a letter to me regarding her divorce and that Ms. Canter had delivered the letter to me. 425 F.3d at 1189-90.

In contrast with Ms. Smyth’s story, Ms. Canter signed a declaration prepared by the Judicial Council’s investigator in which she denied that she had ever written or delivered a letter or any other document to me or to anyone in my chambers. She also denied that she had ever met with or had any conversation with me outside of the presence of counsel or a probation officer.

I confirmed the statements of Ms. Canter in a letter that was submitted to Chief Judge Schroeder.⁸ In that letter, I truthfully stated that I had never received any letter or written communication of any sort from Ms. Canter or anyone acting for her concerning my intervening on her behalf to prevent her eviction. I also confirmed that I had never been alone with Ms. Canter and had only met with her in the presence of her Probation Officer or in open court.

In addition, my secretary, Loyette Fisher, signed a declaration stating that she had carefully reviewed the files in my chambers relating to Ms. Canter and did not find any letter or other written communication from Ms. Canter to me. (Exh. F.) She also declared that she did not recall ever having received or seen any letter from Ms. Canter to me.

⁸ August 10, 2004 letter from Manuel L. Real to Don Smaltz, attached as Exhibit I.

Based upon this information, Chief Judge Schroeder dismissed Mr. Yagman's first complaint, concluding that despite Ms. Smyth's story, there was insufficient evidence to find that there had been an *ex parte* letter or declaration that led me to withdraw the reference and re-impose the stay.

I now know that Ms. Smyth has changed her story. In a recent interview, Ms. Smyth now says that it was not a letter that Ms. Smyth typed, but rather a sworn declaration on twenty-eight line pleading paper.⁹

I do not know why an employee of Ms. Canter's former lawyer would tell a story that is untrue, but I do know that I never received the letter (or declaration) from Ms. Canter that Ms. Smyth said she helped prepare.

C. Knowledge of the Unlawful Detainer Action

The third "fact" relied upon by Judge Kozinski was that the judgment in the unlawful detainer action was not entered until February 7, 2000. 425 F.3d at 1190-91. Based on this timing, Judge Kozinski concluded that Ms. Canter could not have told me of the judgment during the January 24, 2000 meeting and, therefore, I had to have learned of it in a subsequent *ex parte* communication from her.

As discussed above, when the bankruptcy files were routinely transferred to my chambers on February 24, 2000, I personally reviewed those files and learned of the unlawful detainer action. I then asked my secretary to check the status of that action and she obtained the docket sheet from the state court clerk. I learned from the docket sheet that a judgment had been entered and, based on that information, issued my February 29, 2000 stay order.

Judge Kozinski's speculation regarding the source of my knowledge of the unlawful detainer judgment is simply wrong.

⁹ September 19, 2006 Declaration of Eric L. Dobberteen, attached as Exhibit J.

V. CONCLUSION

The accusations of misconduct made against me by Mr. Yagman are untrue. I did not receive any *ex parte* communication from Ms. Canter. I did not make any rulings in her bankruptcy action based upon any such communication or “to benefit an attractive female” as alleged by Mr. Yagman, an accusation I find repugnant, particularly at my age. I hope that I have fully explained the history of my involvement in Ms. Canter’s bankruptcy action and the reasons for my rulings in that action. If not, I welcome any questions the Subcommittee might have.

EXHIBIT A

FILED

99 DEC 30 PM 2:11

COURT
CENTRAL DISTRICT OF CALIFORNIA

BY *[Signature]* DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
FEB 24 2000
CV 00-01185
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

9 In re
10 Deborah M. Canter

CASE NO. ~~LA99-49126-AA~~
SACV 01-688 DOC
(Chapter 13)

REQUEST FOR JUDICIAL NOTICE
PURSUANT TO FEDERAL RULE OF
EVIDENCE 201

[Filed Concurrently with The
Canter Family Trust's Motion
for Relief from the
Automatic Stay]

Date: 1/26/2000
Time: 2:30 p.m.
Crtm: 1375

18
19 TO THE HONORABLE ALAN AHART, THE CHAPTER 13 TRUSTEE, EDWINA
20 DOWELL, THE DEBTOR, AND ALL PARTIES OF INTEREST:

21 Pursuant to Federal Rule of Evidence, 201 (b), (c) and (d), the
22 moving party requests mandatory and discretionary judicial notice of
23 the following:

- 24 1. California Civil Code, Sections 1624 and 1946. Attached as
25 **Exhibit A;**
- 26 2. Schedule J of the debtor in the instant case. **Exhibit B;**
- 27 3. The petitions and schedules of the prior bankruptcy cases filed
28 by the debtor: case numbers 92-38435 (ch. 7), 96-10153 (ch. 13),


[Handwritten signature]

1 96-16058 (ch. 13), and 97-35894 (ch. 13). At the time of the
2 filing of this motion copies were not available. True and correct
3 copies will be obtained from the court archives and submitted
4 under separate cover as Exhibits C, D, and E respectively.

- 5 4. The Criminal Judgment and probation report in United States v.
Maristina Canter, Case No. 98-576-R . Exhibit F.
- 6 5. Documents filed with the county recorder of Los Angeles County as
7 follows.
- 8 a. Grant Deed of 9/11/91 Exhibit G
9 to Alan and Elizabeth
10 Canter on property
located at 446 S.
11 Highland, Los Angeles
 - 12 b. Deed of Reconveyance Exhibit H
13 to Alan and Elizabeth
Canter of July 23,
1992 for 446 S.
14 Highland, Los Angeles
 - 15 c. Quitclaim deed from Exhibit I
16 Alan and Elizabeth
Canter of September
22, 1997 to the Canter
Family Trust
- 17 6. Unlawful detainer complaint in Canter v. Canter, Municipal Court
18 case No. 99U18116. Exhibit J.
- 19 7. Verified Transcript of debtor's 341a hearing held on December 10,
20 1999. Exhibit K.
- 21 8. Interrogatories to and Debtor's Answers to Interrogatories,
22 Exhibit L.

23 Dated: December 29, 1999

Respectfully submitted

24 
25 _____
26 Mark E. Brenner, Esq.
27 Attorney for Creditors Alan Canter and the
28 Canter Family Trust

REQUEST FOR JUDICIAL NOTICE- EXHIBIT F- JUDGMENT AND PROBATION
IN CRIMINAL CASE

EXHIBIT B

FILED
APR 18 2003

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MAR - 6 2003

03-89037
COMPLAINT FORM
JUDICIAL COUNCIL OF THE NINTH CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT AND DISABILITY

MAINTAIN THIS FORM WITH THE CLERK, UNITED STATES COURT OF APPEALS, P.O. BOX 193939,
SAN FRANCISCO, CALIF. 94119-3939. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR
"JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED FOR FILING.

03-03-03

1. Complainant's name: **STEPHEN YAGMAN**
Address: **LAW OFFICE
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270
(310) 452-3200**

2. Name of judge complained about: **MANUEL L. REAL**
Court: **C.D. CAL.**

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?
 Yes No

If "yes" give the following information about each lawsuit (use reverse side if there is more than one):

Court: **C.D. Cal.**
Docket Number: **See attached**

Are (were) you a party or lawyer in the lawsuit? Party Lawyer Neither

If a party, give the name, address, and telephone number of your lawyer:

Docket numbers of any appeals to the Ninth Circuit: **see attached**

4. Have you filed any lawsuits against the judge? Yes No

If yes, give the following information about each lawsuit (use the reverse side if there is more than one):

Court:
Present status of suit:
Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. Statement of Facts: On separate sheets of paper, not larger than the paper this form is printed on, describe the facts and evidence that support your charges of misconduct or disability. See Rules 1(c) (proper

See attached

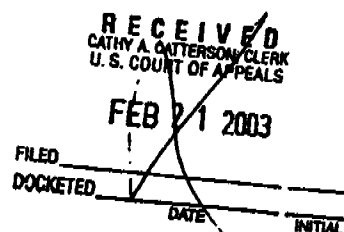
EXHIBIT B

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STEPHEN YAGMAN

February 7, 2003

Honorable Mary M. Schroeder
Chief Judge
230 North First Avenue
Phoenix, AZ 85025



Re: Complaint against U.S. Dist. Judge Manuel L. Real

Dear Judge Schroeder:

This letter is written to make a complaint against the above-named Judge pursuant to 28 U.S.C. § 372(c), based on the following.

In *re Deborah M. Canter: Canter v. Canter*, 2002 DJDAR 9407 (9th Cir. August 15, 2002), the owners of Los Angeles' Canter's Delicatessen were stuck for two years, to the tune of \$35,000 they never will be able to recoup, until the Ninth Circuit wrested the case away from U.S. Dist. Judge Manuel L. Real, who had hijacked the case from the U.S. Bankruptcy Court in Los Angeles.

Elizabeth and Alan Canter, the owners of Canter's Deli bought a house as an investment in 1991, and rented it out to their son, Gary Canter, who, from 1991 to 1999, lived there with his wife, comely Deborah M. Canter, aka D. Maristina Canter, until their separation. Gary Canter always paid rent to his parents on the house.

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. *He put her on probation*, not to the United States Probation Dept., but rather to *himself, personally*. The Ninth Circuit disposition omits fact from its opinion probably because this fact was not in the record of this case, but my curiosity in the opinion that led to a little district court docket research revealed this fact.

Deborah Canter stayed on in the Canter house. The Canters filed an unlawful detainer action against her in state court, but the proceedings were stayed twenty-four minutes before the unlawful detainer trial was to have begun, when Deborah Canter filed a Chapter 13 bankruptcy proceeding.

Three months later, on January 26, 2000, the bankruptcy court lifted the stay and allowed the Canter parents to pursue their unlawful detainer action.

On February 7, 2000, Deborah signed a stipulated judgment providing that she would vacate the premises, and judgment was entered.

Judge Real, on February 17, 2000, withdrew the matter from bankruptcy court, and on February 29, 2000 Judge Real stayed enforcement of the state

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court unlawful detainer judgment, which required Deborah Canter to vacate the premises. She remained on personal probation to Judge Real.

Twice the Canter parents asked Judge Real to lift the stay, and twice Judge Real refused.

When the Canter parents asked Judge Real why the stay was reinstated, his response was "because I said it."

Under then-current federal law Judge Real's refusal to lift the stay was an unappealable interlocutory order. Then this court rendered its disposition.

In *In re Canter*, the Ninth Circuit re-stated the old rule of *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1997), that five conditions governed eligibility for mandamus: (1) no other adequate means of relief, such a direct appeal; (2) damage not correctable on appeal; (3) a clearly erroneous order; (4) an oft-repeated error or manifestation of a persistent disregard of federal rules; and (5) new and important problems, or issues of law of first impression. In a rarity, the Circuit found all five factors to be present.

Citing *In re Kemble*, 776 F.2d 802, 806 (9th Cir. 1985), the court restated that it does not "have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court." Thus, no direct appeal was available.

The court found the Canters would be damaged and prejudiced in a way not correctable on appeal, citing *DeGeorge v. U.S. Dist. Ct.*, 219 F.3d 930, 934 (9th Cir. 2000). It held the Canters "sit in limbo . . . [and] Deborah [bankrupt and on probation to Judge Real] continues to reside in the property . . . without any rental payments"

The court held that "[t]he district court's [action] was an inefficient allocation of judicial resources, . . . [r]ather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings[,] negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case[,] [and] derailed the [bankruptcy] process provided by statute." Moreover, the court said that "[t]he district court's [action] also resulted in great delay and costs to Appellants[] . . . [and] encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations."

The court found the final two *Bauman* factors met because Judge Real's action "manifests a persistent disregard of the federal court rules," and because the case raised an issue of first impression. The court commented on the phenomenon: "In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus[,] " which is what was done.

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Rather than send the case back to Judge Real, perhaps in light of its knowledge of *Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), cert. denied, 484 U.S. 963 (1987), a case remanded by the Ninth Circuit to Judge Real in which he simply refused to turn over the files to a new judge, the court itself remanded the case directly to the bankruptcy court.

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Thank you.

Very truly yours,



STEPHEN YAGMAN

c: Hon. Alex Kozinski

EXHIBIT C

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

FILED

JUL 14 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re Charge of)
Judicial Misconduct)
_____)

No. 03-89037
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

Complainant, an attorney, intimates that the judge acted for his own salacious interests by placing an "attractive female" criminal defendant on probation, "not to the United States Probation Dept., but rather to himself, personally." (Emphasis in original.) He states that "a little district court docket research revealed this fact." Complainant adds that the judge's actions in withdrawing the underlying bankruptcy matter from the bankruptcy court and staying enforcement of the state

EXHIBIT C

unlawful detainer judgment further support the allegation of improper conduct. The Court of Appeals reviewed the judge's withdrawal of the matter from the bankruptcy court, determined that his actions were in error, and remanded the case to bankruptcy court. Complainant requests investigation into the relationship between the judge and the defendant, which was not discussed in the Court of Appeals opinion.

Upon inquiry the allegations of inappropriate conduct were not substantiated. Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents, or transcripts) supporting his allegations of misconduct. Furthermore, complaints alleging misconduct occurring in open court should be supplied with the specific date of occurrence, the details of the hearing, and if possible, copies of transcripts. Conclusory charges that are unsupported, as here, will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

The judge's decisions pertaining to the bankruptcy case have already been reviewed by the Court of Appeals. A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). Charges relating to

those decisions are, therefore, also dismissed.

COMPLAINT DISMISSED.

Mary M. Schmitt
Chief Judge

EXHIBIT D

DECLARATION OF DEBORAH M. CANTER

I, DEBORAH M. CANTER, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called upon to testify, I could and would competently testify thereto.

2. I was formerly represented by Andrew Smyth, Esq., in connection with bankruptcy proceedings. At one point in the proceedings I received a call at home from Mr. Smyth's wife and legal secretary, Michelle. She asked me to come in to the office to sign a declaration about an eviction action pending against me. I did so, and at Michelle's request I gave her \$50 for an attorney's messenger service to deliver the declaration to the court. Michelle did not specify the addressee, and I do not have a copy of the declaration.

3. Approximately one week later, while I was at home, my mother told me that Mr. Smyth's office was on the phone. Mr. Smyth said that an eviction stay order had been issued.

4. I have never written or delivered a letter or any other document to District Judge Manuel Real or to anyone in his chambers.

5. I have never met with, seen, or had any conversation with Judge Real outside the presence of counsel or a probation officer.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

DATED: September 1, 2004

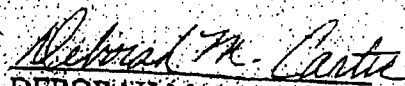

DEBORAH M. CANTER

EXHIBIT E

Professional Indexes & Files 800-422-9191 www.proindexes.com

DECLARATION OF RANDALL LIMBACH

I, RANDALL LIMBACH, declare as follows:

1. I am a United States Probation Officer and have been so employed since 1998. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify, I would and could competently testify thereto.

2. On about April 15, 1999, the case of *United States v. Deborah Canter* was assigned to me, in my capacity as a Probation Officer. Ms. Canter had been sentenced upon her conviction of federal criminal violations to five years probation and 2,000 hours of community service by U.S. District Judge Manuel L. Real.

3. Even prior to Ms. Canter's case having been assigned to me, I was familiar with Judge Real's successful "120 Day Program" of periodically meeting with probationers to encourage their rehabilitation and participation in community service programs. In my opinion it is a valuable program that is helpful to probationers.

After Ms. Canter's case was assigned to me, and Judge Real placed her on probation, I assisted in coordinating meetings amongst Ms. Canter, Judge Real and me in Judge Real's Chambers.

4. Judge Real's meetings with probationers generally lasted approximately fifteen (15) minutes and the Probation Officer was present at the meetings. Ms. Canter's case was treated no differently.

5. On April 20, 1999, Ms. Canter and I had our first meeting, and I made arrangements for her to comply with her community service obligations as a volunteer with AIDS Project LA.

6. On August 23, 1999, Ms. Canter and I met with Judge Real for her first 120-day meeting during which Judge Real explained the purpose and goals of the program to her. I was present for the entire meeting.

7. On January 24, 2000, Ms. Canter and I met with Judge Real for her second "120-Day" meeting. During the course of this meeting, Ms. Canter advised Judge Real that the confidential probation report from her criminal case had been used against her by counsel for her creditors in a bankruptcy case that she had filed in the District Court. I observed Ms. Canter provide Judge Real with a copy of the bankruptcy case cover sheet. Judge Real advise her to confer with her criminal attorney, Guy Iverson, concerning her complaint that confidential information from her criminal case had been improperly disclosed in the Bankruptcy proceeding.

At this meeting, Judge Real inquired of me if Ms. Canter had provided this same information to me and I informed Judge Real that she had. Judge Real stated that he would look into the possibility that improper use of confidential probation materials had been used in the bankruptcy case. I was present for the entire meeting on January 24, 2000.

8. I have reviewed my file in the *Canter* case and my notes show that on February 3, 2000, I met with Ms. Canter in connection with her probation status and she informed me that she had followed Judge Real's instruction to advise her attorney, Guy Iverson, of her bankruptcy case complaint.

9. On April 3, 2000, I once again met with Ms. Canter and she informed me that it was her understanding, based upon information she had received from Mr. Iverson, that Judge Real had assumed jurisdiction over her bankruptcy case.

10. I recall having been subsequently advised by Judge Real's staff that a previously scheduled 120-day meeting on April 24, 2000 would not take place in that Judge Real had taken jurisdiction over Ms. Canter's bankruptcy case and there was a need to avoid even a perception of a conflict.

11. In June of 2002, I was transferred to the Inglewood Division of the U.S. Probation Office and no longer have supervision of Ms. Canter's case.

I declare under penalty of perjury pursuant to the laws of the United States
that the foregoing is true and correct.

DATED: August 5, 2004



RANDALL LIMBACH

EXHIBIT F

DECLARATION OF LOYETTE LYNN FISHER

I, LOYETTE LYNN FISHER, declare as follows:

1. I have been employed either as a Courtroom Deputy Clerk or Administrative Assistant to Judge Manuel L. Real for the last twenty-four years. Part of my responsibilities as Judge Real's Administrative Assistant is to receive correspondence and mail delivered to Judge Real's Chambers and to appropriately file these documents.

2. I have personal knowledge of the facts set forth in this declaration, and, if called upon to testify, I could and would competently testify thereto.

3. In 1976, Judge Real instituted his "120 Day Program" for defendants who were sentenced to probation. The program was designed to help probationers become productive and law abiding citizens. The program is administered through the Probation Office. I receive a list of probationers that are scheduled for the 120 day program each month. The probation officer submits a report that details how the probationer is doing in their performance of community service, work, restitution and any problems with the probationer. I call the names of the probationers in the courtroom and escort them with their probation officer into Judge Real's chambers for the meeting. During the meeting Judge Real counsels the probationer with respect to problems they may have encountered, monitors the probationer's progress and lends encouragement to complete the program. More than four hundred probationers have successfully completed Judge Real's 120 Day Program. It is my belief that this program has been of great value to the probationers and to the community in general.

4. On or about December 22, 2003, I reviewed an order from the Judicial Council involving the case of *United States v. Deborah Canter*. I carefully reviewed the file concerning Ms. Canter, which I maintain as

Judge Real's Administrative Assistant. After conducting a diligent search of the file, I found no letter or other written communication from Deborah Canter to Judge Real. Nor do I recall ever having received or seen any letter from Ms. Canter to Judge Real during the time I have been employed as Judge Real's Administrative Assistant.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

DATED: August 6, 2004


LOYETTE LYNN FISHER

EXHIBIT G

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

FILED

NOV - 4 2004

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re Charge of)
)
)

Judicial Misconduct)
)
)

No. 03-89037
SUPPLEMENTAL
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

In February 2003 complainant, an attorney who was not a party and did not represent a party in the relevant litigation, submitted a misconduct complaint alleging that the judge in question had acted for inappropriate personal reasons in placing an attractive female criminal defendant on probation "to himself, personally," and that the judge's actions in withdrawing that defendant's bankruptcy matter from the bankruptcy court and staying enforcement of a state unlawful detainer judgment against her further supported complainant's allegation of improper conduct.

EXHIBIT G

Before entering an Order, the Chief Judge conducted an inquiry into the charges, and specifically the allegation that there was an inappropriate personal relationship between the judge and the defendant/debtor. In the course of that inquiry, the Probation Office confirmed that all meetings that took place between the judge and the defendant were regularly scheduled, were documented in Probation Office files, and included a probation officer in attendance at all times. The Probation Office and the Clerk's Office further confirmed that the defendant was the subject of a formal probation/commitment order, and that it was the custom of the judge to hold periodic status meetings with probationers and their probation officers.

In a Dismissal Order and Memorandum filed on July 14, 2003, the Chief Judge noted that the Court of Appeals had already reviewed the case in which withdrawal of bankruptcy jurisdiction had occurred; the court had held that the withdrawal had been improper, and had remanded the case to Bankruptcy Court. This complaint was therefore related to the merits of a prior appeal. The Chief Judge observed that misconduct complaints relating to the merits of a judicial decision are not cognizable under the misconduct statute and the circuit's rules, and that such merits determinations are reserved for appellate review. In this instance appellate review had already occurred. The Chief Judge further stated that her inquiry had not substantiated the

conclusory charges of any inappropriate personal relationship between the judge and the defendant/debtor. Accordingly, in the July 14, 2003 Order, the Chief Judge dismissed the complaint in its entirety, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and Misconduct Rules 4(c)(1) and (c)(3).

Complainant petitioned for review by the Judicial Council. The Judicial Council then apparently made some further inquiry. By a divided vote, on December 18, 2003, the Judicial Council issued an Order vacating the Chief Judge's Dismissal Order and remanding the matter to the Chief Judge for further proceedings consistent with its Order. The council's Order stated that "In response to an inquiry from our council, the debtor's bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor 'a day or two before . . . [the district judge] withdrew the [bankruptcy] reference,' and the next time they saw each other, the debtor told her 'the letter had worked.'" The Judicial Council noted that this information was based on hearsay, but asked that it be investigated further. The Order expressed concern that the district judge might have exercised judicial power based on "secret communications," and a further concern that he assigned the case to himself for the express purpose of granting the debtor

relief in a matter unrelated to the criminal case assigned to him.

The Judicial Council focused on the ex parte nature of communications between the judge and the defendant/debtor and viewed the new information about a letter to be more serious than either the information considered by the panel that heard the prior appeal or the communications previously considered by the Chief Judge. Therefore, the Judicial Council remanded the misconduct complaint for further inquiry by the Chief Judge.

Accordingly, the Chief Judge directed that a further inquiry be conducted. That inquiry has now been concluded. In connection therewith additional information, including sworn declarations and other documentary evidence, was obtained.

The council's inquiry had included hearsay information from the debtor's former attorney and his secretary/wife concerning a letter prepared by the debtor and personally delivered by her to the judge. In the course of the Chief Judge's subsequent inquiry, the debtor and the judge, each of whom would have first-hand knowledge of such delivery, firmly denied that any such letter was written or delivered. No such document was found in the court's records, and both the debtor and the judge also firmly denied that any meetings or communications outside of the scheduled status meetings with a probation officer in attendance took place. The debtor further denied, under penalty of perjury,

that she had any conversation with her former attorney's secretary/wife in which the debtor stated either that she had delivered a letter to the judge or that "the letter had worked." Because the district judge, his staff, and the debtor all certified that the "letter" and "visit" mentioned in the hearsay account previously reported to the Judicial Council did not exist or happen, there is no basis for a finding that credible evidence exists of a letter or other "secret communication" having passed between the defendant/debtor and the district judge. There is similarly no basis for finding that there was any private meeting or discussion between them at any time.

Furthermore, with respect to the withdrawal of bankruptcy jurisdiction itself, two material points have been considered that were not addressed before the Judicial Council. The first relates to the district judge's reason for withdrawal of the bankruptcy reference. In a supplemental statement the district judge wrote that he had been made aware that the defendant/debtor's pre-sentence report had been unlawfully filed and/or referred to in Bankruptcy Court and in state court proceedings. In response to the Chief Judge's inquiry, he stated that he withdrew the bankruptcy reference in light of that knowledge. Withdrawal for the purpose of preventing further violations of confidentiality and conducting contempt proceedings constitutes, at the least, an "arguably legitimate basis" for such

action.

Second, the district judge himself recognized the questionable nature of his intervention in the bankruptcy case and, pursuant to the court's internal procedures, asked another district judge to review the record. Following the voluntary transfer of the bankruptcy case to a disinterested judge in his district for independent review, that judge granted a motion to return the case to bankruptcy court. This transfer occurred several months before the matter was argued in the Court of Appeals. For reasons that are not clear, the appellate panel apparently was unaware that at the time of oral argument on the propriety of withdrawal of the bankruptcy reference, the case had long since been returned to Bankruptcy Court and closed by the assigned bankruptcy judge.

Having considered all of the evidence in this matter, it is apparent that complainant's factual allegations of an inappropriate personal relationship, and the Judicial Council's subsequent concern about secret communications having occurred between the district judge and the defendant/debtor, are not reasonably in dispute within the meaning of 28 U.S.C. § 352(a). Furthermore, the unlawful filing of and references to a confidential pre-sentence report in defendant/debtor's bankruptcy proceedings constituted a legitimate basis for the district judge's initial assumption of jurisdiction in the bankruptcy case,

sufficient to preclude a finding of judicial misconduct.

Accordingly, for the reasons expressed herein, the complaint is dismissed.

COMPLAINT DISMISSED.

William M. Schroeder
Chief Judge

EXHIBIT H

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

1179

Cite as 425 F.3d 1179 (9th Cir. 2005)

they may have or discover claims against the other which are unknown or unanticipated by them. Nevertheless, the Parties hereby expressly waive all rights they may have with respect to such unknown claims or damages.

DHX further represents and warrants that it is the sole owner of all of the respective claims hereby released by it and agrees to hold harmless and indemnify all parties released herein from and against all liability, damage, costs and expense, including attorneys fees, as a result of any claim asserted or brought, whether litigation is commenced or not, by any person or entity who claims an interest in the released claims.

The Parties acknowledge and agree that any rule of interpretation, to the effect that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Agreement.

This Agreement shall be construed according to and governed by English law. Further, in any action to enforce the terms of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees, experts' fees and costs in connection with such action.

This Agreement constitutes the entire agreement between Parties pertaining to the subject matter hereof, and may be modified only by a written agreement signed by all Parties hereto. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

The signatures below further represent that they have authority to execute this release on behalf of the respective parties.

Date: 3/15/04 DHX, Inc.
BY: /s/
Its: President

Date: 16/3/04 AGF M.A.T., S.A.
By: /s/
P. Warren / Allianz Marine & Aviation
Its: Authorized Agent

Date: 16/3/04 Allianz AGF MAT, Ltd.

By: /s/
P. Warren / Allianz Marine & Aviation
Its: Authorized Agent

APPROVED:

Date: March 15, 2004 /s/
DAVID E.R. WOOLLEY

Date: GIBSON ROBB & LINDH LLP
G. GEOFFREY ROBB

Counsel

David E.R. Woolley, Los Angeles, California, for plaintiff-appellant-cross-appellee.

G. Geoffrey Robb, Gibson Robb & Lindh LLP, San Francisco, California, for defendant-appellee-cross-appellant.



In re COMPLAINT OF JUDICIAL MISCONDUCT.

No. 03-89037.

Judicial Council of the Ninth Circuit.

Sept. 29, 2005.

Background: Misconduct complaint was filed against a district judge. After the Chief Judge dismissed the complaint, complainant petitioned for review.

Holdings: The Judicial Council of the Ninth Circuit held that:

- (1) judge did not commit misconduct by ordering female probationer to appear before himself personally, and
(2) adequate corrective action was taken in response to any inappropriate conduct occurring when district judge withdrew reference in female probationer's bankruptcy proceeding and stayed eviction proceedings against the probationer.

Affirmed.

Ezra, Chief District Judge, filed opinion concurring in part and dissenting in part.

Kozinski, Circuit Judge, filed dissenting opinion.

Winmill, District Judge, filed dissenting opinion.

that are detrimental to the fair administration of justice. 28 U.S.C.A. § 372.

Before: ALARCÓN, KOZINSKI, KLEINFELD, McKEOWN and W. FLETCHER, Circuit Judges, and EZRA, LEVI, McNAMEE, STRAND and WINMILL, District Judges.

ORDER

A misconduct complaint was filed against a district judge of this circuit pursuant to 28 U.S.C. § 372(c) (now 28 U.S.C. § 351(a)) in February 2003. The Chief Judge entered an Order and Memorandum dismissing the complaint on July 14, 2003. The Judicial Council entered an Order vacating and remanding to the Chief Judge for further proceedings on December 18, 2003. After further investigation, the Chief Judge entered a Supplemental Order and Memorandum on November 4, 2004, again dismissing the complaint. Complainant has filed a petition for review of the Chief Judge's November 4th Order.

Complainant alleges that the district judge acted for inappropriate personal reasons in placing a "comely" female criminal defendant on probation "to himself, personally," and in withdrawing the reference in the bankruptcy proceeding of this probationer in order to "benefit an attractive female." The claim asserted in the complaint is that the judge "acted inappropriately to benefit an attractive female" and requested that "this matter be appropriately investigated to determine, among other things, the actual relationship" between the probationer and the judge. An investigation was made of the allegation.

[1] Complainant's suggestion of an inappropriate personal relationship with the probationer is entirely unfounded. This district judge has for many years directed criminal probationers, both male and female, to appear before him personally during their probationary period. In all cases, the district judge's personal meeting with the probationer is in the company of

1. Judges ¶11(2)

District judge did not commit misconduct by ordering female probationer to appear before himself personally, where judge had for many years directed both male and female probationers to appear before him personally during their probationary period, and in all cases, such personal meetings were in the company of the probation officer.

2. Judges ¶11(2)

Adequate corrective action was taken in response to any inappropriate conduct occurring when district judge withdrew reference in female probationer's bankruptcy proceeding and stayed eviction proceedings against the probationer based on information he allegedly learned from probationer during personal meeting with her in her criminal case; in response to Judicial Council's request for acknowledgment of "improper conduct" and a "pledge not to repeat it," judge acknowledged that he could have prevented misunderstandings by the parties if he had articulated reasons for his actions and that a similar situation would not occur in the future.

3. Judges ¶11(1)

Overall purpose of the Judicial Conduct and Disability Act is not to punish but to protect the judicial system and the public from further acts by a judicial officer

the probation officer. The probationer in this case was supervised in the same manner as other probationers supervised by this district judge, as described in an affidavit by her probation officer.¹

[2] The withdrawal of the reference by the district judge was dealt with by the court of appeals in *In re Canter*, 299 F.3d 1150 (9th Cir.2002). The court held that the district judge had abused his discretion in withdrawing the reference and in staying eviction proceedings against the probationer.

The district judge withdrew the reference on February 17, 2000, and stayed the eviction proceedings on February 29. While evaluating the misconduct complaint now before us, the Chief Judge learned that in July 2001 the district judge transferred the bankruptcy proceeding to another district judge to allow the second judge to evaluate the propriety of the withdrawal of the reference. The second judge re-referred the proceeding to the bankruptcy court in September 2001. The bankruptcy court granted the trustee's motion to abandon the estate's interest in the residence in question in January 2002.

The Judicial Council's remand to the Chief Judge indicated concern that the district judge may have received an improper ex parte letter from the probationer, and that the withdrawal of the reference may have been based on information contained in the alleged letter. After an investigation, the Chief Judge found that no such letter had been transmitted to, or received by, the district judge. We will not upset that factual finding. Further, any other impropriety in the district judge's receipt of information from the

probationer during his personal meeting with her, and in the withdrawal of the reference based on that information, has been the subject of appropriate corrective action by the court of appeals, which held that there had been an abuse of discretion, and by the district judge's own earlier action in transferring the bankruptcy proceeding to another district judge.

On May 18, 2005 the Judicial Council communicated with the district judge setting forth with specificity the nature of the inappropriate conduct that he had engaged in relating to the withdrawal of the reference of the Canter bankruptcy and setting forth the necessity for appropriate and sufficient corrective action including an acknowledgment by the district judge of his "improper conduct" and a "pledge not to repeat it."

In response to the Judicial Council's communication, the district judge, in a written response from his lawyers, advised that, "... he has carefully reflected upon the underlying events surrounding this proceeding. Upon reflection, he recognizes that if he had articulated his reasons for withdrawing the reference and re-imposing the stay, and his underlying concerns that led to those actions, misunderstandings by the parties could have been prevented. As would any dedicated jurist, he believes those types of misunderstandings should be avoided wherever possible, and he recognizes that it was unfortunate they occurred in this situation. He does not believe that any similar situation will occur in the future."

[3] We are satisfied that adequate corrective action has been taken such that

1. The court's supervision of a probationer does not involve additional parties or require adversary legal proceedings unless the probation officer asks the court to revoke probation because of an alleged violation of a condition of probation. The conditions of probation,

and, therefore, the supervision of a probationer, often focus on the probationer's living arrangements and economic circumstances. See 18 U.S.C. § 3563(a)(7), (b)(1), (b)(2), (b)(13), and (b)(19).

there will be no re-occurrence of any conduct that could be characterized as inappropriate. In response to the dissents, it is important to note that the overall purpose of the Judicial Conduct and Disability Act is not to punish but to protect the judicial system and the public from further acts by a judicial officer that are detrimental to the fair administration of justice. *See Rule 1 of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability* ("The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts."). As the procedural history of this complaint amply demonstrates, the Council has given close and diligent attention to this matter over a period of many months. Although the specific allegation raised by the complainant of judicial action in exchange for sexual favors is as straightforward as it is without merit, the additional issues that have been raised along the way in the course of the Council's inquiry are factually and legally complex. It is not surprising that all members of the Council do not agree on the correct resolution of these issues. Indeed, it is even a fair question whether these additional matters are properly within the scope of the complaint. Assuming that they are, the Council's finding of corrective action is a considered judgment, based on the circumstances of this case, that is specifically authorized by the rules that govern these proceedings. *See Rule 14(d)*. A finding of corrective action is not a cover up or a whitewash; it is a finding that adequate steps have been taken to assure that the conduct will not be repeated, whether or not the conduct crosses over the line from inappropriate conduct to misconduct.

Judge Kozinski suggests that the Council's goal is to avoid "hurting the feelings of the judge" who is the subject of the

complaint. Dissent at 13831. Not so. Our goal in these proceedings is to maintain the integrity of the judiciary, not to cater to hurt feelings. Compared to many of the decisions we are called upon to make, decisions on misconduct complaints do not make any special claim on a judge's intellectual integrity or personal courage. Any judge who feels that his or her impartiality might be affected because of a personal relationship to the judge about whom a complaint is made must recuse. Otherwise, it is our duty to consider the complaints objectively, without bias for or against the judge or the complainant. This is not an onerous duty, and we gladly accept it.

The Judicial Council finds that appropriate corrective action has been taken in this case and we therefore AFFIRM the November 4, 2004, Order of the Chief Judge dismissing the complaint.

EZRA, Chief District Judge, partially concurring and partially dissenting:

This complaint of misconduct is a complex and difficult one that it is exacerbated by the unproven, and as far as I can discern from the record unfounded, insinuation of licentious conduct on the part of the District Judge with respect to his dealings with Ms. Canter. With respect to those allegations of personal misconduct I join with both the majority and Judge Winmill's dissent and would affirm the Chief Judge's dismissal of that portion of the complaint as well as the allegations surrounding the so called letter.

However, in my view the record is insufficient with regard to the remainder of the complaint and I therefore regretfully cannot join the majority in affirming the Chief Judge's disposition of the remaining allegations. I would remand to the Chief Judge for further proceedings in order to allow the record to be more fully devel-

oped with respect to the bankruptcy stay ordered by the District Judge and the District Judge's motivation behind it.

I wish to make it clear that by this partial dissent I am not suggesting a finding of misconduct should be made. It is my view that given the serious nature of the allegations and the points made by both the majority and the two dissents that further fact finding with appropriate input from those implicated needs to be undertaken before a conclusion either way can be reached under our standard of review.

KOZINSKI, Circuit Judge, dissenting:

Passing judgment on our colleagues is a grave responsibility entrusted to us only recently. In the late 1970s, Congress became concerned that Article III judges were, effectively, beyond discipline because the impeachment process is so cumbersome that it's seldom used. *See* 126 *Cong. Rec.* S28091 (daily ed. Sept. 30, 1980) (statement of Sen. DeConcini). At the same time, Congress was aware of the adverse effects on judicial independence if federal judges could be disciplined by another branch of government using means short of impeachment. *See* S.Rep. No. 96-362, at 6 (1979), *reprinted in* 1980 U.S.C.C.A.N. 4315, 4320. The compromise reached was to authorize federal judges to discipline each other. *See* 126 *Cong. Rec.* S28091. We are unique among American judges in that we have no public members—lawyers or lay people—on our disciplinary boards. *See* American Judicature Society, *Appendix C: Commission Membership*, at <http://www.ajs.org/ethics/pdfs/Commission%20membership.pdf> (revised Aug. 2003) (listing disciplinary procedures for all state judges). Rather, judicial discipline is the responsibility of the circuit judicial councils—bodies comprised entire-

ly of Article III judges. *See* Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub.L. No. 96-458, 94 Stat.2035 (1980).

Disciplining our colleagues is a delicate and uncomfortable task, not merely because those accused of misconduct are often men and women we know and admire. It is also uncomfortable because we tend to empathize with the accused, whose conduct might not be all that different from what we have done—or been tempted to do—in a moment of weakness or thoughtlessness. And, of course, there is the nettlesome prospect of having to confront judges we've condemned when we see them at a judicial conference, committee meeting, judicial education program or some such event.

Pleasant or not, it's a responsibility we accept when we become members of the Judicial Council, and we must discharge it fully and fairly, without favor or rancor. If we don't live up to this responsibility, we may find that Congress—which does keep an eye on these matters, *see, e.g., Operations of Fed. Judicial Misconduct Statutes: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2001); *Report of the Nat'l Comm'n on Judicial Discipline and Removal* (1993)—will have given the job to somebody else, materially weakening the independence of the federal judiciary.

For the reasons I explain below, I believe the judge who is the subject of the complaint in this case has committed serious misconduct by abusing his judicial power. *See* Jeffrey M. Shaman, Steven Lubet & James J. Alfani, *Judicial Conduct and Ethics*, § 2.07, at 50 (3d ed.2000)[hereinafter Shaman, Lubet & Alfani] (“Judges abuse the power of the judicial office when they abbreviate or change critical aspects of the adversary process in ways that run counter to the scheme established by relevant constitutional and statutory law.”).

Some may disagree, as a majority of the Judicial Council apparently does. But I hope that, by the time I've finished writing, my reasons will be clear. To that end, I must do what the majority eschews—discuss the unusual and uncomfortable facts presented by the record before us.

Many of the facts are already public, having been discussed by the court of appeals in *In re Canter*, 299 F.3d 1150 (9th Cir.2002). *Canter* grew out of a bankruptcy case involving Deborah Canter who, at the time, was undergoing a messy divorce from her husband Gary. During their married life, the couple had lived in a house on Highland Avenue in Los Angeles; the house was owned by Gary's parents, who transferred title to the Canter Family Trust in 1997. Gary paid rent while he and Deborah were living there. When the couple separated in 1999, Gary moved out, leaving Deborah in possession; the rent payments stopped.

The Trust brought an unlawful-detainer action against Deborah seeking eviction and back rent, and the case was set for trial on October 26, 1999. Twenty-four minutes before trial was to start, Deborah filed a bankruptcy petition, which automatically stayed the unlawful-detainer case. See 11 U.S.C. § 362. Three months later, on January 26, 2000, the bankruptcy court lifted the automatic stay on a motion filed by the Trust. Deborah, represented by attorney Andrew Smyth, did not file an opposition. Thereafter, the Trust and Deborah—again represented by counsel—signed a stipulation. Based on that stipulation, the state unlawful-detainer court on February 7, 2000, ordered Deborah to vacate the Highland Avenue premises.

At that point, lightning struck. Without notice, without warning, without giving the Trust an opportunity to oppose, without so much as a motion, the district judge who is now the subject of this disciplinary complaint withdrew the case from the bank-

ruptcy court. Twelve days later, the same judge entered a second order, enjoining the state-court judgment evicting Deborah. Like the withdrawal order, the injunction was not preceded by the usual processes to which we are accustomed in American courts, such as a petition from the party seeking the relief or a response from the opposing side. In fact, no one knew why the district judge had done what he did—the order gave no reasons, cited no authority, made no reference to a motion or other petition, imposed no bond, balanced no equities. The two orders were a raw exercise of judicial power, the net effect of which was to let Deborah Canter live in the Highland Avenue property rent-free. Just how raw this exercise of power was became clear—if it was not already—when the Trust twice asked the judge to lift the stay, and was twice met by summary denials.

The so-called hearing on the second of these motions gives a pretty good flavor of the judge's attitude in this matter. The motion (and an unrelated motion) were argued together on June 18, 2001—after Deborah Canter had occupied the property for some 15 months past the eviction judgment. Deborah was present (apparently *pro se*), but said nothing of substance. After counsel for the Trust soliloquized for about a page of transcript, we find the following unilluminating exchange:

THE COURT: Defendants' motion to dismiss is denied, and the motion for lifting of the stay is denied—I'm sorry. The motion to dismiss is granted with ten days to amend.

MR. KATZ: And the motion to lift the stay is denied?

THE COURT: Denied; that's right.

MR. KATZ: May I ask the reasons, your Honor?

THE COURT: Just because I said it, Counsel.

I could stop right here and have no trouble concluding that the judge committed misconduct. It is wrong and highly abusive for a judge to exercise his power without the normal procedures and trappings of the adversary system—a motion, an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is—and is seen to be—based on law, not the judge's caprice. The district judge surely had the *power* to enjoin enforcement of the state-court eviction judgment once he assumed jurisdiction over the bankruptcy case, but he could legitimately exercise that power only if he had sufficient legal cause to do so. Here, the judge gave no indication of why he did what he did, and stonewalled all the Trust's efforts to find out.

Nor is there anything in the record that would suggest a legal basis for the judge's action. Canter might have appealed the bankruptcy court's order lifting the stay, but she didn't. She might also have filed a motion asking the district court to withdraw the reference and enjoin the state-court judgment. Had she done so, we could have gleaned from her motion some legal theory supporting the injunction. But Canter didn't do that either, so we're left in the dark as to what legal basis the judge might have had for enjoining the state's lawful processes. Judicial action taken without any arguable legal basis—and without giving notice and an opportunity to be heard to the party adversely affected—is far worse than simple error or abuse of discretion; it's an abuse of judicial power that is "prejudicial to the effective and expeditious administration of the business of the courts." See 28 U.S.C.

§ 351(a); Shaman, Lubet & Alfani, *supra*, § 2.02, at 37 ("Serious legal error is more likely to amount to misconduct than a minor mistake. The sort of evaluation that measures the seriousness of legal error is admittedly somewhat subjective, but the courts seem to agree that legal error is egregious when judges deny individuals their basic or fundamental procedural rights."); *In re Quirk*, 705 So.2d 172, 178 (La.1997) ("A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct." (citing Jeffrey M. Shaman, *Judicial Ethics*, 2 *Geo. J. Legal Ethics* 1, 9 (1988))).

But, of course, there's more. Federal district judges don't withdraw the reference in bankruptcy cases for no reason, and they don't enjoin state-court judgments *sua sponte* unless they have some information about the case that persuades them to do so. Because the district judge had no prior involvement in the bankruptcy case, and no motion was filed challenging the propriety of the bankruptcy court's order lifting the automatic stay, we can infer that the judge learned about the case some other way. And, sure enough, Deborah Canter was no stranger to the district judge. At about the time she was involved in her divorce proceedings with Gary, Deborah was also the defendant in a criminal case where she was charged with false statements in violation of 18 U.S.C. § 1001, and loan fraud in violation of 18 U.S.C. § 1014. That case was pending before this district judge and he had placed Deborah on probation after she pled guilty to four counts.

When this complaint was before the Judicial Council on a prior occasion, we wrote the district judge and asked him whether the bankruptcy case was assigned to him by random assignment (a process known

as the "wheel") or in some other fashion. We also inquired as to his reasons for staying the state-court proceedings. This is what he said:

There is no wheel for the purpose of withdrawing the reference in a bankruptcy matter.⁽¹⁾ I felt it was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. *In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents. She was still living in the house with her 8 year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so it could not be adequately presented to the state court. Counsel for her husband had asked the Probation Officer to release Mrs. Cantor's [sic] probation report so it would be used in the divorce proceedings. I denied that request upon the recommendation of the Probation Officer.*

...

I have no exact memory of any specific conversation with Mrs. Canter concerning the withdrawal of the reference in

the bankruptcy matter. But what I can re-construct from the records I have in the criminal case is that *at a 120 day meeting with Mrs. Canter in connection with her performance of community service advised me that there was an unlawful detainer action pending in the Municipal Court to evict her from the property in which she and her minor daughter were living that was nominally owned by the senior Canters but was given to them when she married her then estranged husband.*

I have that recollection because shortly after that meeting and my withdrawal of the reference in the bankruptcy case Mrs. Canter's lawyer in the criminal matter filed an application for an order to show cause to find counsel for Gary Canter in the matrimonial matter and counsel for Alan Canter (Gary's father) in the bankruptcy matter in contempt for filing a copy of Mrs. Canter's confidential probation report against her privacy interest in both courts, matrimonial and bankruptcy. After a hearing on the order to show cause it was discharged by stipulation of counsel to withdraw the probation reports although I never learned how the probation report got into the hands of counsel in the matrimonial or bankruptcy matter in the first instance. (Emphasis added.)

The district judge's response confirms what common sense suggests: His actions in sua sponte seizing control of the bankruptcy case and enjoining the state-court judgment were not random events; they were taken in direct response to communications he had with Deborah Canter—the

1. The district judge is correct, strictly speaking, in saying that "[t]here is no wheel for the purpose of withdrawing the reference in a bankruptcy matter," but only insofar as it applies to sua sponte withdrawals—withdrawals by the district court without a motion. According to the clerk of the district court, if a party files a motion seeking withdrawal of

the reference, the case is assigned randomly according to the "wheel." Sua sponte withdrawals are very rare, so rare in fact that the district court clerk only "recalled one other instance of such withdrawal, so long ago that she could not remember the name of the judge, but she believed it was a judge who has long since retired."

bankruptcy debtor—during the course of supervising her criminal probation. As the judge admits, he formed certain impressions about the state-court proceedings based on Canter's representations to him, and concluded that possession of the Highland Avenue property should be "finalized" during the course of the matrimonial proceedings, so he enjoined the unlawful-detainer judgment.² In addition, he believed—again based entirely on what Canter told him—that "her counsel had abandoned her interest so it could not be adequately presented to the state court." The judge also suggested that maintaining her in possession of the Highland Avenue property would "help [her] rehabilitation."

The judge's explanation does not provide a lawful basis for his actions. He cites no statute, regulation or caselaw that authorized him, even arguably, to enjoin the state-court judgment. His belief that the debtor was badly served by her lawyer in the state-court proceedings, even if it were based on anything more than the debtor's unilateral complaint, provides no authority for exercising federal power under the Bankruptcy Act to interfere with the state-court judgment.³ Nor does the judge's belief that the debtor's rehabilitation would be helped if she remained in the Highland Avenue property provide a law-

ful basis for the injunction. We so ruled in our previous order:

The debtor, represented by her counsel, had stipulated to a judgment requiring her to vacate the premises, and the unlawful detainer court had entered the judgment. The district judge acted based on his belief that the dispute over possession of the property should be "finalized" in the divorce proceeding rather than the unlawful detainer proceeding, because "it appeared to ... [him] that her counsel had abandoned her interest so it could not be adequately presented to the state court." However, we are not aware of any authority for a bankruptcy court to determine whether parties in state court proceedings were adequately represented by their counsel. Nor are we aware of any authority allowing the district court to allocate jurisdiction between two state courts dealing with related subject matter.

That the district judge believed his actions would help his probationer's rehabilitation is of no consequence. A judge may not use his authority in one case to help a party in an unrelated case. Exercise of judicial power in the absence of any arguably legitimate basis can amount to misconduct.

2. There is cause to doubt the district judge's explanation. See pp. 1196–97 *infra*. For present purposes, however, I accept it at face value.

3. As noted by the court of appeals in *In re Canter*, injunctions under the bankruptcy power may only be issued to protect the integrity of the bankruptcy estate:

In staying enforcement of the municipal court judgment, the district court was acting pursuant to its powers under 11 U.S.C. § 105(a). Section 105(a) authorizes the district court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11]." *Wells v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506 (9th Cir.2002). Section 105(a) "contemplates injunctive relief in precisely

those instances where parties are pursuing actions pending in other courts that threaten the integrity of a bankrupt's estate." *In re Baptist Med. Ctr. of N.Y.*, 80 B.R. 637, 641 (Bankr.E.D.N.Y.1987) (citations and internal quotation marks omitted).

In re Canter, 299 F.3d at 1155 (footnote omitted). There is plainly no authority to issue an injunction pursuant to section 105(a) for the purpose of providing the debtor a warm place to live at the expense of the creditors. Indeed, Congress has provided that a federal court may not enjoin a state-court judgment, unless specifically authorized by Congress or in aid of its jurisdiction. See 28 U.S.C. § 2283. The district judge's injunction was, thus, not merely unauthorized, it was unlawful.

Judicial Council Order (Dec. 18, 2003) at 5-6 (alterations in original). (For ease of reference, I attach a copy of our earlier order as an Appendix.)

The judge's response, moreover, adds a further dimension to his misconduct: His orders were not merely lacking in lawful authority, they were based on *ex parte* communications from the debtor for whose benefit those orders were entered. *See Shaman, Lubet & Alfini, supra*, § 5.01, at 160 ("At the very least, participation in *ex parte* communications will expose the judge to one-sided argumentation. . . . At worst, [it] is an invitation to improper influence if not outright corruption."⁴) By his own admission, the judge seized the case from the bankruptcy court so he could enter an injunction that would allow the debtor to remain in the Highland Avenue property. He did so based on information given to him by the debtor during the course of the criminal proceedings when the trustees and their lawyers were absent. In our earlier order we also ruled that this conduct was improper:

The district judge's explanation confirms what complainant alleges and the evi-

dence suggests: The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information he obtained *ex parte* from an individual who benefitted directly from that order.

It is well established that a judge may not exercise judicial power based on secret communications from one of the parties to the dispute. *United States v. Thompson*, 827 F.2d 1254, 1258-59 (9th Cir.1987). The district judge did not, either before or after his ruling, disclose to the parties that this *ex parte* communication had taken place, its substance or the fact that it formed the basis of his ruling.

While parties do not have a due process right to the random assignment of cases, a judge may not assign a case in order to affect its outcome. *See Cruz v. Abate*, 812 F.2d 571, 574 (9th Cir.1987). The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction.

Judicial Council Order (Dec. 18, 2003) at 4-5.⁵

4. "*Ex parte* communications are those that involve fewer than all of the parties who are legally entitled to be present during the discussion of any matter." *Id.* § 5.01, at 159.
5. The majority claims that "it is . . . a fair question whether these additional matters [other than the allegation of sexual impropriety] are properly within the scope of the complaint." Maj. at 1182. Fairness, like beauty, must be in the eye of the beholder. Our earlier order, remanding the case to the Chief Judge, dealt exclusively with these "additional matters." *Were we just whistling in the wind?* The Judicial Council has already construed the complaint as encompassing claims beyond sexual impropriety. It is unseemly for my colleagues to now call that considered judgment into question, and do so in a throw-away line with no explanation whatsoever. In any event, the suggestion that the complaint in this case was limited to "judicial

action in exchange for sexual favors," *id.*, is preposterous. While the complaint makes reference to Canter as "an attractive female," there is no reference to sexual favors, nor to any quid pro quo. *See* n. 14 *infra*. Complainant clearly suggests that the judge may have been influenced by the debtor's appearance, but he expressly leaves open the nature of their relationship—a matter he suggests be investigated. The gravamen of the complaint is that the judge acted "inappropriately," a term that includes judicial acts based on *ex parte* communications and the related misconduct that is amply demonstrated by this record. Our duty is to read the complaint fully and fairly, construing the words the complainant actually uses rather than rewriting the complaint so it reads more narrowly than actually written. The standard the majority uses to construe the complaint here is very different from the standard we apply in normal civil litigation. *See, e.g., United States*

Before remanding the case to the Chief Judge, we ordered a limited investigation into the allegations of the complaint. This investigation was conducted, at the direction of the Judicial Council, by a staff person who called various individuals by telephone. This investigation uncovered evidence that there may have been further communications between the debtor and the district judge concerning her eviction. Among the individuals called by our staff was attorney Andrew Smyth, who represented Deborah Canter in the bankruptcy proceedings and also, apparently, in the state-court unlawful-detainer action. This is a summary of that conversation:

Mr. Smyth said that when Deborah Canter filed in bankruptcy, she was being threatened with eviction by her in-laws and going through a nasty divorce. He was also aware that she was on probation and had regular appearances before [the district judge]. The Canter Family Trust moved for relief from the automatic stay in order to pursue its unlawful detainer action in state court, and Mr. Smyth stipulated to an order. He speculated that Ms. Canter may have lost some trust in him after that, but said that he believed that all of her defenses could best be raised in the state court action. He said he was surprised when [the district judge] withdrew the bankruptcy reference and reimposed the stay. At the time he had no idea why [the judge] had done so. He recalls that when the parties questioned [the judge] in court, [the judge] said "Because I said so." Mr. Smyth said that even at the time of the Court of Appeals argument, he and Mr. Katz were still speculating on the reason for [the judge's] action. Mr. Smyth said

that he had "absolutely zero evidence" of any improper relationship between [the judge] and Ms. Canter, but was "suspicious" because Ms. Canter was a "cute girl" who projected a "waif" persona that was appealing. At the time he thought that perhaps [the judge] had become aware of her divorce and imminent eviction in the course of one of her probation visits.

Mr. Smyth then said that he had only become aware of the "real" reason for the withdrawal sometime after the Court of Appeals opinion. He explained that his wife and legal secretary Michelle, whom he described as a Korean emigre unfamiliar with the habits of American judges, told him that one day Ms. Canter had come into the office crying about her circumstances, and that Michelle had offered to help her to compose a letter to [the judge] and told her to go see him. Michelle did "ghostwrite" a letter for Ms. Canter explaining how her husband's family was picking on her and how she was being victimized in the divorce. I asked Mr. Smyth whether he knew if Ms. Canter actually delivered such a letter to [the judge], so he put his wife on the phone. She said that Ms. Canter told her that she had taken the letter in to [the judge]. It was Michelle's understanding that Ms. Canter delivered the letter to [the judge] personally and had some brief discussion with him. Ms. Canter told Michelle that the letter had "worked." I asked Michelle when this delivery took place, and she said she believed it was a day or two before [the judge] withdrew the reference.

v. LSL Biotechnologies, 379 F.3d 672, 683 (9th Cir.2004) ("[F]ederal complaints are generally construed liberally . . ."); *Miranda v. Clark County*, 319 F.3d 465, 471 (9th Cir. 2003) (en banc); *Harmon v. Billings Bench*

Water Users Ass'n, 765 F.2d 1464, 1467 (9th Cir.1985). I see no justification for applying a different standard here just because the respondent is a federal judge, and the majority offers none.

In our order remanding the case to the Chief Judge, we noted proof that the judge had withdrawn the reference and stayed the eviction "in response to a direct plea for help from the debtor," Judicial Council Order (Dec. 18, 2003) at 4, and suggested that the matter "be investigated further," *id.*

The Chief Judge, on remand, obtained denials of any such communication from the judge and from Deborah Canter. Based on these denials, the Chief Judge concluded that "there is no basis for a finding that credible evidence exists of a letter or other 'secret communication' having passed between the defendant/debtor and the district judge. There is similarly no basis for finding that there was any private meeting or discussion between them at any time." Chief Judge Order (Nov. 4, 2004) at 5.

The majority declines to "upset that factual finding," maj. at 1181, but the Chief Judge is not a trier of fact, and she did not conduct an evidentiary hearing. Her authority is limited to determining whether there is credible evidence of misconduct, and she may dismiss the complaint only if credible evidence is entirely lacking. *See* 9th Cir. Misconduct R. 4. That the judge accused of receiving a secret communication and the party who allegedly made the

communication both deny it does not negate the fact that we have contrary evidence—the statement of the secretary who claims to have ghostwritten the letter for Deborah Canter and also claims that Canter told her she had delivered the letter and that "[it] had 'worked.'"⁶

The Chief Judge did not contact the lawyer or his secretary and they did not retract the statements they had made to our investigator. Nor can I imagine why they would have lied about this in the first place, as it hardly reflects creditably on their own conduct. At the very least, then, we have a conflict in the evidence that only an adversary hearing can resolve. And an adversary hearing can only be held if the Chief Judge convenes an investigative committee pursuant to Ninth Circuit Misconduct Rule 4(e), which she declined to do.

But there is more here than merely the conflicting statements; there is the matter of timing: According to probation office records and the judge's own statement, Canter and the district judge had a probation review meeting in his chambers on January 24, 2000. That was the last such meeting before the district judge withdrew the reference on February 17 and entered his order enjoining the unlawful-detainer judgment on February 29.⁷ But, at the

6. The two denials are hardly as conclusive as the Chief Judge and the majority want to believe. The district judge made no statements to us at all. Rather, he answered some questions in a letter directed to his own lawyer and the lawyer then passed that information on to the Chief Judge. Neither the judge's statement nor, of course, that of his lawyer is under oath. *See also* pp. 1196–97 *infra* (questioning the veracity of other unsworn statements made to us by the district judge). As for Canter's statement, it is made under penalty of perjury but (as I note on p. 1191 below) says suspiciously more than it needs to. Moreover, the declarant had recently been convicted of felonies of deception. *See* Fed.R.Evid. 609(a)(2). She had also filed

five bankruptcy petitions in just over seven years, three of which were dismissed within two months of filing. This is considered evidence of bad faith use of the automatic stay to stall legal proceedings against her. *See In re Knight Jewelry*, 168 B.R. 199, 202–03 (Bankr. W.D.Mo.1994). When she filed the last of these petitions—the one that is at the heart of our complaint—she signed, also under penalty of perjury, a form required by Local Rule 1015–2, which purported to list all her past bankruptcy petitions, yet she neglected to list any of the four prior petitions on that form. *See* Bankr.C.D. Cal. R. 1015–2.

7. The next such meeting was on April 7, 2000.

time of the January 24 meeting, the bankruptcy court had not yet lifted the automatic stay—that didn't happen until two days later, on January 26. Nor did the state court enter its order of eviction—the one the district judge eventually enjoined—until two weeks later, on February 7.

How then did the district judge know about the state-court eviction order that he eventually enjoined? Once the bankruptcy court lifted its stay, it was no longer concerned with the unlawful-detainer action and there is nothing in the bankruptcy court file reflecting the subsequent eviction judgment. Yet, the district judge was familiar enough with Deborah Canter's situation—including the specific judgment entered in state court two weeks after her probation meeting—that he was able to quash it with cruise-missile accuracy: "Pending further proceedings in this Court the judgment of February 7, 2000, in the matter of *ALAN S. CANTER v. DEBORAH MARISTINA ROMANO* in Municipal Court No. 99U18116 is stayed." Dist. Ct. Order (Feb. 29, 2000).

Normally, of course, there would be a motion, with declarations and exhibits attached, that would leave no doubt about how the judge learned the information on which he based his decision. But the record here is entirely silent. One plausible inference—perhaps the most likely inference—is that some time after the January 24 probation meeting, Deborah Canter communicated with the judge privately—by letter, by telephone or in person—and advised him that an eviction order had been entered against her, and that she would have to move out unless he did something about it lickety-split. The letter, allegedly ghostwritten by Smyth's secretary and delivered by Canter to the district judge, would seem to fit the bill.

But there is still a bit more to this story. Deborah Canter's declaration, in which she

denies having written or delivered a letter to the judge, actually contains information not mentioned in the Chief Judge's order:

2. I was formerly represented by Andrew Smyth, Esq., in connection with bankruptcy proceedings. At one point in the proceedings I received a call at home from Mr. Smyth's wife and legal secretary, Michelle. She asked me to come in to the office to sign a declaration about an eviction action pending against me. I did so, and at Michelle's request I gave her \$50 for an attorney's messenger service to deliver the declaration to the court. Michelle did not specify the addressee, and I do not have a copy of the declaration.
3. Approximately one week later, while I was at home, my mother told me that Mr. Smyth's office was on the phone. Mr. Smyth said that an eviction stay order had been issued.

The district judge enjoined enforcement of the state-court judgment on February 29. Approximately a week earlier would have been February 22. What then was this "declaration about an eviction action pending against me" that Canter says Smyth's secretary had her sign and sent off "to the court" by messenger? It's hard to imagine it had anything to do with the unlawful-detainer proceedings, because those were concluded on February 7 with the entry of the eviction judgment. The only case Canter had pending at that time that in any way pertained to her eviction was the bankruptcy, and the only document filed around that time was a motion dated February 25, seeking conversion from Chapter 13 to Chapter 7. Neither that motion nor Canter's attached declaration makes any reference to the eviction.

Could the "declaration" to which Canter refers in her sworn statement to us actually be the letter that the lawyer's secretary described in her conversation with our in-

investigator? To be sure, the two accounts differ in material respects, but they also have much in common: a conversation between the secretary and Canter, a missive signed by Canter concerning the eviction that was then sent off to the court, an eventual happy result. Could it be that Deborah Canter did sign a letter as described by the secretary? Could Canter be worried that such a letter might turn up, and is she providing herself an out by volunteering information about a declaration so she might later claim she didn't know what she was signing? This could explain why Canter included otherwise extraneous information in a declaration whose only purpose was to deny that she had any private communications with the district judge.

There might well be an innocent explanation for all this, but these are not the kind of details that a careful review of the record should overlook. In light of the other evidence we have as to a secret communication between the debtor and the district judge, leading up to his otherwise inexplicable order enjoining the state-court judgment, I cannot agree that the absence

of such a communication has been conclusively established.

The majority, as did the Chief Judge before it, ignores these troubling issues and focuses instead on matters that are wholly irrelevant, such as the fact that the judge eventually transferred the case to another district judge, after suddenly developing doubts as to whether he had acted properly in seizing the case from the bankruptcy court. What the majority and the Chief Judge overlook is that the judge transferred the case *seventeen months* after he had removed it from the bankruptcy court, and just two days after the creditors had filed their mandamus petition with the court of appeals. Given that the district judge had developed no doubts whatsoever while maintaining the debtor in the Highland Avenue property for a year and a half, despite two motions by the Trust, this strikes me as a clumsy effort to avoid the inevitable dropping of the hammer by the court of appeals—an implicit acknowledgment of wrongdoing.⁸

Why does this matter, anyway? The district judge's misconduct occurred in

8. Worse, the Chief Judge suggests the fault really lies with the debtor's lawyers who hoodwinked the court of appeals by pressing on with the mandamus petition even though the district judge had corrected his own mistake: "For reasons that are not clear, the appellate panel apparently was unaware that at the time of oral argument on the propriety of withdrawal of the bankruptcy reference, the case had long since been returned to Bankruptcy Court and closed by the assigned bankruptcy judge." Chief Judge Order (Nov. 4, 2004) at 6.

This is untrue, unfair and beside the point. One need only listen to the tape of oral argument before the court of appeals—freely available from the clerk of that court—to learn that the court of appeals panel was fully apprised of these events. But this made no difference to the relief requested by the mandamus petitioners because neither this district judge, nor the second district judge (who did, indeed, determine—as has everyone else—that the first judge had no basis for withdraw-

ing the case from the bankruptcy court), bothered to vacate the order enjoining the state-court judgment. The case was thus returned to the bankruptcy court with the injunction intact, and the bankruptcy judge—being lower on the food chain than the district judge—reasonably felt he had no authority to vacate that order. At the time of oral argument in the court of appeals, in March 2002, counsel for the creditors represented that his clients continued to feel bound by the injunction, and reminded the court that "Ms. Canter has now lived in my client's house for three years, rent free." The debtor's counsel agreed that the district judge's order continued to "prevent any action against the debtor." Deborah Canter could not be dislodged from the Highland property until the court of appeals vacated the district court's order impeding the state-court eviction judgment.

The majority seems to be under the impression that the district judge's injunction was terminated in January 2002, when the bankruptcy court "granted the trustee's motion to

February 2000, when he seized the case from the bankruptcy court based on information whispered to him by the debtor *ex parte*, and then stayed her eviction without a stated reason and without first giving the parties aggrieved by the order a chance to argue against it. It occurred again when he denied their two motions for reconsideration with the imperious “Just because I said it, Counsel” as the only reason. *See* p. 1184 *supra*. Had he vacated his order at a later date, this might have mitigated the harm caused by his misconduct, though it could not have undone the misconduct itself. But he didn’t even do that much. With the help of another district judge hand-picked by him, the case was trundled back to the bankruptcy court with the order enjoining the state-court judgment intact, and so it remained until the court of appeals issued its mandamus. How or why this series of events serves as “corrective action” for the district judge’s misconduct, *see* maj. at 1181–82, is a mystery to me.⁹

Nor, of course, does the mandamus order of the court of appeals, which did find that the district judge had abused his discretion, count as corrective action. *See* maj. at 1181–82. The majority’s contrary suggestion does an injustice to the many other district judges who have been re-

abandon the estate’s interest in the residence in question.” Maj. at 1181. If that is what my colleagues are saying—and I can see no other point in mentioning that event—they are simply mistaken. Termination of the bankruptcy proceedings had no effect on the district court’s injunction and the creditors were still precluded from enforcing the state-court judgment, even though the debtor had abandoned any interest in the property, until the court of appeals vacated the injunction seven months later.

9. The Chief Judge also seems to say in her order that the judge’s actions were justified by the fact that a copy of the debtor’s presentence report had been improperly released

and relied upon in the bankruptcy proceedings. Chief Judge Order (Nov. 4, 2004) at 5. The majority doesn’t adopt this rationale and for good reason: It is manifestly untrue. The district-court docket in the bankruptcy case reflects no proceedings whatsoever related to the presentence report. In his written statement to us, the district judge admitted that a show-cause order *was* issued to deal with this issue, but in the criminal case. *See* p. 1186 *supra*. The docket in the criminal case confirms this. There was absolutely nothing about the improper release of the presentence report that justified withdrawing the reference in the bankruptcy case, much less the entry of an order enjoining the state-court unlawful-detainer judgment.

versed for abuse of discretion. When a court of appeals says that a district judge abused his discretion, this is a legal conclusion that connotes mere error—not wrongdoing. The court of appeals here carefully refrained from saying whether the district judge committed misconduct, mindful no doubt that such determinations are the province of this body. Merely reversing an erroneous judgment that is the product of misconduct does not undo the misconduct. If my colleagues need a clear-cut hypothetical to demonstrate this self-evident proposition, consider a judgment procured by a bribe. That the court of appeals reverses the judgment—which it would do in every instance where the bribe was brought to its attention—does not and cannot insulate the district judge from the consequences of his misconduct on the theory that the misconduct has somehow been cured. *See* Shaman, Lubet & Alfini, *supra*, § 2.02, at 36 (“In some instances . . . legal error may amount to judicial misconduct calling for sanctions ranging from admonishment to removal from office.”); accord *Oberholzer v. Comm’n on Judicial Performance*, 20 Cal.4th 371, 84 Cal. Rptr.2d 466, 975 P.2d 663, 679 (1999) (legal error “can constitute misconduct if it involves ‘bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose

other than the faithful discharge of judicial duty' " (citing cases)); *In re Quirk*, 705 So.2d at 178 ("egregious legal error, legal error motivated by bad faith, and a continuing pattern of legal error" can also constitute misconduct).

Finally, I find the district judge's slipper statement of contrition risible. As the majority notes, we wrote the district judge and offered to close the matter without further action, provided he acknowledge his "improper conduct" and "pledge not to repeat it." See maj. at 1181.¹⁰ This is consistent with the accepted practice of giving judges subject to a valid disciplinary complaint a chance to mitigate or correct their misconduct by an open acknowledgment of wrongdoing, an apology and a pledge to mend their ways. See, e.g., *In re Charges of Judicial Misconduct*, 404 F.3d 688, 700 (Judicial Council of the 2d Cir. 2005).

The district judge's response here falls far short of what I would consider corrective action. First of all, he fails to even acknowledge that he acted based on information he obtained from the party benefited by his orders, without disclosing this to the opposing parties or giving them an opportunity to correct any misstatements or exaggerations that may have been made to him in private. Our rules governing judicial misconduct proceedings use this precise example of conduct that is sanctionable: "Conduct prejudicial to the effective and expeditious administration of the business of the courts' . . . includes such things as . . . improperly engaging in discussions with lawyers or parties to

10. We also asked that the district judge tender an apology for his actions, a requirement the majority seems to have forgotten. Our letter said: "We believe that, in this case, the most appropriate corrective action would be for you to acknowledge your improper conduct, apologize for it and pledge not to repeat it."

cases in the absence of representatives of opposing parties, and other abuses of judicial office." 9th Cir. Misconduct R. 1(c); see also 28 U.S.C. § 351(a); Code of Conduct for United States Judges, Canon 3(A)(4).

Second, the judge withdrew the bankruptcy reference without any legal justification, for no reason other than to benefit the debtor by blocking her eviction. See *id.*, Canon 3(C)(1)(a) (judges should not participate in cases "in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which . . . the judge has a personal bias or prejudice concerning a party"); see also *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir.1987) ("While a defendant has no right to any particular procedure for the selection of the judge . . . he is entitled to have that decision made in a manner free from bias or the desire to influence the outcome of the proceedings.").

Third, he acted without notice, in direct contravention of Fed.R.Civ.P. 65(a)(1) which states in categorical terms, "No preliminary injunction shall be issued without notice to the adverse party."¹¹ Notice is also one of the bedrock principles of due process and would be required even without the direct command of Rule 65(a). See *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170-72, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Fourth, the district judge failed to heed the other explicit procedures applicable to

11. It is clear that once an automatic bankruptcy stay is lifted, as happened in this case, it may not be re-imposed. Rather, the judge may act—if at all—only by issuing an injunction pursuant to section 105(a) of the Bankruptcy Code, in which case he must follow the procedures applicable to preliminary injunctions under Fed.R.Civ.P. 65. See *In re Canter*, 299 F.3d at 1155 & n. 1.

the issuance of an injunction, such as the requirements of a bond and a clear statement of reasons, *see* Fed.R.Civ.P. 65(c), (d), all of which are designed to provide transparency for purposes of appellate review and otherwise protect the interests of the party against which an injunction is entered. This was *twice* pointed out to the judge by the creditors in their motions for reconsideration, with no effect whatsoever. A federal courtroom is not Sherwood Forest; a judge may not take property from one party and give it to another, except by following established rules of procedure. *See* Shaman, Lubet & Alfani, *supra*, § 2.07, at 50 (“Judges abuse the power of the judicial office when they abbreviate or change critical aspects of the adversary process . . . [and] have been disciplined for . . . issuing dispositive orders without making findings of fact or setting forth reasons as required by law . . .”).

Fifth, the district judge acted without even colorable legal authority. To this day, I am unaware of any conceivable legal basis the district judge might have had for enjoining the state court judgment and keeping the debtor in the Highland Avenue property at the expense of the Trust. *See* p. 1187 n. 3 *supra*. Throughout these lengthy proceedings, the judge has offered nothing at all to justify his actions—not a case, not a statute, not a bankruptcy treatise, not a law review article, not a student

note, not even a blawg. He’s said nothing that would suggest he was mistaken—perhaps badly mistaken—but nevertheless acting in good faith. By his silence, the district judge has implicitly acknowledged that his orders were a raw exercise of power, unsupported by any authority other than that of his commission. *See* Shaman, Lubet & Alfani, *supra*, § 2.02, at 38 (“Intentional refusals to follow the law are another manifestation of unfitness for judicial office.”). Congress has surely not made us the most powerful judges in the world so we can bestow thousands of dollars of bounties on our personal favorites whenever we feel like it.

Sixth, the district judge has failed to acknowledge the serious harm he caused the Trust through his improvident actions. Not only was it forced to host the debtor on its property rent-free for years—at a cost estimated by the court of appeals at \$35,000—but it also had to spend money on lawyers to bring two motions for reconsideration and a mandamus petition in the court of appeals. Bankruptcy lawyers don’t come cheap, and I’d be surprised if the legal costs associated with undoing the harm inflicted by the district judge didn’t run into the tens of thousands of dollars. *See* *Miss. Comm’n on Judicial Performance v. Perdue*, 853 So.2d 85, 91 (Miss. 2003) (party aggrieved by judge’s *ex parte* order incurred “attorneys fees in excess of \$13,000.00”).¹²

12. *Perdue* is a case remarkably like our own. The judge there granted a custody decree based on information provided to her *ex parte*. *Id.* at 92. Her order “stated no basis for jurisdiction,” *id.*, was entered “without a petition being filed,” *id.* at 91, and “there was no indication of any appearances, testimony, or evidence taken in the matter,” *id.* at 92. Later, “when presented with a golden opportunity to right the wrong, Judge Perdue refused to even discuss the [matter],” *id.*, referred the case to another court, “thereby keeping in effect” her *ex parte* order, *id.* at 93, and “attempt[ed] to divert . . . attention

from her actions” by placing the blame on the aggrieved party, *id.* at 96. The Mississippi Supreme Court found it “especially troublesome” that the judge “fail[ed] to acknowledge her wrongdoing, or even that she may have made a mistake.” *Id.* Based on these considerations, the court suspended the judge without pay for 30 days and assessed her the cost of the disciplinary proceedings. *Id.* at 98. The Mississippi Supreme Court’s thorough and thoughtful opinion in *Perdue* contrasts favorably with the Judicial Council’s summary order in our case.

Of all these things, the judge says nothing at all; he steadfastly refuses to admit any wrongdoing. What he seems to acknowledge—though it's hard to tell from his lawyer's guarded language—is that he should have communicated the reasons for his actions better, pretending that, had he done so, “misunderstandings by the parties could have been prevented.” This is patently absurd. The problem at the root of the district court's actions lay in the fact that he *had* no reasons—at least no legitimate reasons—for doing what he did. What could he possibly have said that might have avoided “misunderstandings” by the Trust? Would the trustees have been placated had the judge told them that he had chatted with Deborah Canter in their absence and that, based on that conversation, he was convinced they had given her a raw deal? Any attempt on the judge's part to explain would only have made it clear that his orders lacked legal authority and were based on *ex parte* communications. The judge's failure to explain was not a foible; it was part and parcel of a calculated effort to maintain the debtor in the Highland Avenue property rent-free for as long as possible, and elude what he doubtless feared would be the adverse personal consequences of such an admission.

Nor does the judge's statement contain a pledge not to repeat his wrongful conduct. What he says, with uncharacteristic coyness, is that “[h]e does not believe that any similar situation will occur in the future.” Perhaps he does not believe that any similar situation will occur because he doesn't expect to encounter a similar set of

facts; it is hardly a commitment to act differently in similar circumstances. It reflects poorly on this body that, after asking the district judge for a pledge, my colleagues settle for something as binding and precise as a weather forecast.¹³

Worse still, my colleagues turn a blind eye to evidence that the accused judge may have been less than forthright in his communications with the Judicial Council. Recall that his explanation for issuing the injunction was that he thought Canter was “contesting her right to occupancy [of the Highland property] in the divorce court,” and he “re-imposed the stay to allow the state matrimonial court to deal with her claim.” *See* p. 1186 *supra*. In its second motion to have the injunction lifted, the Trust informed the district judge that the matrimonial court *had* by then adjudicated the issue, and had concluded that Canter had no rights in the property. Attached to the motion was the order of the state divorce court, entered after a five-day trial, which included the following finding: “The court finds that neither Petitioner [n]or Respondent have any ownership interest in the residence located at . . . Highland Avenue, Los Angeles, California 90036, so therefore, there is no community property interest in said property under any theory of community property law.”

Had the judge been motivated, as he now claims, by the desire to maintain the status quo until ownership of the property was resolved by the matrimonial court, one would think he would have rescinded his order once he learned that the matrimonial court had resolved the issue against the

13. The fact that the judge does not speak to us directly, but in the third person through his lawyer, sheds further doubt on his sincerity. *Cf. In re Charges of Judicial Misconduct*, 404 F.3d at 691–92, 700 (complaints dismissed after judge writes his own letter of apology). I seriously doubt that many of my colleagues would be persuaded that a criminal defendant

has accepted responsibility for his misconduct based on a statement from his lawyer that the defendant does not believe such a situation will arise again in the future. It does not inspire confidence in the federal judiciary when we treat our own so much better than we treat everyone else.

debtor. But no—nothing of the sort. What he did do was to summarily deny the motion and refuse to give reasons. See p. 1184 *supra*. By leaving the injunction in place after the debtor had been found to have no rights in the property, the judge enabled her to live there rent-free for another two years—until the court of appeals finally vacated the order by writ of mandamus. This sequence of events makes it perfectly clear that the judge was far more concerned with giving Deborah Canter a free place to live than with preserving any rights she may have had under state law.

The fact of the matter is that the judge's conduct here caused real harm. It certainly harmed innocent creditors to the tune of \$50,000 or more. Worse, it harmed public confidence in the fair administration of justice in the courts of this circuit. The prohibition against *ex parte* communications, rules of procedure, principles of law—all of these are not trinkets that judges may discard whenever they become a nuisance. Rather, they are the mainstays of our judicial system, our guarantee to every litigant that we will administer justice, as our oath requires, "without respect to persons." 28 U.S.C. § 453.

"All of the foundations of judging—such as respect for the text of the law and precedent—reinforce the message of impartiality." M. Margaret McKeown, *Don't Shoot the Canons: Maintaining the Appearance of Propriety Standard*, 7 J.App. Prac. & Process 45, 53 (2005). When a judge acts in accordance with the rules of procedure, when he gives reasons for his orders, when he allows both sides equal and open access to him, when he follows the law, he ensures not merely that justice is done, but that it appears to have been done. When, on the other hand, a federal judge exercises the vast powers entrusted to him by Congress based on secret communications with one party, when he fails to give the opposing side an opportunity to

speak, when he refuses to give reasons for his actions, when he does not cite legal authority, when he stubbornly and laconically sticks to his guns despite repeated requests for reconsideration or an explanation, he inevitably gives rise to the suspicion that he acted for personal and improper reasons rather than according to the rule of law.

The complaint here brought this matter to our attention and plausibly suggested an inappropriate motive for the judge's actions. Complainant is surely not alone in his suspicions, as evidenced by this exchange in the argument before the court of appeals on the mandamus petition:

JUDGE THOMAS: But you didn't ask for a reimposition of the stay or the injunction, right?

MR. SMYTH: No. That is correct. I did not. It was a surprise he suddenly did.

JUDGE THOMAS: Surprised you. And you have no explanation as you stand here today of why he did it.

MR. SMYTH: No. Just a guess.

JUDGE THOMAS: And what's your guess?

MR. SMYTH: That he, one, he possibly felt my client was being ill served and that I so readily stipulated to lift the stay. He had had her as a client, not a client, a . . .

JUDGE THOMAS: Defendant.

MR. SMYTH: And she gives the kind of little girl lost, doesn't know what she's doing, she needs protection, everyone's picking on her, and I think he probably stepped in because his thought was that her lawyer wasn't doing a good [job], so I'll just preserve the status quo, let her have her stay. But again, I'm just trying to guess, you know counsel asked [the judge] why, and . . .

When opposing counsel was asked a similar question, his silence spoke more eloquently than any statement might have:

JUDGE RAWLINSON: Counsel what is your speculation as to why the Judge *sua sponte* lifted, reimposed the stay?

MR. KATZ: Judge Rawlinson, I would prefer not to answer that question.

A judge must not put himself in a position where the parties to the dispute suspect him of acting out of personal motives rather than according to law. By his unorthodox behavior in this case, the district judge did precisely that and I, for one, cannot say that these suspicions are unfounded.¹⁴

The majority claims that the issues raised by the dissenters "are factually and legally complex" and that it is therefore "not surprising that all members of the Council do not agree on the correct resolution of these issues." Maj. at 1182. Perhaps it's not surprising that we disagree, but I *do* find it surprising that I still don't know *why* we disagree, because the majority refuses to engage the issues. Com-

plexity of the issues does not excuse a tribunal from confronting them. I also find it surprising that, despite what the majority claims is its "close and diligent attention to this matter over a period of many months," *id.*, my colleagues can't even figure out whether the judge's conduct "crosses over the line from inappropriate conduct to misconduct," *id.* A Judicial Council order in a misconduct case is not a jury verdict; the accused judge and the public are entitled to a decision that resolves the issues presented, no matter how difficult or complex they may be. Unfortunately, the majority's exiguous order seems far more concerned with not hurting the feelings of the judge in question. But our first duty as members of the Judicial Council is not to spare the feelings of judges accused of misconduct. It is to maintain public confidence in the judiciary by ensuring that substantial allegations of misconduct are dealt with forthrightly and appropriately. This the majority has failed to do.

14. My colleagues are too quick to dismiss complainant's suggestion of an improper relationship between the district judge and the debtor as "entirely unfounded," maj. at 1180, or even "scurrilous," Winmill dissent at 1202. Here is what complainant says, after pointing out that he had conducted "a little district court docket research" and discovered that Deborah Canter had been placed on probation by the district judge:

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court [of appeals] discussed. What I mean to say is that it appears that [the district judge] acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and [the judge].

This is no different from what her own lawyer told the court of appeals, *see* p. 1197 *supra*, or our investigator, *see* p. 1189 *supra*. Unfortunately, the judge's otherwise inexplicable actions invite such speculation. Whether the judge acted out of a misplaced sense of chivalry toward what he saw as a damsel in distress or for some other reason, I don't know. What I do know is that he did not act for judicially appropriate reasons and this alone justifies complainant's suggestion that the judge may have "acted inappropriately." I am well aware of the numerous misconduct complaints by disgruntled litigants who claim that they lost because the judge had some secret relationship with the prevailing party. Such complaints are routinely—and properly—dismissed by the Chief Judge because the accused judges followed normal procedures and there is no evidence whatsoever to support the allegations. This case is quite different because the district judge did *not* follow normal procedures and thus forfeited the presumption of regularity that normally attaches to judicial actions.

We are all human and do things we have reason to regret later. The transgression here, however, was particularly egregious and protracted, and despite numerous opportunities to do so, the district judge has steadfastly refused to own up to it. I therefore cannot agree either with the Chief Judge's conclusion that no misconduct occurred or the majority's conclusion that there has been sufficient corrective action to justify dismissal of the complaint. Rather, I believe that serious misconduct has been clearly established¹⁵ and discipline must be imposed consisting of nothing less than a public reprimand and an order that the district judge compensate the Trust for the damage it suffered as a result of the judge's unlawful injunction.

I also believe that the aggrieved creditors are entitled to an apology from the judges of our circuit for the cost, grief and inconvenience they suffered in one of our courts because of the district judge's unprofessional behavior. The judge who committed the misconduct refuses to offer such an apology and it is therefore up to us. Because I cannot speak for the Judicial Council, a majority of whose members see far too little wrong with what the district judge here did, I offer mine.

**Appendix: Judicial Council
Order (Dec. 18, 2003)**

**JUDICIAL COUNCIL OF THE
NINTH CIRCUIT**

In re: COMPLAINT OF JUDICIAL
MISCONDUCT

No. 03-89037

ORDER

Before: ALARCÓN, KOZINSKI, THOMAS, McKEOWN and W. FLETCHER,

15. I reach this conclusion without taking into account the unresolved issue as to whether the debtor communicated with the judge via a secret letter after her January 24, 2000, probation review meeting. While I believe that

**Appendix: Judicial Council Order
(Dec. 18, 2003)—Continued**

Circuit Judges, and PATEL, HUFF, COUGHENOUR, HATTER and SHANSTROM, District Judges.

A complaint of judicial misconduct was filed against a district judge of this circuit pursuant to 28 U.S.C. § 351-64. Complainant, an attorney who was not involved in the matters alleged in the complaint, claims that the district judge committed misconduct in the handling of a bankruptcy matter, which has been the subject of an adverse ruling by the Court of Appeals. See *In re Canter*, 299 F.3d 1150 (9th Cir. 2002). Specifically, complainant alleges that the district judge acted improperly in withdrawing the reference from the bankruptcy court and then re-imposing the automatic stay that the bankruptcy court had vacated on the motion of certain creditors. Re-imposition of the stay precluded the creditors from enforcing an unlawful-detainer judgment that would have entitled them to immediate possession of premises occupied by the debtor. The Chief Judge dismissed the complaint, noting that "[a] complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case." Chief Judge Order at 2 (citing 28 U.S.C. § 352(b)(1)(a)(ii); 9th Cir. Misconduct R. 4(c)(1)).

While legal error alone will not amount to misconduct, the converse is not necessarily true: Misconduct can cause error. That a judge's ruling can be, or has been, subject to appellate review does not automatically insulate the judge's conduct from disciplinary proceedings. Jeffrey M. Shaman, Steven Lubet & James J. Alfini, *Ju-*

issue deserves further investigation for the reasons I explain above, I agree with Judge Winmill that misconduct has been established based on the public record and the judge's own admissions.

Appendix: Judicial Council Order
(Dec. 18, 2003)—Continued

dicial Conduct and Ethics § 2.02, at 36 (3d ed. 2000) (“In some instances . . . legal error may amount to judicial misconduct calling for sanctions . . .”). If the misconduct claimed consists of nothing more than the judge’s erroneous ruling, the complaint will be deemed to be “directly” related to the subject of the underlying proceeding, and must be dismissed summarily by the Chief Judge. However, where the complainant presents solid evidence that the judge’s ruling was the result of “conduct prejudicial to the effective and expeditious administration of the business of the courts,” 28 U.S.C. § 351(a), then such underlying conduct will not be deemed “directly” related to the merits of the ruling and the Chief Judge must make an initial determination whether it amounts to misconduct. In so doing, she must bear in mind that “[t]he purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges engage in conduct that does not meet the standards expected of federal judicial officers.” 9th Cir. Misconduct R. 1(a).

Complainant alleges, and the public record supports these allegations, that the district judge withdrew the reference from the bankruptcy court and re-imposed the stay without a motion from any party. The district judge gave no explanation for his actions, despite repeated inquiries from the aggrieved creditors. At the time of the bankruptcy proceeding, the debtor was on probation in a criminal case presided over by the district judge. The district judge had placed the debtor-defendant under his personal supervision, which means that he met with her and the probation officer personally at 120-day intervals. Probation office records indicate that there had been a meeting between the debtor, the probation officer and the district judge

Appendix: Judicial Council Order
(Dec. 18, 2003)—Continued

less than a month before the judge withdrew the case from the bankruptcy court. In response to an inquiry from our council, the debtor’s bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor “a day or two before . . . [the district judge] withdrew the reference,” and the next time they saw each other, the debtor told her “the letter had ‘worked.’” Though this information is based on hearsay and should be investigated further, it suggests the district judge may have withdrawn the reference in response to a direct plea for help from the debtor.

In response to our inquiry, the district judge gives the following explanation:

I felt . . . [the bankruptcy case] was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband’s parents. She was still living in the house with her 8 year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so it could not be adequately presented to the state court . . .

....

Appendix: Judicial Council Order

(Dec. 18, 2003)—Continued

I have no exact memory of any specific conversation with ... [the debtor] concerning the withdrawal of the reference in the bankruptcy matter. But what I can re-construct from the records I have in the criminal case is that at a 120 day meeting with ... [the debtor] in connection with her performance of community service[, she] advised me that there was an unlawful detainer action pending in the Municipal Court to evict her from the property in which she and her minor daughter were living that was nominally owned by ... [the creditors] but was given to them when she married her then estranged husband.

The district judge's explanation confirms what complainant alleges and the evidence suggests: The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information he obtained ex parte from an individual who benefitted directly from that order.

It is well established that a judge may not exercise judicial power based on secret communications from one of the parties to the dispute. *United States v. Thompson*, 827 F.2d 1254, 1258–59 (9th Cir.1987). The district judge did not, either before or after his ruling, disclose to the parties that this ex parte communication had taken place, its substance or the fact that it formed the basis of his ruling.

While parties do not have a due process right to the random assignment of cases, a judge may not assign a case in order to affect its outcome. *See Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir.1987). The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction. The debtor, represented by her counsel, had stipulated to a

Appendix: Judicial Council Order

(Dec. 18, 2003)—Continued

judgment requiring her to vacate the premises, and the unlawful-detainer court had entered the judgment. The district judge acted based on his belief that the dispute over possession of the property should be "finalized" in the divorce proceeding rather than the unlawful-detainer proceeding, because "it appeared to ... [him] that her counsel had abandoned her interest so it could not be adequately presented to the state court." However, we are not aware of any authority for a bankruptcy court to determine whether parties in state court proceedings were adequately represented by their counsel. Nor are we aware of any authority allowing the district court to allocate jurisdiction between two state courts dealing with related subject matter.

That the district judge believed his actions would help his probationer's rehabilitation is of no consequence. A judge may not use his authority in one case to help a party in an unrelated case. Exercise of judicial power in the absence of any arguably legitimate basis can amount to misconduct.

The line between abuse of discretion and misconduct is not always clear. It depends, rather, on the balancing of a variety of factors. *See Shaman, supra*, § 2.02. We need not decide whether that line was crossed in this case. We hold only that the Chief Judge erred in dismissing the complaint as frivolous or unsubstantiated; it is plainly neither. We therefore vacate the Chief Judge's dismissal order and remand to the Chief Judge for further proceedings consistent with our order.

Judges HUFF, COUGHENOUR, HATTER and SHANSTROM would affirm the order of dismissal.

WINMILL, District Judge, dissenting:

I agree with the majority opinion that we should affirm the Chief Judge's finding that the allegations of an inappropriate personal relationship are baseless. Indeed, the charges are not only baseless, but scurrilous and contemptible.

There remains, however, persuasive evidence of misconduct that has not been addressed by either the Chief Judge or the majority. The majority approaches this issue by finding that if any misconduct has been committed, it was corrected by (1) the finding in *Canter* that the district judge committed an abuse of discretion, *In re Canter*, 299 F.3d 1150, 1152 (9th Cir. 2002); (2) the district judge's referral of the case to another judge who ultimately sent the case back to the bankruptcy court, and (3) the district judge's apology.

I disagree with both the methodology of this approach and its conclusions. It is impossible to determine if misconduct has been corrected until the misconduct is precisely identified. Once the misconduct is identified in this case, it becomes clear that it has never been corrected.

The analysis must begin by asking whether there is misconduct. The complaint alleges that the district judge committed misconduct by enjoining the eviction of Ms. Canter on the basis of ex parte information without giving anyone notice or a chance to respond. The record supports this charge. In letters to the Council, the district judge himself explains that on the basis of ex parte information he received from Ms. Canter, he decided to benefit her by enjoining a state court judgment evicting her from the home in which she was residing. Ms. Canter did not own that residence, and the district judge gave the owners no notice and no opportunity to be heard. By staying the eviction, the district judge allowed Ms. Canter to occu-

py "the property rent-free for almost three years, resulting in a \$35,000 loss of rental income." *Canter*, 299 F.3d at 1154.

Dispensing an ex parte favor without notice or an opportunity to be heard is "conduct prejudicial to the effective . . . administration of the business of the courts." See 28 U.S.C. § 351(a); see also *Rule 14(f) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability*. This phrase includes "improperly engaging in discussions with . . . parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office." *Id.* at *Rule 1(c)*. The district judge's conduct appears to fall precisely within this definition. His conduct also appears to violate Canon 3(a)(4) of the Code of Conduct for United States Judges, which directs judges to accord to the parties a "full right to be heard according to the law."

Of course, the Canons are only guidelines, and so not all violations of the Canons amount to misconduct. *In re Charge of Judicial Misconduct*, 62 F.3d 320 (9th Cir.1995). However, dispensing an ex parte favor, without giving anyone notice or an opportunity to be heard, goes beyond a disregard for guidelines, and strikes at the very heart of due process. It is not merely "prejudicial" but is outright destructive "to the effective administration of the business of the courts."

Once the misconduct is identified in this way, the three corrective actions identified by the majority can be seen in a different light. First, the finding in *Canter* that the district judge abused his discretion is a resolution of an appellant's legal claim, not an admonishment of a judge's conduct. Indeed, *Canter* never addressed in any way the misconduct issue before us.

Second, the district judge's referral to another judge for review did not occur until seventeen months had passed from the date the stay of eviction was entered. This action did nothing to correct the original misconduct of staying the eviction based upon an ex parte communication and without notice or an opportunity to be heard.

Finally, while it is commendable that the district judge apologized for failing to explain his actions, that apology misses the mark. The misconduct is not the failure to explain, but the granting of an ex parte favor without giving anyone notice or a chance to respond. The district judge has never apologized for that. Because the district judge's apology fails to address the misconduct, it cannot be deemed corrective action.

Judge Kozinski's dissent reveals in much more detail the powerful and persuasive evidence of misconduct in this case. Ultimately, however, I cannot join his dissent because the district judge has had no opportunity to provide a defense. While the district judge submitted letters in response to questions, he has never been given a full opportunity to present his defense.

Given that, we should invoke our authority under Rule 5 to "return the matter to the Chief Judge for further action," and direct the Chief Judge to use her authority under Rule 4(e) to appoint a Special Committee, constituted as provided in Rule 9, to resolve the issues raised here. Under Rule 11, the Special Committee has the authority to hold hearings where the district judge may put on a full defense, including witnesses if necessary.

The record in this case creates a stark appearance of misconduct. A further investigation is absolutely necessary, and therefore I cannot join in the majority opinion. At the same time, I cannot join

in Judge Kozinski's dissent: If we rush to judgment, we deny to the district judge the very due process that he is accused of denying to others. By allowing the district judge a formal opportunity to respond to these very serious charges, we preserve his rights and confront the misconduct issue directly. For these reasons, I have filed this separate dissent.



**CHARLOTTE'S OFFICE BOUTIQUE,
INC., Petitioner-Appellant,**

v.

**COMMISSIONER OF INTERNAL
REVENUE, Respondent-
Appellee.**

No. 04-71325.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 11, 2005.

Filed Oct. 7, 2005.

Background: Corporate taxpayer petitioned for review of IRS's determination that it was liable for unpaid employment taxes for its royalty payments to shareholder, as well as additions to tax. The Tax Court, 121 T.C. 89, 2003 WL 21783383, denied IRS's motion to dismiss, and, T.C. Memo. 2004-43, 2004 WL 350591, ruled in favor of IRS's proposed computation for additions to tax. Taxpayer appealed.

Holdings: The Court of Appeals, Callahan, Circuit Judge, held that:

- (1) Tax Court had jurisdiction over all years included in notice of determination, regardless of IRS's concession

EXHIBIT I

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

312 NORTH SPRING STREET

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
ANUEL L. REAL
JUDGE

TELEPHONE:
894-5267

August 10, 2004

Don Smaltz, Esq.
Spiegel, Liao & Kagay
3323 Crownview Drive
Rancho Palos Verdes, California 90275

Dear Don:

You've asked me to respond in writing to the following questions with the understanding that my response would be included in a brief you will be filing on my behalf with Chief Judge Schroeder.

1. Did I ever receive any letter, or written communication of any sort from Ms. Maristina Canter or anyone acting for her concerning my intervening on her behalf to prevent her eviction?

The answer is NO. I have never received any letter or other document from Ms. Canter or any one acting on her behalf concerning her eviction other than pleadings filed in the bankruptcy proceeding which are a matter of public record.

2. Did I ever meet alone with Ms. Maristina Canter?

The answer is NO. I have never met alone with Ms. Canter at any time. The only time I ever met her was either in the presence of the probation officer assigned to her case, and in open court when she was present with her counsel.

EXHIBIT I

Don Smaltz, Esq.
August 10, 2004
Page 2

3. Is it my recollection that the events regarding a January 24, 2000, chambers meeting with Ms. Canter and her probation officer as recited at paragraph 7 of Probation Officer Limbach's declaration dated August 5, 2004, are accurate?

The answer is YES. I believe the events he states there are accurate, and they accord with my memory.

Cordially,

A handwritten signature in black ink, appearing to read 'M. Real', with a vertical line extending downwards from the end of the signature.

Manuel L. Real
United States District Judge

EXHIBIT J

DECLARATION OF ERIC L. DOBBERTEEN

I, Eric L. Dobberteen, hereby declare and state as follows:

1. I am a member of the State Bar of California, and a partner in Arnold & Porter LLP, counsel for Judge Manuel L. Real.
2. On July 24, 2006, I personally interviewed Michelle Yi Smyth in the presence of my colleague, Stephen Miller at the law offices of Andrew Smyth.
3. Michelle Smyth told us that she is married to Andrew Smyth, the former attorney for Deborah Canter. Michelle works for Andrew Smyth as a secretary.
4. We asked Michelle Smyth questions about a purported "letter" to Judge Real that she had allegedly typed on behalf of Deborah Canter.
5. Ms. Smyth told us that she had not typed a letter to Judge Real but instead had typed a declaration containing the title "Declaration of Deborah Canter," on twenty-eight line pleading paper that is used for court filings and the declaration was approximately two pages long.
6. Ms. Smyth recalled the declaration was not addressed to or directed to Judge Real. She said she has no recollection what month or year she typed this declaration, and that she did not have a copy in her files.
7. Ms. Smyth stated that the substance of the declaration included: Ms. Canter was cheated out of sufficient money for alimony and child support; that her husband had cheated her by not placing her name on the title after he promised he would do so; that Ms. Canter had been a housewife for years and needed time to prepare herself for the work place; and that her eviction should be delayed so that she could attend school and become more qualified for employment.

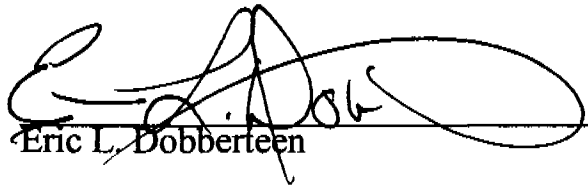
8. Ms. Smyth said Deborah Canter signed the document in her presence and that the declaration contained the usual “signed under penalty of perjury” statement found on court-filed declarations.

9. Ms. Smyth said that much later she told her husband of this event.

10. Mr. Miller and I also separately interviewed Mr. Andrew Smyth on July 24, 2006. During that interview Mr. Smyth told us that he did not believe there was any kind of improper relationship between Judge Real and Ms. Canter; that following Judge Real’s withdrawal of the bankruptcy court reference, Smyth had discussed with Ms. Canter her relationship with Judge Real; and that she had denied any impropriety.

11. Mr. Smyth also told us that he recalled a telephone conversation with Ms. Canter’s criminal attorney (Guy Iverson) during which call Mr. Iverson asked Mr. Smyth if he (Smyth) would file a pleading of some kind in the bankruptcy court regarding the use of the Pre-Sentence Report from Ms. Canter’s criminal case. Mr. Smyth also told us that Mr. Iverson mentioned in this same call that he (Iverson) intended to file something in the criminal case about the improper use of the criminal case in the civil cases involving Ms. Canter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed at Los Angeles, California on September 19, 2006.


Eric L. Dobberteen

**THE SUBCOMMITTEE ON COURTS, THE INTERNET
AND INTELLECTUAL PROPERTY**

APPENDIX OF EXHIBITS

**IN SUPPORT OF TESTIMONY OF
THE HONORABLE MANUEL L. REAL**

September 21, 2006

**BACKGROUND DOCUMENTS REGARDING JUDGE
REAL'S HANDLING OF DEBORAH CANTER'S
BANKRUPTCY**

EXHIBIT	DOCUMENT
1	Timeline
2	Motion of Alan Canter (Ms. Canter's father-in-law) requesting relief from the automatic stay in order to pursue eviction action against Ms. Canter (12/24/99)
3	Request for Judicial Notice attaching Ms. Canter's confidential Pre-Sentence Report (only the face page of the report is included with this exhibit) (12/30/99)
4	Judge Ahart's order granting motion for relief from the automatic stay permitting eviction action to go forward (1/26/00)
5	Judge Real's order withdrawing reference to Ms. Canter's bankruptcy case (1/27/00)
6	Judge Real's order staying the unlawful detainer action (2/29/00)
7	Ex parte application for an order to show cause regarding the improper filing of the Pre-Sentence Report (3/28/00)
8	Judge Real's order to show cause regarding the improper filing of the Pre-Sentence Report and setting a hearing (4/7/00)
9	Response of Lauren Nemiroff (Gary Canter's divorce lawyer) to order to show cause (4/17/00)
10	Transcript of hearing before Judge Real on order to show cause (4/17/00)
11	Status report and stipulation to take the continued hearing on the order to show cause off calendar (6/16/00)
12	Judge Real's order transferring Ms. Canter's bankruptcy case to Judge Carter (7/9/01)

**BACKGROUND DOCUMENTS REGARDING THE
DISMISSAL OF MR. YAGMAN'S COMPLAINT OF
JUDICIAL MISCONDUCT AGAINST JUDGE REAL**

EXHIBIT	DOCUMENT
13	Mr. Yagman's first complaint of judicial misconduct (No. 03-89037) (4/18/03)
14	Chief Judge Schroeder's order dismissing the complaint (7/14/03)
15	Mr. Yagman's petition for review of Chief Judge Schroeder's order dismissing the complaint (7/21/03)
16	Judge Kozinski's letter to Judge Real with questions regarding the complaint (9/10/03)
17	Judge Real's memorandum responding to Judge Kozinzki's letter (10/9/03)
18	Judicial Council's order vacating Chief Judge Schroeder's order of dismissal and remanding complaint for further investigation (12/18/03)
19	Judge Carter's letter to Chief Judge Schroeder regarding his handling of Deborah Canter's bankruptcy (1/24/04)
20	Don Smaltz (counsel for Judge Real) letter to Clerk of the Ninth Circuit requesting witness statements (1/27/04)
21	Chief Judge Schroeder's letter stating the Judicial Council had advised her that it "had no discovery materials" (7/26/04)
22	Judge Real's brief in response to the complaint with exhibits (8/13/04)
23	Chief Judge Schroeder's supplemental order dismissing the complaint (11/4/04)
24	Mr. Yagman's petition for review of the second order of dismissal (11/19/04)
25	Judge Kozinski's letter to Judge Real requesting an apology (5/18/04)

- 26 Don Smaltz's letter to Judge Kozinski responding to Judge Kozinski's 5/18/04 letter (6/17/05)**
- 27 Mr. Yagman's petition to the Judicial Conference for review of the Judicial Council's order affirming dismissal of his complaint (10/1/05)**
- 28 Memoranda prepared by Judicial Council's investigator regarding witness interviews conducted in the investigation of the complaint**
- Interview of Sherri Carter (8/28/03)**
 - Interviews of Randall Limbach and Noel Jones (10/14/03)**
 - Interviews of Sherri Carter and Chief Judge Marshall (11/04/03)**
 - Interviews of Andrew Smyth and Herbert Katz (11/11/03)**
 - Interview of Judge Carter, Cathy Catterson, Judge Ahart, Randall Limbach, Richard Diamond, Michael Lightfoot, Mark Brenner and Robert Brodney (11/20/03)**

EXHIBIT 1

TIMELINE

1998

8/24/98 **Deborah Canter pleads guilty**

1999

4/13/99 **Ms. Canter sentenced by Judge Real**

- 5 years probation
- 2,000 hours community service
- Ordered to report to Court every 120 days as directed by Probation Office

8/23/99 **Ms. Canter's first 120-day meeting with Judge Real and her Probation Officer**

10/26/99 **Ms. Canter files Chapter 13 bankruptcy**

12/24/99 **Alan Canter/Canter Family Trust file motion for relief from automatic stay (See Exhs. 2 and 3)**

- Attaches Ms. Canter's confidential Pre-Sentence Report
- Requests relief from stay to pursue unlawful detainer action to evict Ms. Canter

2000

- 1/24/00 Ms. Canter's second 120-day meeting with Judge Real and her Probation Officer**
- Ms. Canter informs Judge Real her confidential Pre-Sentence Report has been filed in her bankruptcy action
 - Judge Real advises her to report this to her Public Defender
- 1/26/00 Automatic stay lifted (See Exh. 4)**
- Allows the Canters to proceed with the unlawful detainer action
- 1/27/00 Judge Real signs order withdrawing bankruptcy reference entered 2/16/00 (See Exh. 5)**
- 2/7/00 Eviction order in unlawful detainer action**
- 2/24/00 Bankruptcy files transferred to Judge Real**
- Judge Real notes that the Pre-Sentence Report is attached to Request for Judicial Notice
 - Instructs secretary to contact state court regarding status of the unlawful detainer action

- Judge Real learns from state court docket that judgment has been entered in the unlawful detainer action

2/29/00 **Judge Real signs order staying 2/7/00 order in the Unlawful Detainer Action (See Exh. 6)**

- “Pending further proceedings in this Court the [2/7/00 order] is stayed.”

4/7/00 **Order to Show Cause issued to attorneys for the Canters regarding the violation of the confidentiality of Ms. Canter’s Pre-Sentence Report (See Exhs. 7 and 8)**

4/13/00 **Probation Office advised no further 120-day meetings while Judge Real has bankruptcy case**

4/17/00 **Hearing on Order to Show Cause (See Exh. 10)**

7/24/00 **Hearing on Canters’ motion to vacate 2/29/00 stay order**

- Motion is denied

2001

- 2/20/01** Judge Real denies Ms. Canter's motion to stay "State Court Determination of Property Issues"
- Notes "This Court cannot interfere with state court's jurisdiction over marital property."
- 5/01** Judge Real speaks with Judge Carter regarding transfer of Ms. Canter's bankruptcy action
- 6/18/01** Hearing on the Canters' second motion to vacate stay order and to dismiss Ms. Canter's adversary complaint
- Judge Real grants motion to dismiss adversary complaint with 10 days to amend; denies motion to vacate.
- 7/09/01** Judge Real signs order transferring bankruptcy action to Judge Carter (See Exh. 12)

2003

- 4/18/03** Yagman's First Complaint (See Exh. 13)
- Alleges Judge Real improperly withdrew bankruptcy "to benefit an attractive female"

- 7/14/03 Dismissal of First Complaint (See Exh. 14)**
- Chief Judge finds no evidence of improper relationship between Judge Real and Ms. Canter

- 7/21/03 Yagman's First Appeal (See Exh. 15)**
- Alleges no real investigation

- 12/18/03 Judicial Council's Remand (See Exh. 18)**
- Judicial Council conducts investigation
 - Raises issue of ex parte letter
 - Remands for further investigation

2004

- 11/4/04 Second Dismissal of First Complaint (See Exh. 23)**
- Chief Judge finds no "credible evidence" of ex parte letter

- 11/19/04 Yagman's Second Appeal (See Exh. 24)**
- Complains of "conflict in testimony"

2005

- 9/29/05 Judicial Council Affirms Dismissal**
- Majority agrees with factual finding that there was not an ex parte communication
 - Dissent argues there is "conflict in evidence" regarding the ex parte letter

10/05

Yagman's Second Complaint

- Alleges there was an ex parte letter
- Alleges Judge Real was untruthful in his responses regarding the first complaint

EXHIBIT 2

Attorney or Party Name, Address, Telephone & FAX Numbers, and Case No.

Mark E. Brenner, P.C.
Mark E. Brenner
7009 Owensmouth, No. 201
Canoga Park, Ca 91303

818/313-9966 Fax No.:
Bar No.: 106962

Individual appearing without counsel
 Attorney for: Creditor, Canter Family Trust

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re: Deborah Canter

Debtor(s).

FILED
CENTRAL DISTRICT OF CALIFORNIA
FEB 24 2000
CV 00-0185 R
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

10/20/1999 FILED** 14:15
LA99-49126AA
DEPTON: CANER, DEBORAH
JUDGE: A. Aharz
TRUSTEE:
CHAPTER: 13 MOTION

CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIF. DEPUTY: 767
RECEIPT NO: LA-062696 \$ 76.00

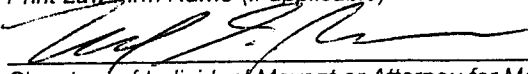
CHAPTER: 13
CASE NO.: LA99-49126AA
DATE: January 26, 1999
TIME: 2:30 pm
CTRM: 1375
FLOOR: 13th Floor

**NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY
UNDER 11 U.S.C. § 362 (with supporting declarations)
(MOVANT: Canter Family Trust)
(Real Property)**

- NOTICE IS HEREBY GIVEN to the Debtor(s) and Trustee (if any) ("Responding Parties"), their attorneys (if any), and other interested parties that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.
- Hearing Location: 255 East Temple Street, Los Angeles 411 West Fourth Street, Santa Ana
 21041 Burbank Boulevard., Woodland Hills 1415 State Street, Santa Barbara
 3420 Twelfth Street, Riverside
- a. This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing appear at the hearing of this Motion.
b. This Motion is being heard on SHORTENED NOTICE. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence may be filed and served: at the hearing at least ___ court days before the hearing.
(1) An Application for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
(2) An Application for Order Shortening Time was filed per Local Bankruptcy Rule 9075-1(2) and was granted by the Court.
(3) An Application for Order Shortening time has been filed and remains pending.
- You may contact the Bankruptcy Clerk's office to obtain a copy of an approved court form for use in preparing your response (*Optional Court Form 390*), or you may prepare your response using the format required by Local Bankruptcy Rule 1002-1.
- If you fail to file a written response to the Motion or fail to appear at the hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Dated: December 24, 1999

Mark E. Brenner
Print Name of Individual Movant or Attorney for Movant

Mark E. Brenner
Print Law Firm Name (if applicable)

Signature of Individual Movant or Attorney for Movant



In re Deborah Canter	(SHORT TITLE)	Debtor(s).	CHAPTER: 13 CASE NO.: LA99-49126-AA
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY
(MOVANT: Canter Family Trust)

1. **The Property at issue:** Movant moves for relief from the automatic stay with respect to following real property (the "Property"):

Street Address: 446 S. Highland Ave.
Apartment/Suite no.:
City, State, Zip Code: Los Angeles, CA 90036

Legal description or document recording number (including county of recording):

See attached continuation page.

2. **Case History:**

a. A voluntary An involuntary petition under Chapter 7 11 12 13 was filed on: 10/26/99

b. An Order of Conversion to Chapter 7 11 12 13 was entered on:

c. (If applicable) Plan was confirmed on (specify date):

d. (Optional) Other bankruptcy cases affecting this Property have been pending within the past two years. See Attached Declaration.

3. **Grounds for Relief from Stay:**

a. Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant the requested relief from stay as follows:

(1) Movant's interest in the Property is not adequately protected.

(a) Movant's interest in the collateral is not protected by an adequate equity cushion.

(b) The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.

(c) No proof of insurance re Movant's collateral has been provided to Movant, despite borrower(s)'s obligation to insure the collateral under the terms of Movant's contract with Debtor(s).

(d) Payments have not been made as required by an Adequate Protection Order previously granted in this case.

(2) (Chapter 12 or 13 cases only) Post-confirmation payments required by the confirmed plan have not been made.

(3) The bankruptcy case was filed in bad faith.

(4) For other cause for relief from stay, see attached continuation page.

b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

c. Pursuant to 11 U.S.C. § 362(d)(3), Debtor(s) has/have not satisfied the requirements of this section because of a failure to:

(1) Commence payments; or

(2) File a reasonable Plan of Reorganization within 90 days of the petition date.

4. Movant also seeks annulment of the stay to validate post-petition acts, as specified in the attached declaration(s).

(Continued on next page)

In re Deborah Canter	(SHORT TITLE) Debtor(s).	CHAPTER: 13 CASE NO.: LA99-49126-AA
-------------------------	---------------------------------	--

5. **Evidence in Support of Motion:** (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)
- a. Movant submits the attached Declaration(s) on the Court's approved forms (if applicable) to provide evidence in support of the Stay Motion pursuant to Local Bankruptcy Rules.
 - b. Movant submits the attached supplemental Declaration(s) under penalty of perjury, to provide additional admissible evidence in support of the Stay Motion.
 - c. Movant requests that the Court consider as admissions the statements made by Debtor(s) under penalty of perjury concerning Movant's claims and the Property set forth in Debtor(s)'s Schedules. Authenticated copies of the relevant portions of the Schedules are attached as Exhibit _____.
 - d. Other evidence (*specify*): Matters on which Judicial Notice is Requested (Deeds; Prior Bankruptcies of this debtor; Federal Criminal Judgment)
6. (*Optional*) A Memorandum of Points and Authorities is attached to this Motion.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following (*specify forms of relief requested*):

- 1. Relief from the Stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
- 2. Annulment of the stay to validate post-petition acts, as specified in the attached declarations.
- 3. Additional provisions requested:
 - a. That the Order be binding and effective in any bankruptcy case commenced by or against the above-named Debtor(s) for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.
 - b. That the 7-day waiting period prescribed by California Civil Code Section 2924g(d) be waived.
 - c. See Extraordinary Relief Attachment (*Use Optional Court Form 350ER*).
 - d. For additional relief requested, see attached continuation page.
- 4. If relief from stay is not granted, Movant respectfully requests the Court to order adequate protection.

Dated: December 24, 1999

Respectfully submitted,

Canter Family Trust

 Movant Name

Mark E. Brenner

 Firm Name of Attorney for Movant (if applicable)

By: 

 Signature

Name: Mark E. Brenner

 Typed Name of Individual Movant or Attorney for Movant

CONTINUATION PAGE TO MOTION FOR RELIEF FROM AUTOMATIC STAY

In re CANTER, DEBORAH Debtor.	CHAPTER <u>13</u> CASE NUMBER: LA99-49126-AA
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3. d This moving creditor requests a waiver of FBR 4001(a)(3)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY

1. THE CANTER FAMILY TRUST, AS OWNER OF THE REAL PROPERTY IN WHICH THE DEBTOR RESIDES WITHOUT PAYING RENT, IS A PARTY IN INTEREST.

The filing of the debtor's Chapter 13 case on October 26, 1999 acted as an automatic stay to the commencement or continuation of any action against the debtor. 11 U.S.C. 362(a). In this case the unlawful detainer proceeding filed by Alan Canter was stayed by virtue of the filing 24 minutes before. However, 11 U.S.C. 362(d) states the stay may be lifted:

"On the request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay-" Emphasis added.

In this instance, the real property listed in the debtor's schedules, 446 S. Highland Ave., Los Angeles, California, is owned by the Canter Family Trust. See Declaration of Alan Canter at ¶2. The trust, then, is a proper party to bring this motion because it is affected by the stay in so far as it may not commence, or continue an unlawful detainer for possession of the property. Brizendine v. Humbolt Express, 23 CBC2d 393, 118 BR 189 (N.D. Ga. 1990).

2. CAUSE EXISTS TO GRANT RELIEF FROM THE STAY TO CONTINUE WITH THE UNLAWFUL DETAINER PROCEEDINGS.

The Bankruptcy Code does not define the term "cause" in the

1 context of being a ground for relief from the automatic stay.
2 The determination of "cause" was intentionally left vague to
3 allow a bankruptcy court, as a court of equity, to decide "cause"
4 on a case-by-case basis. In re Texas State Optical, Inc. 199
5 B.R. 552 (Bnkruptcy E.D., Tex., 1995).

6 A. The Landlord of Real Property with a Month to Month
7 Tenancy Is Entitled to Relief.

8 At least one court has stated that a Landlord's desire to
9 terminate a holdover lease of a chapter 13 debtor was enough
10 "cause" to lift the automatic stay. In re Nasir 217 BR 995 (E.D.
11 Va 1997). From the declaration of Alan Canter it is known that
12 the debtor and her husband were paying rent on a monthly basis
13 for the property. Therefore, a month to month tenancy was
14 created. California Civil Code, Section 1946. Because a month to
15 month tenancy may be terminated at the will of the landlord, when
16 the monthly payments stopped in February, 1999, Alan Canter was
17 within his right to start eviction proceedings by giving notice.
18 California Civil Code, Section 1946. It is undisputed that at
19 the time of filing the debtor was not paying any rent, or paying
20 any expenses related to the real property. See Debtor's Schedule
21 J.

22 B. Cause Exists to Grant Relief from the Stay Because the
23 Chapter 13 Was Filed in Bad Faith.

24 This court has the power to grant relief from the stay for
25 cause if it finds that the debtor's case was commenced in bad
26 faith. In re Laguna Assocs. Ltd. Partership, 30 F.3d 734, 31 CBC
27

1 2d 545 (6th Cir., 1994). Traditionally, no one single factor
2 will trigger "bad faith" as a ground for the relief; many factors
3 are considered and a court will apply a totality of the
4 circumstances test. In re Cadwell's Corners Partnership, 174 B.R.
5 744 (Bkrtcy.N.D.Ill.1994).

6 In this case there are several factors to be considered by
7 the court in reaching the conclusion that the filing was made in
8 bad faith.

- 9 1. The debtor misrepresented her interest in the real
10 property.

11 The debtor listed the real property as an asset on Schedule
12 A. However she does not contribute to any of the payments on the
13 mortgage, the fire insurance, the property taxes, nor does her
14 name appear on the bank statements, or any document of title.
15 See Declaration of Alan Canter, attached.

16 As stated below, the debtor seems to be making the argument
17 that she has an "equitable" interest in the property based on an
18 oral representation that she would participate in the ownership
19 of the real property. However, an agreement to transfer an
20 interest, equitable or otherwise, in real property is
21 unenforceable unless evidenced by some writing. Here, there is
22 no writing showing that the debtor was to receive any interest in
23 this property.

24 As further evidence of the bad faith of the assertion that
25 she has an interest in the real property, in none of her four
26 previous filings bankruptcy filings did she list this property as
27

1 property of her estate. Why is it listed now? Simply stated: to
2 frustrate the unlawful detainer proceedings begun in state court.

3 2. The debtor is unable to fund a feasible plan
4 because she cannot work.

5 The debtor has stated under penalty of perjury that she
6 cannot work because of a neck injury. See her answer to
7 Interrogatory 18, attached to the Request for Judicial Notice
8 filed concurrently with this motion as **Exhibit L** Although she
9 listed on Schedule I that she has been working for her brother
10 part time, she does not think that this will continue. See
11 Transcript of 341(a) hearing at page 9, lines 16 to 24 attached
12 to the Request for Judicial Notice as **Exhibit K**. Without this
13 income or the ability to work, the debtor could not possibly fund
14 a feasible chapter 13 plan.

15 As one court put it, this debtor's filing is "unsupported by
16 credible assumptions and projections that offer some basis for
17 confidence that the plan could succeed." In re Pegasus Agency
18 Inc., 101 F.2d 882 (2nd Cir, 1996). As of the date of the
19 hearing on this motion 90 days will have passed since the filing
20 of this case and the debtor has not yet complied with the
21 requirement of 11 USC 362(d)(3) by filing a reasonable plan.

22 3. Based on Undisclosed Previous Filings, the Debtor
23 is Again Using the Chapter 13 Process for the Sole
24 Purpose of Frustrating a Legal Proceeding Against
25 her and not to Reorganize.

26 Debtor listed no bankruptcy cases on her Rule 104 statement.
27

1 However, under both of the social security numbers used, she has
2 filed three other chapter 13 cases since 1996 and one chapter 7
3 case in 1992. All of the chapter 13 cases were dismissed within
4 2 months of being filed. The cases are:

5	<u>Case No.</u>	<u>Date Filed</u>	<u>Date Dismissed</u>
6	92-38435 (ch. 7)	7/22/92	2/24/93
7	96-10153 (ch. 13)	1/3/96	2/29/96
8	96-16058 (ch. 13)	2/27/96	4/11/96
9	97-35894 (ch. 13)	7/7/97	7/29/97

10 One might expect that an honest, but unfortunate debtor, who
11 has used the Chapter 13 proceeding for its intended purpose,
12 would forget to list an old case number, or one of the 3 most
13 recent chapter 13 cases. But this debtor has failed to mention 4
14 cases, 3 of which were chapter 13 cases filed in the last 3
15 years.

16 Of great significance is the small period of time that
17 passed between the filing date and the dismissal date, less than
18 two months in each case. This fact suggests that the debtor uses
19 a chapter 13 proceeding, and the automatic stay, to stall or de-
20 rail legal proceedings against her. This fact is relevant in
21 determining "bad faith" for the purposes of relief from the
22 automatic stay. In re Knight Jewelry, 168 B.R. 199. (Bkrtcy.
23 W.D.Mo.1994) [Three repeat filings by debtor and related entity
24 that were part of series of bad faith delay tactics warranted
25 relief from automatic stay to take possession of premises, where
26 debtor was formed to use Bankruptcy Code's protection to avoid
27

1 payment of rent and eviction, and there was no intent to
2 reorganize]. See also In re Hundley, 103 B.R. 768, 770
3 (Bankr.E.D.Va.1989). [The court may examine three repeat filings
4 by this debtor and a related entity to determine good faith].

5 4. This Case Was a Last Minute Filing for the Sole
6 Purpose of Stopping the Unlawful Detainer
7 Proceeding.

8 As stated in the declaration of Alan Canter, this case was
9 filed just 24 minutes before a trial in an unlawful detainer case
10 was about to take place. Moreover, the debtor had asked for, and
11 was granted, a continuance of the unlawful detainer case prior to
12 the filing of this bankruptcy.

13 3 **THE DEBTOR HAS A LEASEHOLD INTEREST IN THE PROPERTY AND**
14 **THEREFORE NO EQUITY.**

15 The debtor claims to have an 50% ownership interest in the
16 real property which she obtained 1991. Exhibit K at page 3, line
17 11 and page 30, lines 25 and 26. However, she admits that there
18 is no written document which supports this contention. See
19 Exhibit K at page 26, lines 19 to 24. At the time of this
20 hearing she will not be able to produced any document to show
21 evidence of that interest to satisfy the Statute of Frauds.
22 California Civil Code, Sec. 1624. [The grant of an interest in
23 real property is not valid unless evidenced by a written
24 document].

25 Here, the debtor is not on the original deed executed in
26 1991, her name does not appear on a reconveyance deed signed in
27

1 1992, her name does not appear on the quitclaim deed signed and
2 filed in 1997, nor does she appear on the insurance, tax bill,
3 the mortgage statement which the moving party receives each
4 month, or any other document evidencing ownership.

5 It is extremely significant at this juncture to note that on
6 the prior bankruptcies filed by this debtor, the Highland Street
7 property is not listed as property owned by her. This evidence
8 impeaches her present position that she has an ownership interest
9 in the property, especially since 3 of the bankruptcies were
10 filed after she claims to have acquired the interest.

11 Based on the evidence before this court, the debtor's
12 interest appears to be consistent with only a possessory
13 interest, which, as property of the estate, might be enough to
14 invoke the automatic stay under 362 of the code, but it is not
15 necessarily equated with "equity" found in 362(d)(2)(A). In re
16 West Pine Construction Co., 80 BR 315, 322 (E.D. Pa, 1987) citing
17 In re Andorra Meat Market, 7 BR 744, 746 (E.D. Pa, 1980). A
18 landlord is still entitled to relief from the automatic stay if
19 his interest is not adequately protected. In re De Santis, 66
20 B.R. 998 (Bankr.E.D.Pa.1986); In re Richards Pontiac, Inc., 6
21 B.R. 773, 777 (Bankr.E.D.N.Y.1980).

22 4 **THE DEBTOR'S CREDIBILITY IS AT ISSUE.**

23 The debtor's capacity to be truthful is a factor which this
24 court should consider in granting relief from the stay. That
25 capacity is severely compromised in light of her recent
26 conviction in April, 1999 in federal court of filing false

27

28

1 statements and loan fraud.

2 In Case No. CR98-576-R the Honorable Manuel Real found the
3 debtor guilty of three counts of filing false information when
4 applying for a loan, including, *inter alia*, information about her
5 wages. According to the court documents, the debtor had filed a
6 false W-2 from OMG Industries which misrepresented her wages. In
7 the probation report, attached at page 8, paragraph 25, OMG was
8 suspected to be a sham entity and a brother was suspected as
9 posing as her superior.

10 Copies of the Judgment and the Pre-sentencing report are
11 attached to the Request for Judicial Notice as **Exhibit F**.

12 **5. CONCLUSION**

13 For the reasons stated above, relief from the stay should be
14 granted.

15 Dated:

Mark E. Brenner, P.C.

16

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by 

Mark E. Brenner, Esq.

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DECLARATION OF ALAN CANTER

IN SUPPORT OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY

ALAN CANTER declares:

6. I am one of the trustees of the Canter Family Trust which owns the real property located at 446 S. Highland Ave., Los Angeles, California (the "real property"). I have personal knowledge of the facts stated in this declaration and if called as a witness, could and would competently testify hereto.
7. On September 11, 1991 my wife Elizabeth and I purchased the real property. A true and correct copy of the deed we received is attached to the concurrently filed Request for Judicial Notice as **Exhibit G**. As part of the purchase and sale agreement we were to make a down payment of \$320,000 and obtain a new first deed on the property.
8. All of the funds with which the down payment was made were provided by my wife and me. No other individual made a deposit, or contributed to the down-payment.
9. Thereafter, my wife and I obtained a new first trust deed on the real property. My wife and I were the only obligors on the promissory note. Since the original purchase of the property it has been refinanced several times. Neither the name of my son nor that of the debtor has ever figured on any of the notes, trust deeds or statements. A true and correct copy of the present statement received from Washington Mutual is attached hereto as **Exhibit 1**.
10. After the escrow closed my wife and I rented the real property to my son and his wife, the debtor. There was no

1 lease agreement, only an oral promise on the part of my son
2 and the debtor to pay monthly rent. My son regularly paid
3 monthly rent in the amount of \$1,000.

4 11. In June, 1992 my wife and I refinanced the real property and
5 received a deed of reconveyance, a true and correct copy of
6 which is attached to the Request for Judicial Notice as
7 **Exhibit H**. The name of the debtor does not appear as a
8 grantee on that document.

9 12. On August 28, 1997 my wife and I transferred the real
10 property to an intervivos trust named the Canter Family
11 Trust (the "trust"). A true and correct copy of the
12 quitclaim deed is attached to the Request for Judicial
13 Notice as **Exhibit I**.

14 13. Since August 28, 1997 the trust has been the sole owner of
15 the real property listed by the debtor on schedule A of her
16 bankruptcy schedules. Since that time the trust has charged
17 the debtor and her husband, my son, Gary Canter, rent on the
18 property. At all times, up to and including February, 1999,
19 the rent was current.

20 14. On March 1, 1999 I did not receive payment of the monthly
21 rent. I have not received payment of the monthly rent since
22 the March rent became due.

23 15. I instructed my attorney, Robert Brodney, to file an
24 unlawful detainer to evict the debtor from the premises for
25 failure to pay rent. The complaint was filed on August 13,
26 1999. A true copy of which is attached as **Exhibit J** to the
27 Request for Judicial Notice.

28 16. The case was ultimately set for trial on October 26, 1999 at

1 8:30 a.m. in Municipal Court in Los Angeles. This chapter
2 13 petition was filed 24 minutes before the trial was to
3 begin.

4 17. At no time since I and my wife originally purchased the
5 property did either of us make any oral transfer of an
6 interest in the property to the debtor or to any other
7 individual.

8 18. At no time since I and my wife originally purchased the
9 property has either of us executed any document in writing
10 transferring and interest in the real property to the debtor
11 or to any other individual.

12 19. At no time since the trust acquired the real property as any
13 trustee executed any written document, or made any oral
14 representation to the debtor or to any other individual,
15 transferring an interest to her in the real property.

16 20. For each year since the property was originally acquired in
17 1991 either my wife and I or the trust has paid the real
18 property taxes on the property.

19 21. For each year since the property was originally acquired in
20 1991 either my wife and I or the trust has made the mortgage
21 payments on the real property.

22 22. For each year since the property was originally acquired in
23 1991 either my wife and I or the trust has made the fire
24 insurance premium payments on the real property.

25 23. At all times since 1991 the only persons who have possessed
26 a legal or equitable title to the property have been my
27 wife, myself and the Canter family trust.

28 I declare under penalty of perjury under the laws of the State of

1 California that the foregoing is true and correct. Executed on
2 December 24, 1999 at Los Angeles California.

3
4  A handwritten signature in cursive script that reads "Alan Canter". The signature is written in dark ink and is positioned above a solid horizontal line.

5 Alan Canter
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1
2 DECLARATION OF GARY CANTER IN SUPPORT
3 OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY.

4 GARY CANTER declares:

- 5 1. I am the husband of the debtor and have personal knowledge
6 of the facts stated in this declaration. If called as a
7 witness, I could and would competently testify hereto.
- 8 2. The debtor and I are currently separated. We lived together
9 at 446 S. Highland Ave., Los Angeles, California (the
10 "property") from September 25, 1991 until February 24, 1999
11 when we separated.
- 12 3. My father and mother purchased the house in 1991. Neither I
13 nor the debtor put any money towards the down payment of the
14 property.
- 15 4. At all times while we resided on the premises we paid rent
16 to my father, Alan Canter in the amount of \$1,000.
- 17 5. At no time have I ever had an interest in the property. At
18 no time have I ever seen or had possession of any document
19 purporting to grant to me or my wife any interest in the
20 property.

21 I declare under penalty of perjury that the preceding is
22 true and correct. Executed on December 24, 1999 at Los Angeles,
23 California.

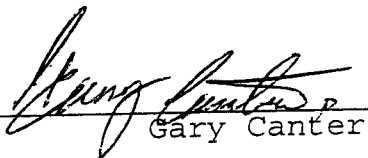
24
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26 Gary Canter
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EXHIBIT 1 TO POINTS AND AUTHORITIES-BANK STATEMENT

Washington Mutual

Please write your loan number on your check
Make check payable to Washington Mutual.

Alan S Center

Elizabeth Center

Loan Number
0016863987

Statement Date
December 2, 1999

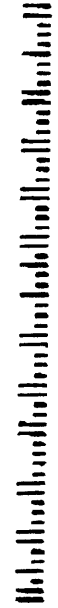
Next Payment Due Date
January 1, 2000

Total Amount Due
\$1,930.92

Please check here if change of address,
SSN# or telephone number is indicated on
the reverse of this form.

PMT OPTION \$
Please apply additional payments to:
Late Charge \$
Principal \$
Other \$

WASHINGTON MUTUAL
PO BOX 80800
LDS ANGELES CA 90080-0800



Total Amount Enclosed

000000 0000000 0000000 0016863987 0193092 0009655 0193092 7

Mark E. Brenner
7009 Owensmouth, No. 201
Canoga Park, CA 91303

Bar No.: 106962

UNITED STATES BANKRUPTCY COURT
Central **DISTRICT OF California**

In re: Deborah Canter)
) Case No. LA99-49126-AA
)
) Chapter 13
)
)
_____)

PROOF OF SERVICE BY MAIL

I, Ornella Torralba, declare that:

I am employed in the County of Los Angeles, California. My business address is:
7009 Owensmouth, No. 201, Canoga Park, California 91303

I am over the age of eighteen years and not a party to this cause.

On December 31, 1999, I served the Notice of Motion, Motion for Relief from Automatic Stay, Exhibits and Request for Judicial Notice in said cause by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Canoga Park, California, addressed as follows:

Deborah Canter
446 S. Highland
Los Angeles, Ca 90036

*Deborah Canter
P.O. Box 480400
Los Angeles CA 90048*

Andrew Smith, Esq.
4929 Wilshire Blvd., Ste. 988
Los Angeles, Ca 90010

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 31, 1999, at Canoga Park, California.



Ornella Torralba

EXHIBIT 3

FILED

99 DEC 30 PM 2:11

U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BY AS DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
FEB 24 2000
CV 00-01185
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

1 Mark E. Brenner, Cal Bar No. 106962
Attorney at Law
2 7009 Owensmouth, No. 201
Canoga Park, CA 91303

3 Telephone: 818.313.9966

4 Attorney for Creditor Alan Canter and
Canter Family Trust

5
6
7 UNITED STATES BANKRUPTCY COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 In re
10 Deborah M. Canter

CASE NO. ~~LA99-49126-AA~~
SACV 01-688 DOC
(Chapter 13)

11 REQUEST FOR JUDICIAL NOTICE
12 PURSUANT TO FEDERAL RULE OF
EVIDENCE 201

13 [Filed Concurrently with The
14 Canter Family Trust's Motion
for Relief from the
Automatic Stay]

15 Date: 1/26/2000
16 Time: 2:30 p.m.
17 Crtm: 1375

18
19 TO THE HONORABLE ALAN AHART, THE CHAPTER 13 TRUSTEE, EDWINA
20 DOWELL, THE DEBTOR, AND ALL PARTIES OF INTEREST:

21 Pursuant to Federal Rule of Evidence, 201 (b), (c) and (d), the
22 moving party requests mandatory and discretionary judicial notice of
the following:

- 23 1. California Civil Code, Sections 1624 and 1946. Attached as
24 Exhibit A;
25 2. Schedule J of the debtor in the instant case. Exhibit B;
26 3. The petitions and schedules of the prior bankruptcy cases filed
27 by the debtor: case numbers 92-38435 (ch. 7), 96-10153 (ch. 13),
28

Handwritten initials/signature

1 96-16058 (ch. 13), and 97-35894 (ch. 13). At the time of the
2 filing of this motion copies were not available. True and correct
3 copies will be obtained from the court archives and submitted
4 under separate cover as Exhibits C, D, and E respectively.

5 4. The Criminal Judgment and probation report in United States v.
6 Maristina Canter, Case No. 98-576-R . Exhibit F.

7 5. Documents filed with the county recorder of Los Angeles County as
8 follows.

9 a. Grant Deed of 9/11/91 Exhibit G
10 to Alan and Elizabeth
11 Canter on property
12 located at 446 S.
13 Highland, Los Angeles

14 b. Deed of Reconveyance Exhibit H
15 to Alan and Elizabeth
16 Canter of July 23,
17 1992 for 446 S.
18 Highland, Los Angeles

19 c. Quitclaim deed from Exhibit I
20 Alan and Elizabeth
21 Canter of September
22 22, 1997 to the Canter
23 Family Trust

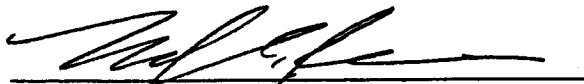
24 6. Unlawful detainer complaint in Canter v. Canter, Municipal Court
25 case No. 99U18116. Exhibit J.

26 7. Verified Transcript of debtor's 341a hearing held on December 10,
27 1999. Exhibit K.

28 8. Interrogatories to and Debtor's Answers to Interrogatories,
Exhibit L.

Dated: December 29, 1999

Respectfully submitted


Mark E. Brenner, Esq.
Attorney for Creditors Alan Canter and the
Canter Family Trust

REQUEST FOR JUDICIAL NOTICE -EXHIBIT A-CALIFORNIA CIVIL CODE
SECTIONS 1624 AND 1946

CALIFORNIA CIVIL CODE, SECTION 1624
(Emphasis is Added)

1624. (a) **The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:** (1) An agreement that by its terms is not to be performed within a year from the making thereof. (2) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794. (3) **An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged....**

CALIFORNIA CIVIL CODE, SECTION 1946

1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed to the other party. In addition, the lessee may give such notice by sending a copy by certified or registered mail addressed to the agent of the lessor to whom the lessee has paid the rent for the month prior to the date of such notice or by delivering a copy to the agent personally.

REQUEST FOR JUDICIAL NOTICE- EXHIBIT B- DEBTOR'S SCHEDULE J

In re Deborah M. Canter	Case No.: LA99-49126AA (If known)
Debtor.	

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home) \$ 0.00

Are real estate taxes included? Yes X No _____

Is property insurance included? Yes X No _____

Utilities:

Electricity and heating fuel	\$ _____
Water and sewer	\$ <u>300.00</u>
Telephone	\$ <u>100.00</u>
Other _____	\$ <u>0.00</u>

Home Maintenance (Repairs and Upkeep) \$ 120.00

Food \$ 500.00

Clothing \$ 50.00

Laundry and dry cleaning \$ 50.00

Medical and dental expenses \$ 50.00

Transportation (not including car payments) \$ 100.00

Recreation, clubs and entertainment, newspapers, magazines, etc. \$ 0.00

Charitable contributions \$ 0.00

Insurance (not deducted from wages or included in home mortgage payments): \$ 0.00

Homeowner's or renter's \$ _____

Life \$ 0.00

Health \$ 0.00

Auto \$ 0.00

Other _____ \$ 0.00

Taxes (not deducted from wages or included in home mortgage payments) \$ 0.00

(Specify) _____ \$ 0.00

Installment payments (In chapter 12 and 13 cases, do not list payments to be included in the

Auto \$ 0.00

Other _____ \$ 0.00

Other _____ \$ 0.00

Alimony, maintenance, and support paid to others \$ 0.00

Payments for support of additional dependents not living at your home \$ 0.00

Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ 0.00

Other _____ \$ 0.00

TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) \$ 1,270.00

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]
Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income \$ 2,520.00

B. Total projected monthly expenses \$ 1,270.00

C. Excess income (A minus B) \$ 1,250.00

D. Total amount to be paid into plan each MONTHLY \$ 677.00
(interval)

EX. D-PRESENTENCE REPORT

UNITED STATES OF AMERICA vs.

CR 98-576-R

Defendant MARISTINA CANTER

FILED
CLERK U.S. DISTRICT COURT

Soc Security #548-94-0669

T/N: DEBORAH MARISTINA ROMANO

Residence: 446 So. Highland Avenue
Los Angeles, CA 90036

APR 19 1999

Mailing: SAME

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person, on: APRIL 13, 1999

Month / Day / Year

COUNSEL:

 WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked if defendant desired to have counsel appointed by the Court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL Guy Iversen, Deputy Federal Public Defender

PLEA:

XX GUILTY, and the Court being satisfied that there is a factual basis for the plea.

 NOLO CONTENDERE

 NOT GUILTY

FINDING:

There being a finding of GUILTY, defendant has been convicted as charged of the offense(s) of:

False statements in violation of Title 18 United States Code Section 1001 as charged in counts 1, 9, and 14; Loan fraud in violation of Title 18 United States Code Section 1014 as charged in count 5 of the indictment.

JUDGMENT AND PROBATION/COMMITMENT ORDER:

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Imposition of sentence is suspended, and

IT IS FURTHER ADJUDGED that defendant is placed on probation for a term of five (5) years under the following terms and conditions: the defendant 1) shall comply with the rules and regulations of the U.S. Probation Office and General Order 318; 2) shall perform two thousand (2000) hours of community service, as directed by the Probation Officer; 3) shall report before the Court in person every 120 days as directed by the Probation Officer; 4) shall refrain from any unlawful use of a controlled substance, and shall submit to 1 drug test within 15 days of placement on probation and at least 2 periodic drug tests

-- GO TO PAGE TWO --

ENTER ON ICMS
APR 19 1999

WJA
Deputy Clerk

309

JUDGMENT AND PROBATION/COMMITMENT ORDER

thereafter as directed by the Probation Officer; 5) shall as directed provide to the Probation Officer an accurate financial statement with supporting documentation as to all sources and amounts of income and all expenses of the defendant, and in addition shall provide federal and state income tax returns as requested by the Probation Officer; 6) shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification without the prior written approval of the Probation Officer and further shall not use for any purpose or in any manner any name other than her true legal name.

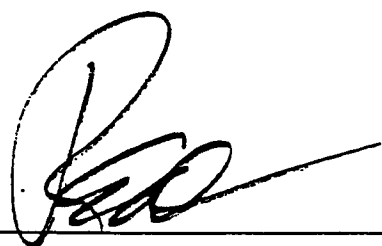
IT IS FURTHER ORDERED that all fines are waived including the costs of imprisonment of supervision as defendant is unable to pay.

IT IS FURTHER ORDERED that defendant pay a special assessment of \$200.00.

IT IS FURTHER ORDERED that the bond of the defendant is exonerated.

IT IS FURTHER ORDERED that any remaining counts are hereby dismissed as to this defendant.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.



Signed by: District Judge

MANUEL L. REAL

It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk of Court

Dated/Filed

April 16, 1999
Month / Day / Year

By

William Hoffrell, Deputy Clerk

REQUEST FOR JUDICIAL NOTICE- EXHIBIT F- JUDGMENT AND PROBATION
IN CRIMINAL CASE

UNITED STATES DISTRICT COURT
LOS ANGELES, CALIFORNIA
PRESENTENCE REPORT

COURT NAME: T/N: Deborah Maristina Romano
 CANTER, Maristina AKA(s): CANTER, Deborah
 ROMERO, Deborah
 ROMEN, Deborah
 DICTATION DATE
 October 27, 1998
 SCHED. SENT. DATE
 December 14, 1998

ADDRESS: 446 S. Highland Avenue
 Los Angeles, CA 90036
 (323) 935-2520
 LEGAL ADDRESS: Same
 DOCKET NO.: 98-00576
 CITIZENSHIP: United States

AGE 43	RACE White	SEX Female	BIRTH DATE 2-27-55	BIRTH PLACE Los Angeles, CA	EDUCATION 12 years
-----------	---------------	---------------	-----------------------	--------------------------------	-----------------------

MARITAL STATUS Married	DEPENDENTS 1 (Daughter)	SOCIAL SECURITY NO. 548-94-0669
---------------------------	----------------------------	------------------------------------

FBI NO. Not received	U.S. MARSHAL NO. 13650-112	OTHER IDENTIFYING NOS.: CA DL: N2384700 CII: None
-------------------------	-------------------------------	---

OFFENSE
 18 USC 1001: False Statements (Counts 1, 9 & 14 of 14-Count Indictment), Class D Felonies;
 18 USC 1014: Loan Fraud (Count 5), Class B Felony

PENALTY
 5 years pursuant to 18 USC 1001 [\$250,000 maximum fine pursuant to 18 USC 3571(b)(3) as to Counts 1, 9, & 14]; 30 years and/or \$1 million fine pursuant to 18 USC 1014 as to Count 5

CUSTODIAL STATUS Released 6-16-98 on \$50,000 Appearance Bond with affidavit of surety, no justification, and PSA supervision.	DATE OF ARREST June 16, 1998
---	---------------------------------

PLEA Guilty, 8-24-98 (Counts 1, 5; 9 & 14)	VERDICT
---	---------

DETAINEES/CHARGES PENDING.
 None

OTHER DEFENDANTS
 None

DATE OF NOTIFICATION August 25, 1998	DEFENSE COUNSEL: Guy Iverson (Federal Defender) 312 North Spring Street, Suite 1503 Los Angeles, CA 90012 (213) 894-2235
---	---

SENTENCING JUDGE HONORABLE MANUEL L. REAL	DATE PARTIES NOTIFIED November 3, 1998	PROBATION OFFICER USPO KELLER, Ext. 6024 SUSPO BARNES, Ext. 5576
	DISCLOSURE DATE 05 1998	

Prob. 2
 (Rev. 05/20/98)

**FOR CONFIDENTIALITY REASONS--ONLY PAGE ONE OF THE PRE-SENTENCE
REPORT IS ATTACHED**

REQUEST FOR JUDICIAL NOTICE- EXHIBIT G- GRANT DEED 9/11/91

91 1512838

RECORDING REQUESTED BY

Smithson

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA.

SEP 25 1991 AT 8 A.M.

Recorder's Office

FEE
\$5
C

ALAN and Elizabeth Carter
446 S. Highland Ave
Los Angeles, CA 90036

SPACE ABOVE THIS LINE FOR RECORDERS USE

DOCUMENTARY TRANSFER TAX IS

NOT A PUBLIC RECORD

Computed on full value of property
Or computed on full value less first and second
tranches remaining at time of sale

WELSHS ESCROW COMPANY

Charles W. Bush
Signature of Recorder or Agent authorizing fee. First name

Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CHARLES W. BUSH AND MARGEN BUSH, HUSBAND AND WIFE, AS
JOINT TENANTS

do hereby

GRANT TO ALAN CARTER AND ELIZABETH CARTER, HUSBAND AND WIFE, AS COMMUNITY
PROPERTY.

the real property in the CITY OF LOS ANGELES
State of California, described as:

County of LOS ANGELES

LOT 19 OF TRACT NO. 6388, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF
LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49
PAGE 52 AND 54 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Dated SEPTEMBER 11, 1991

Charles W. Bush
CHARLES W. BUSH

Margen Bush
MARGEN BUSH

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
I, *Don W. Bush*, before me,
Don W. Bush a Notary Public

know the said *Charles W. Bush and Margen Bush*
Charles W. Bush and Margen Bush

personally known to me
or proved to me on the basis of satisfactory evidence to be the persons
whose names are subscribed to the foregoing instrument and
acknowledged that they executed the same for the purposes and
intentions expressed therein.

Signature *Don W. Bush*
Don W. Bush
Name (Typed or Printed)



(This area for official record use)

REAL TAX WAIVER AS SHOWN ABOVE. 125193

REQUEST FOR JUDICIAL NOTICE- EXHIBIT H- Deed of Reconveyance

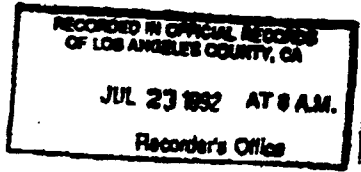
7/23/92

#4559
RECORDING REQUESTED BY:

92 1340763

Diane Ganley
Southland Title
ORD #140303-3
300 East Magnolia Blvd #600
Burbank, CA 91502
AND WHEN RECORDED MAIL TO:

Alan Canter
Elizabeth Canter
446 S. Highland Ave
Los Angeles, Cal. 90036
Loan No. 665875-0



DEED OF RECONVEYANCE

Whereas, the indebtedness secured by that certain Deed of Trust executed by

ALAN CANTER and ELIZABETH CANTER, husband and wife as Community Property.

to U.F. Service Corporation, A California corporation

as Trustee(s), dated September 19th, 1991, and recorded on September 25th,

1991, in the Office of the County Recorder of the County of Los Angeles,

State of California, Series Number 91-1512839, in Book _____, of

Official Records, at Page _____, has been paid, the Trustee of Record,

U. F. Service Corporation, a California Corporation

pursuant to the written request of the beneficiary, does hereby grant and reconvey,

without warranty express or implied as to the title, possession or encumbrance, to the

person or persons legally entitled thereto, all the right, title and interest derived

by the undersigned, pursuant to said Deed of Trust, in and to the real property

described therein, to which reference is made for a description of the same.

In Witness Whereof, the undersigned, as such Trustee, has executed this Deed

of Reconveyance this 12th day of June, 1992.

U.F. Service Corporation, a California Corporation
TRUSTEE

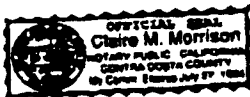
By *Rena Tipton*
RENA TIPTON-ASST. VICE PRESIDENT

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On June 12th, 1992, before me, CLAIRE M. MORRISON, a Notary Public in and for said State, personally appeared RENA TIPTON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Asst. Vice President of the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS My Hand and Official Seal.

Claire M. Morrison
Notary's Signature



140303-3

REQUEST FOR JUDICIAL NOTICE- EXHIBIT I- Quitclaim Deed 9/22/97

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

NINA MADDEN SABBAN, ESQ.
HOFFMAN, SABBAN & WATENMAKER
10880 Wilshire Boulevard, Suite 2200
Los Angeles, California 90024

MAIL TAX STATEMENTS TO:

Alan and Elizabeth Canter, Trustees
350 S. Beverly Dr. #350
Beverly Hills, CA 90212-4817

97 1465665

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
4:41 PM SEP 22 1997

FEE
\$7
Y

Space above this line for recorder's use

Quitclaim Deed

APN 5507-014-008

The undersigned grantors declare under penalty of perjury that the following is true and correct:

Documentary transfer tax is NONE

This conveyance transfers the grantors' interest into their Revocable Living Trust. R&T 11911

() Unincorporated area: (xx) City of Los Angeles, and

FOR NO CONSIDERATION, ALAN CANTER and ELIZABETH CANTER, HUSBAND AND WIFE, AS
COMMUNITY PROPERTY,

hereby REMISE, RELEASE AND QUITCLAIM to ALAN S. CANTER and ELIZABETH CANTER, TRUSTEES OF THE
CANTER FAMILY TRUST DATED AUGUST 28, 1997,

the following described real property in the city of Los Angeles, County of Los Angeles, State of California:

Lot 19 of Tract No. 6388, in the city of Los Angeles, in the County of Los Angeles, State of
California, as per map recorded in Book 69, Pages 53 and 54 of maps, in the office of the
County Recorder of said County.

(commonly known as 446 S. Highland Avenue, Los Angeles, CA 90036)

Dated: 8-28-97

Alan Canter
ALAN CANTER

Elizabeth Canter
ELIZABETH CANTER

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On August 28, 1997, before me Nina M. Sabban,
a Notary Public in and for said County and State personally appeared ALAN CANTER and ELIZABETH CANTER,
personally known to me -OR- proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

Signature Nina M. Sabban

NINA M. SABBAN
COMM. # 1046698
Notary Public - California
LOS ANGELES COUNTY
My Comm. Expires DEC 9, 1998



SUMMONS (CITACION JUDICIAL)

UNLAWFUL DETAINER—EVICTION
(PROCESO DE DESAHUCIO—EVICCION)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (Aviso a acusado)

DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CANTER

YOU ARE BEING SUED BY PLAINTIFF: (A Ud. le está demandando)

ALAN S. CANTER

You have **5 DAYS** after this summons is served on you to file a typewritten response at this court. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays.)

A letter or phone call will not protect you. Your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case; you may be evicted; and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de **5 DIAS** para presentar una respuesta escrita a máquina en esta corte. (Para calcular los cinco días, cuente el sábado y el domingo, pero no cuente ningún otro día feriado observado por la corte.)

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, le pueden obligar a desalojar su casa, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)
LOS ANGELES MUNICIPAL COURT - LOS ANGELES JUDICIAL DISTRICT
110 N. GRAND AVENUE
LOS ANGELES, CALIFORNIA 90012

CASE NUMBER: (Número del caso)

99U15116

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
ROBERT M. BRODNEY (SBN 110275)
1249 SOUTH DIAMOND BAR BLVD. #44
DIAMOND BAR, CALIFORNIA 91765 909.861.6601

(Must be answered in all cases) An unlawful detainer assistant (B&P §§8400-8415) did not did, for compensation, give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- c. Street address, city, and ZIP code:
- d. County of registration:

b. Telephone No.:

e. Registration No.:

Expires on (date):

DATE (Fecha):
AUG 13 1999

By _____ Clerk (Actuaria)
_____ Deputy (Delegada)

CYNTHIA FLURES

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: C.C.P. §416.10 (corporation) C.C.P. §416.80 (minor)
- C.C.P. §416.20 (defunct corporation) C.C.P. §416.70 (conservatee)
- C.C.P. §416.40 (association or partnership) C.C.P. §416.90 (individual)
- other:

- 4. by personal delivery on (date):

SEAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): ROBERT M. BRODNEY (110275) 1249 S. DIAMOND BAR BLVD. PMB 44 DIAMOND BAR, CA 91765		TELEPHONE NO.: (909) 861-6600	FOR COURT USE ONLY
ATTORNEY FOR (Name): PLAINTIFF ALAN S. CANTER			DUPLICATE ORIGINAL FILED LOS ANGELES MUNICIPAL COURT AUG 13 1999 LOS ANGELES JUDICIAL DIST. FREDERICK K. OHLRICH, CLERK By <u>CYNTHIA FLORES</u> Deputy
NAME OF COURT: LOS ANGELES MUNICIPAL COURT STREET ADDRESS: 110 N. GRAND AVENUE MAILING ADDRESS: CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH COURT: LOS ANGELES JUDICIAL DISTRICT			
PLAINTIFF: ALAN S. CANTER DEFENDANT: DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CANTER <input checked="" type="checkbox"/> DOES 1 TO 10 INCLUSIVE			CASE NUMBER:
COMPLAINT - Unlawful Detainer*			

1. a. Plaintiff is (1) an individual over the age of 18 years (4) a partnership
 (2) a public agency (5) a corporation
 (3) other (specify):
- b. Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name (specify):
2. Defendants named above are in possession of the premises located at (street address, apt. No., city and county):
 446 S. HIGHLAND AVENUE, LOS ANGELES, CA 90036
3. Plaintiff's interest in the premises is as owner other (specify):
4. The true names and capacities of defendants sued as Does are unknown to plaintiff.
5. a. On or about (date): 9-01-1991 defendants (names): DEBORAH MARISTINA ROMAN aka MARISTINA CANTER aka DEBBIE CANTER
 (1) agreed to rent the premises for a month-to-month tenancy other tenancy (specify):
 (2) agreed to pay rent of \$1000.00 payable monthly other (specify frequency):
 The rent is due on the first of the month other day (specify):
- b. This written oral agreement was made with
 (1) plaintiff (3) plaintiff's predecessor in interest
 (2) plaintiff's agent (4) other (specify):
- c. The defendants not named in item 5a are
 (1) subtenants (2) assignees (3) other (specify):
- d. The agreement was later changed as follows (specify):
- e. A copy of the written agreement is attached and labeled Exhibit 1.
6. a. Defendants (names): DEBORAH MARISTINA ROMANO aka MARSITINA CANTER aka DEBBIE CANTER were served the following notice on the same date and in the same manner:
 (1) 3-day notice to pay rent or quit (4) 3-day notice to quit
 (2) 3-day notice to perform covenants or quit (5) 30-day notice to quit
 (3) other (specify):
- b. (1) On (date): 8/12/1999, the period stated in the notice expired at the end of the day.
 (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. The notice included an election of forfeiture.
- e. A copy of the notice is attached and labeled Exhibit 2.
- f. One or more defendants was served (1) with a different notice, or (2) on a different date, or (3) in a different manner, as stated in attachment 8f. (Check item 7c and attach a statement providing the information required by items 6a-e and 7 for each defendant.)

*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).
 (Continued on reverse)

PLAINTIFF (Name): ALAN S. CANTER	CASE NUMBER:
DEFENDANT (Name): DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CA	

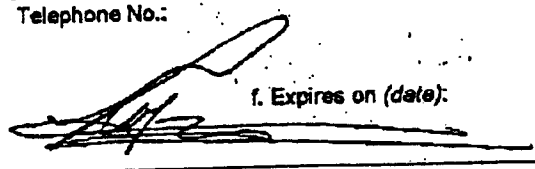
7. a. The notice in item 6a was served on the defendants named in item 6a as follows:
- (1) by personally handing a copy to defendant on (date):
 - (2) by leaving a copy with (name or description): _____, a person of suitable age and discretion, on (date): _____ at defendant's residence business AND mailing a copy to defendant at defendant's place of residence on (date): _____ because defendant cannot be found at defendant's residence or usual place of business.
 - (3) by posting a copy on the premises on (date): 8/9/1999 (and giving a copy to a person found residing at the premises) AND mailing a copy to defendant at the premises on (date): 8/9/1999
 - (a) because defendant's residence and usual place of business cannot be ascertained OR
 - (b) because no person of suitable age or discretion can be found there.
 - (4) (not for 3-day notice; see Civil Code section 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date): _____
 - (5) (not for residential tenancies; see Civil Code section 1953 before using) in the manner specified in a written commercial lease between the parties.
- b. (Name): _____ was served on behalf of all defendants who signed a joint written rental agreement.
- c. Information about service of notice on the defendants named in item 6f is stated in attachment 7c.
8. Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
9. At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$ 5000.00
10. The fair rental value of the premises is \$33.33 per day.
11. Defendants' continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$500 in attachment 11.)
12. A written agreement between the parties provides for attorney fees.
13. Defendants' tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): _____

- Plaintiff has met all applicable requirements of the ordinances.
14. Other allegations are stated in attachment 14.
15. Plaintiff remits to the jurisdictional limit, if any, of the court.

16. PLAINTIFF REQUESTS
- a. possession of the premises.
 - b. costs incurred in this proceeding.
 - c. past due rent of \$ 5000.00
 - d. reasonable attorney fees.
 - e. forfeiture of the agreement.
 - f. damages at the rate stated in item 10 from (date): 8/1/1999 for each day defendants remain in possession through entry of judgment.
 - g. statutory damages up to \$500 for the conduct alleged in item 11.
 - h. other (specify): _____

17. Number of pages attached (specify): _____
- UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400-6415)
18. (must be answered in all cases) An unlawful detainer assistant did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):
- a. Assistant's name: _____
 - b. Telephone No.: _____
 - c. Street address, city, and ZIP: _____
 - d. County of registration: _____
 - e. Registration No.: _____
 - f. Expires on (date): _____

ROBERT M. BRODNEY (110275) _____
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PLAINTIFF OR ATTORNEY)

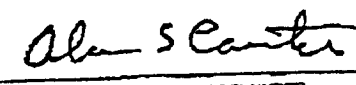
VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

ALAN S. CANTER _____
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PLAINTIFF)

REQUEST FOR JUDICIAL NOTICE- EXHIBIT K- Verified Transcript of
341(a) Hearing

341(a) hearing

SP = Sheila M. Pistone, Esq.

DC = Deborah Canter (debtor)

HME = Howard M. Ehrenberg, Esq.

HS = Andrew Smyth, Esq.

MB = Mark Brenner, Esq.

RB = Robert Brodney

TAPE 1:

SP: We're on the record with calendar number 14, case number 99-49126, may I have the appearance of debtor's counsel, please?

AS: Andrew Smyth for Deborah Canter.

SP: And the appearance of the creditors, starting over here, please?

HME: My name's Howard Ehrenberg. It's E-H-R-E-N-B-E-R-G of Sulmeyer, Kupetz, Baumann & Rothman on behalf of Gary Canter.

SP: And what type of debt is owed to your clients?

HME: Well, my client is the ex-husband of the debtor and is a party in interest relative to the debtor's claims of a community property in interest in certain assets.

SP: Will they be filing a claim in the case? The ex-husband?

HME: No. The ex-husband will be filing a motion to dismiss on the basis that this is a bad faith filing.

SP: Okay. And Mr. Brenner?

MB: Good morning. Mark Brenner for the Canter Family Trust, the owner of the real property that is listed on Schedule A.

SP: Okay. And sir?

RB: Robert Brodney, Law Office of Robert Brodney for Ellen S. Canter who is the manager of the property and ___ trust and also I'm listened as a creditor.

SP: Okay.

AS: I might mention sort of as an aside where I'm at is that my client has a Superior Court order giving her control of the property and apparently...

SP: Okay, Mr. Smith, wait up, I haven't even sworn the debtor in

yet, so hold off, please. Ms. Canter, would you please raise your right hand?

DC: Yes.

SP: Do you solemnly -- okay, why don't you put your -- do you solemnly swear or affirm to tell the whole truth in your testimony here today?

DC: Yes, I do.

SP: And would you please say your name?

DC: Deborah Marcina Canter. C-A-N-T-E-R.

SP: Okay, Ms. Canter, we're recording your testimony today. The microphone is on the table. Please speak up loudly enough for us to pick up your voice. Please give verbal responses. If you don't understand a question, just ask me to repeat it and I'll be happy to do so. We're going to ask you to come closer to the table so we can be sure that the microphone will pick up your voice. So don't forget you're under oath and we're recording your testimony. Okay, let's see, we're going to return to the debtor the receipt for the plan payment; Mr. Smyth will file an amended plan, is that right?

AS: Yes.

SP: Today or yester -- today.

AS: I had her take it down as I was hired very recently. It may still have to be amended based on the comments of the bank.

SP: You actually prepared the amendment though, right? Why did you amend the plan?

AS: Well, because she stated -- I didn't file the original plan and she stated she didn't have the income to pay the unsecured the percent the original plan had proposed. But again --

SP: So you don't have enough money for the plan payment or generally she can't pay?

AS: Previous. Well. No, she didn't have enough for the plan payment of the previous plan, but she had enough for this plan. I would like to comment about what was said about the real property. You told me not to.

SP: Well, let me examine the debtor. If those issues don't arise at that point, then we can go ahead and let you speak them. The creditors will have their opportunity to state their objections. Ms. Canter, I'm going to ask you to come in closer to the table. You're welcome to put your purse on the table. I just want to be sure the microphone can pick up your voice. O.k? I'm returning to you your receipt for the plan payment that you made today.

DC: o.k., thank you.

SP: Do you have an interest in any real estate?

DC: Yes, I do.

SP: What is that interest?

DC: What do you mean, what is the interest?

SP: Well, you said yes you do have an interest, so what did you mean by that when you answered yes to my question?

DC: I have an interest in the real estate of the real property that's located at 446 S. Highland Avenue in Los Angeles.

SP: And what is your interest?

CD: My interest should be a 50% owner of that property.

SP: Do you live there?

DC: Yes, I do.

SP: and there's a mortgage on that property?

DC: Yes, there is.

SP: Are you on the loan to that property?

DC: No, I'm not.

SP: And who's on the loan?

DC: I believe my father-in-law is. Allan Canter.

SP: And do you pay rent or any money to live there?

DC: At this time I have not since I filed -- since my husband filed for divorce, since we've entered into divorce court.

SP: And when was that filed, the divorce?

DC: February of 1999.

SP: And is it final?

DC: No, it's not.

SP: And what, in what stage is that divorce?

DC: I'm not certain. We're in limbo somewhere.

AS: I think it's California, right on the paper here, right down on Hill Street.

SP: Okay, great, but, um, are there unresolved issues as to property settlement or ' -- ?'

DC: There are many unresolved issues.

AS: Well, can I explain that? That's --

SP: Yeah.

AS: Okay. I'm doing this from what my client tells me. From what she told me, she has a very good claim for a community property interest based on, let's say, unpaid income to her husband who worked essentially without pay for Canter's Family Restaurant and I believe under certain cases that would give her a claim of community property interest for that unpaid labor. She tells me that it's not being asserted in the divorce which is where it probably should be asserted, to be asserted --

SP: Can you hold on? I get the gist of what you're saying. Because this isn't the place to make arguments. You need to make that to the court. I get what you're saying --

AS: I want to say one last thing about why its here. It can be brought up under Rule 506 or 502 here. A judge may prefer a divorce court to do it. So it may be brought up here in an adversary, it might be brought up in the divorce court.

SP: Oh, you think you're going to get the family law issues settled in the bankruptcy court?

AS: Well, it's not necessarily a family law issue. I'm not sure if it were -- there are cases is to say under that rule a judge can determine the extent of a person's interest. I assume, they, they've done it, but I assume they'd send it back to the divorce court, so that's --

DC: But I'm not, I'm not in divorce court with my father-in-law, you see, and...

AS: Well, that's it, that's a point, it's something to be resolved in another court, not divorce court, Superior Court or (inaudible _____.)

SP: Mr. Smith, on what basis is this property property of the estate?

AS: I thought I just explained that she --

SP: That was the explanation?

AS: She has a husband who worked for no money. He should have been compensated by Mr. Canter, the father who owns it. That established a community property interest in the property. There's case law supports such an argument. That's what --

SP: So the husband was working and not getting compensated, so he has a claim for income, and by virtue of that, her community property in his income, she's living in this property.

AS: And that income, the father-in-law used to pay the mortgage in his son's behalf rather than reimburse labor, he paid the mortgage in his son's behalf, so that payment was income to the husband and created a community property interest. And that's the argument. My client made a good point that this is not the husband who's on the title, this can be brought up in this court.

SP: Who is on title?

DC: Allen Canter.

AS: Who's the father-in-law.

SP: And your husband is not at all on the title.

DC: No. Not to my knowledge.

SP: Okay, and why have you brought the bankruptcy?

DC: Because I can't afford to pay my bills. My husband has misrepresented to the divorce court the amount of income he earns as well as to the IRS and this has gone on and on and on and so I'm pretty much destitute.

SP: What particular bills are you having a problem repaying?

DC: I can't even, I can't even pay my utility bills?

SP: Are there any tax debts, lawsuit judgments?

DC: Not to my knowledge.

SP: How about car payments?

DC: No.

SP: Your car is --

DC: No car payments.

SP: O.k., Um, I take it you're living separately from your spouse?

DC: Yes, I am.

SP: And have you ever filed for bankruptcy before?

DC: Yes, I have.

SP: And what happened with that case? That was filed in 1996, right?

DC: There was one in '96 that I couldn't get a confirmed payment plan for agreed and there was also one in '91 or 1992 I believe.

SP: What chapter bankruptcy was that? Was that a seven or a thirteen?

DC: I believe that was a seven.

SP: And what happened with that case?

DC: I believe it went through and it was --

SP: Discharged, meaning your debts were forgiven?

DC: Yes, I believe so.

SP: Okay. Counsel, those two cases were disclosed on the, what should be a 1015 statement.

AS: Your assistant said that one was, 9610.

SP: No, that means we filed that case but it's not disclosed.

AS: Oh.

SP: So you're going to have to amend that to include the prior bankruptcies. Um, when you signed the petition, the statement that you had prior, you had never filed for bankruptcy before, why did you not list the prior two cases that you just referenced here?

DC: Only because I didn't know how exactly how to complete the paperwork and I did it myself and I didn't know what I was doing. And at the time I didn't have funds to obtain an attorney. So I needed to get it done in a timely basis. And I didn't know where to list it. But I told the lady at the window when I filed that I did have two other bankruptcies, and she saw it on the computer I guess.

SP: And are you a member of a credit union?

DC: No, I'm not.

SP: Are there any garnishments being taken out of your bank accounts or paychecks?

DC: No.

SP: Have you told your attorney everything you owe?

DC: Yes, I have.

SP: Have you told your attorney everything that you own?

DC: Yes, I have.

SP: Have you read the bankruptcy documents filed in your case?

DC: Some of them.

SP: Some of them? Which ones have you not read?

DC: I don't know exactly what's in there. I'm not certain.

SP: Okay. I need you to look at these document on the left side, tell me if you've read all of those and

DC: This side?

SP: uh huh

AS: _____ service list.

DC: I also have large divorce attorney bills that I can't pay.

SP: Okay, just keep concentrating and looking at those and after you've read them, we'll go on.

...(inaudible talk while DC is reading, papers shuffling)

DC: Yes, I've read all these documents.

SP: Okay. And did you understand them?

DC: I understand what I'm reading I don't understand the law. I mean.

SP: But you said --

DC: -- what rights, what everything means.

SP: Did you list everything that you owe?

DC: Yes. I believe so.

SP: Did you list everything that you own?

DC: Yes, I believe so.

SP: When you give me the qualification that you believe so makes me think that perhaps there's something you haven't listed. Is there something in your mind that maybe you didn't list? You are under oath and it is important that you disclose everything.

DC: No. Other than holdings that my husband may have that I'm unaware of that would be considered community property that I know nothing about.

SP: And how many vehicles do you have?

DC: I don't have.

SP: And what means of transportation do you use?

DC: My brother's car.

SP: Does he charge for the use of that car?

DC: No, he doesn't.

SP: And who pays insurance on the vehicle?

DC: Uh, I'm not sure.

SP: You don't pay?

DC: No, I don't.

SP: Would you have any dependents?

DC: Yes, I do.

SP: How many?

DC: One.

SP: And is that your daughter Jennifer?

DC: Yes.

SP: Does she live with you?

DC: Yes, she does. Fifty percent of the time.

SP: And do you receive spousal support or child support?

DC: Yes, I do.

SP: How much?

DC: Four hundred and I believe it's \$410 a month.

SP: And what's the \$410 for is that for your child or for you or both?

DC: For Jennifer, for my child it's 410 and for myself I believe it's \$600 for spousal support. The total monthly is --

SP: And is that pursuant to an order?

DC: I'm sorry, it's a \$1020, yes, there's a court order.

SP: And is your husband current on those payments?

DC: Yes, he is.

SP: So counsel we need a copy of the court order for that and we need a proof of income payment.

AS: Proof of income that she's actually getting them? Is that what you mean?

SP: Yes, a copy of the order and I need a pay stub. And Ms. Canter, when you have a discussion with your attorney, either it must be loud enough for the recorder to pick it up or just wait until afterwards because then we don't know if it's testimony that just got garbled, okay?

DC: Okay. Sorry.

SP: So, counsel, we need a pay stub and we need a copy of the order. Is there any other source of income for you besides your work at Roman's Restoration and the support of \$1020 dollars that you've referenced.

DC: No, there isn't. And as far as Roman Restoration goes, I've worked for there for two months only and don't know that I can continue. It's my brother's business, because of illness.

SP: Hold on, Mr. Smith, just a moment. Because of your illness you may not be able to continue?

DC: Yes, and because of the distance and my brother let me do some work for him in order to temporarily help me out because of my financial situation and the divorce court.

SP: What's your illness?

DC: I have a neck injury.

SP: What is the specifically the neck injury that you have?

DC: I don't have a medical term, the medical diagnosis for it.

SP: Well, what happened?

DC: I was involved in a slip and fall accident.

SP: Where?

DC: Downtown Los Angeles.

SP: When?

DC: I believe it was January of 1996 or 1997. It would have been January 10th, but I don't remember if it was '96 or '97.

SP: And was there any lawsuit as a result of that slip and fall?

DC: No, there wasn't.

SP: Where did you exactly slip and fall?

DC: In a parking lot. I don't have the exact address, but it was close by here somewhere.

SP: And did you ever seek medical treatment for this?

DC: I've seeked been to several different doctors.

SP: And what is the diagnosis?

DC: Well, supposedly the doctors told me that the curve in my neck is going in the opposite direction that it's supposed to be going in and it's cutting off the circulation to the brain stem and it causes me dizziness and if I'm doing any type of paperwork or book work or anything that causes me to keep my head down

SP: Why wasn't a lawsuit filed as a result of this accident?

DC: I spoke to the person's insurance or manager of the parking lot or property at one particular point. I went to the hospital, I went to see Century City Emergency, I was given medication and treatment and a cervical collar and then I had several other different doctors look at me and treat me during the course of the --

SP: So did you ever seek legal --

DC: No, I didn't file a suit --

SP: Did you didn't get any settlement from an insurance company or any settlement in any way?

DC: No, I didn't. The statute of limitations passed and I never pursued it.

SP: Okay, now what did you do before you were working at Roman's Restoration?

DC: I haven't worked in the last nine years. Or ten years.

SP: And are you seeking, are you getting medical treatment now for your neck injury?

DC: I haven't seen the doctor in probably three weeks or a month.

SP: Okay, well, when you saw the doctor that time, what did you see him for or her?

DC: He gave me a treatment, he gave me a chiropractic alignment and --

SP: So you're seeing a chiropractor?

DC: Yes, a chiropractor.

SP: And how, on what basis, what regularity do you see a

chiropractor?

DC: It depends on the severity of the pain that I'm in. So it could be anywhere from three to four -- it could be like three times a week and then again it can be three times a month. It depends.

SP: And what causes the need to go to the doctor on a -- more frequently?

DC: Depending on the pain level that I'm in.

SP: And what would cause the pain level to change?

DC: I don't know what causes it to change, but a lot of times movement or tension, stress...

SP: Okay, and who pays for the medical treatments?

DC: I have medical insurance.

SP: And you don't have to supplement that with co-payments or any other they pay for the chiropractic treatment?

DC: Yes.

SP: Okay. And how long have you been living at 446 S. Highland Avenue?

DC: Since escrow closed.

AS: How long is that?

DC: That would be since 1991. September of 1991.

SP: And why do you have a different mailing address?

DC: Because my husband was taking and tearing up my mail.

SP: And how many bedrooms is this house?

DC: Four bedrooms.

SP: And when did your husband last live there with you?

DC: February, um, I don't remember an exact date, I want to say around February 23rd or 24th of 1999.

SP: Is there a pool at this house?

DC: Yes, there is.

SP: Okay, because the electricity seems somewhat high.

DC: Yeah, it is. But I don't heat the pool, I don't keep it --

SP: So what's causing this amount of the --

DC: It's a large house. It's approximately a 4,000 square foot house.

SP: And how about, let's see, telephone is \$100 a month?

DC: Yes, approximately.

SP: Counsel have you reviewed these schedules?

AS: Yes.

SP: And so there's not going to be any major amendments because you've substituted in you're going to leave them as they are?

AS: Yes.

SP: Other than the plan?

AS: Um, your assistant said that it seemed like we could go higher and we might.

SP: Okay. But otherwise the Schedule J that I'm working with and all the other schedules of debts and assets will be pretty much --

AS: I think so, I do have that other question that I wanted to get to.

SP: What other question?

AS: Well, when we're -- you wanted a pay stub, you wanted a copy of the order, did you want proof that the payments were being made?

SP: No, just the order.

AS: o.k.

SP: The food might be a little high, but over all the budget appears to be reasonable for a single person with a daughter 50% of the time. Who pays for the daughter's school expenses, if any, private school expenses, anything like that?

DC: My father-in-law pays for that also. I pay for her clothing and other necessities.

SP: Do you expect that to continue?

DC: I believe so, yes.

SP: Have you filed your 1998 income taxes?

DC: I don't know. I didn't file separately. My husband and I had been filing jointly, but, basically the 1998 taxes is what

prompted the divorce because my husband has, is not filing the accurate amount of money on his income tax and my attorney advised me not to sign an income tax return with him ever ever again in the future and because I refused to do so, he flung me into a wall and pinned me down and so there was a -- it resulted in me having to file a police report because he had a loaded gun also in the house and he is violent and has a history of cocaine abuse --

SP: Okay.

DC: So, excuse me, but so because I filed --

SP: Okay, so -- hold on, hold on.

DC: Okay, okay, I'm sorry.

SP: Okay, because that's fine and that's relevant in your family law and perhaps in some way it would become relevant here, I don't know. At this point though I just need to know about the taxes. So we're going to keep focused and just talk about your bankruptcy issues.

AS: We're going to file a state claim _____ and we're going to file her individual at IRS Special procedures.

SP: So, yes, we do have a claim from the IRS showing unfiled taxes for 1998. For the record please file those taxes and provide the trustee with a copy.

DC: Okay.

SP: Do you believe that you owe any income taxes for any years?

DC: Pardon me?

SP: Do you believe that you owe any income taxes for any years?

DC: I don't believe I do.

SP: Okay, counsel, we need schedule F amended with all of the account numbers.

DC: I made for 1999? I don't know how that's going to work yet so I'll get advice on that.

SP: Excuse me.

DC: I may owe taxes for 1999.

SP: Okay. Are you a party to any lawsuits other than the divorce proceeding?

DC: Uh, no, I'm not.

SP: Counsel, we'd like a copy of the income and expense

declarations and the assets and debts, documents filed in the divorce proceeding. And you really need to give us all the information here as to this, the divorce proceeding, these lawsuits and the statement of affairs. And I do see something here about an eviction lawsuit, is that something that's pending as well?

DC: Yes.

SP: Okay.

DC: I forgot about that I'm sorry being that I'm here on the same matter.

SP: So, counsel, we need the case numbers for those, okay?

AS: For the unlawful detainer thing?

SP: Both.

AS: And the --

SP: Divorce.

???: If I may interrupt those case numbers are in my objection.

AS: I don't know if I've got a copy.

???: I never knew you were on the case until ten minutes ago. I'll send you a copy.

AS: o.k, but we'll put it in the schedules _____

SP: Okay, so, Mr. Smith, do you know at what stage the divorce proceeding is in? Is there going to be a trial as to the issues? What's going on there?

AS: I just know that my client told me that the property rights aren't resolved and that her current attorney is not claiming the community property interest in the divorce which she's upset about, so somebody else could probably correct me. I assume it's not resolved in divorce.

SP: That I figured out.

AS: TRO's _____

SP: _____ more specificity.

AS: Well, in other words, the property issues aren't --
_____ issues are not resolving.

HME: I think the debtor is utilizing chapter 13 in an effort to _____ the divorce proceedings going forward, and it will be require a motion for a relief from stay and maybe the debtor

will stipulate to that before we contemplate filing a motion to dismiss this case. But some way or another to get back into divorce court, this bankruptcy has stayed that proceeding.

AS: Well, first of all 362, I think 11 says that there's no stay whatsoever. 11 U.S.C. 362 there is no stay at all on divorce by this bankruptcy. That's why we don't hear divorces in here, but of course we will stipulate, that seems to be the rule, there's no stay on divorce proceedings. Per 362 1994.

SP: Okay. Now, Ms. Canter, you do list here that you have a \$2-million interest in Canter's Deli?

DC: Yes. Community property.

SP: And how did you, how did you value that?

DC: My husband told me he was a 20% silent owner after a deposition that I had in the divorce matter. And I don't know that the \$2-million dollars is an accurate amount. It could be less, it could be more. Because I don't have --

SP: Was this a statement he made in a deposition? Is that what you said?

DC: No, he made it to me after a deposition and I claimed that I had an interest in Canter's Deli, too.

SP: Do you know of any appraisals or any thing, any valuations done of that business?

DC: No, but I have a set of records that my husband was keeping in a locked closet that my divorce attorney and I took out of the closet that he was keeping there for approximately 14 to 15 years now with the daily or weekly take on Canter's restaurant.

SP: Okay, now this valuation as to the alimony and child support, you come up with \$500,000, and how do you get to that valuation?

DC: It's just a guesstimate.

SP: And this is for currently coming due of future payments, right, not for any back due payments?

DC: No, not back due. But then it could be back due because he's misrepresented to the court, and I have not yet done discovery on him because of my financial situation.

SP: And what about any interest in life insurance that your husband might have?

DC: My husband has, I know of, I believe, two life insurance policies on me and possibly one on my daughter, and I've asked

several times, but I don't know, he won't show me a copy of it and I don't have access to anything.

SP: Do you know is he claiming as community property any interest in any life insurance?

AS: Well, that's a divorce issue.

SP: Well if its _____ it should be listed in Schedule B.

DC: I don't know if it's term or whole life. I'm not certain, I have no idea.

AS: She would obviously be claiming a community property interest in all assets acquired after marriage. So...

SP: Okay, so then we also need to put those in the Schedule B.

AS: Right, we might say unknown. She doesn't know yet..

SP: Yeah, there is a problem. I understand that. How long were you married to Mr. Canter?

DC: I guess I'm still married, so 14 years.

SP: And the sports memorabilia, how did you come up with the valuation of \$15,000?

DC: That's also approximately. It probably is more because my husband always kept a running tape on his autographed baseballs and bats and baseball card collection. He kept it in a notebook, catalogued. Ran a tape on it.

SP: And you have had access to that tape?

DC: Yes, right, I've seen it throughout the years?

SP: O.k. you have no jewelry?

DC: Other than what I'm wearing.

SP: Your wedding ring?

DC: No, he took them back.

SP: When did he take them back?

DC: He took it back about a year and a half ago, I think.

AS: We can still claim it as an asset if you claim that you own it.

DC: oh

AS: Do you still own it?

DC: Well, I claim that I mean, it was given to me, I should own it, but he claims he doesn't know where it is, and he took it back from me, I didn't deserve it, and it's about a \$15,000 ring, so I mean, I don't know.

AS: Well, I think we should list it then as an asset.

SP: No furs or anything like that?

DC: I do have a fur coat.

SP: Okay, that should be listed.

DC: _____ coat.

SP: And how much is that worth approximately?

DC: I don't know. Maybe, it's a used coat, \$500, it's like.

SP: What kind of coat specifically, the kind of fur?

DC: Mink.

SP: How much did you purchase it for?

DC: Nine years old. Um, I don't remember. My husband bought it for me as a gift, so I don't remember how much it cost at the time.

SP: Okay, and how about 401K, any interest in any either your own pensions or anything like that, or in your husband's?

DC: I don't have any of my own, what my husband has I don't know.

SP: Counsel; are there any claims in the --

AS: I don't know.

SP: Well, if there are, you need to find that out. Who is the divorce attorney? For Mrs. Canter?

AS: Who's your divorce attorney?

DC: Lawrence Slavett for the time being

SP: and how do you spell that last name.

DC: S-L-A-V-E-double T.

SP: And how are you compensating her?

AS: Him. It's Lawrence.

SP: Lauren?

DC: Lawrence.

SP: Lawrence? Oh, I'm sorry. I thought you said Lauren. I'm sorry. And how are you compensating Mr. Slavett?

DC: I paid him the retainer, but all his fees are due as you see, and I can't afford to pay him.

SP: Okay. And I assume you are seeking the husband to be paying those in the divorce?

AS: Probably

SP: So at this time you're not having to make any payments this person is, this attorney is not requiring you to make any payments?

DC: He does require it, and he's not doing what he's supposed to do, but you know, everyone likes to be compensated for the work that they do, so it's understandable. I can't afford to pay him.

SP: And what was the retainer that you paid?

DC: He's -- I gave him a \$2500 retainer.

SP: And when did you do that?

DC: And my husband gave him \$2500, also ordered by the court.

SP: okay

DC: I gave it to him in February and March, and my husband could have given it in March or April. I don't remember.

SP: okay, have you transferred any other property to anybody in the last twelve years?

DC: No.

SP: And how about, do you have any savings bonds or any other investments, CDs, or anything?

DC: My husband has savings bonds in my daughter's name.

SP: Do you claim any interest in those?

DC: Well, I would imagine so, yes.

SP: Okay, counsel, so we need to review Schedule B and list everything.

DC: I don't know what amount they are, I don't have access to them

AS: How old is your daughter?

DC: My daughter is eight

AS: okay

SP: Okay, currently there's an issue as to whether or not this would be under chapter 7 liquidation analysis sufficient at 7.8, but you have the issues as to the, her ability to access those assets. I'm just going to change the tape and then the creditors can do their questions.

TAPE 2:

SP: We're back on the record with calendar number 14, case number 99-49126. Okay, counsel if you want to do you have any questions for the debtor?

HME: Yes, I do. My first question is what is your social security number?

DC: It's, um, 548-94-0669, and there's an additional one --

HME: You have a second one?

DC: Yes.

AS: Both of them are on --

DC: They're both listed.

AS: The second one is --

SP: You don't know off the top of your head?

DC: No.

AS: You want to --

DC: 620-56-5201.

HME: Will you explain to me please why you have two social security numbers?

DC: Yes, I can. Because Security Pacific Bank back in probably 1990 or 1991 gave, misappropriated funds and mailed my bank statements and all my banking information to a different client, a different customer with a similar name with a different address, and the person was accessing my bank to the tune of probably \$40-45,000 dollars which then I had to collect separately in small claims court. So I was given a different number because somebody else was using my social security number.

HME: So which is the number you use currently?

DC: I'm using -- because I don't have Bank of Am -- Security Pacific Bank anymore, I use the original number.

SP: What do you mean by original number, the one you were --

DC: The the the 548 number.

HME: That's the one you were given when you were a child?

DC: Yes.

HME: And the 660 number you obtained because of this fraudulent activity you're describing.

DC: Yes.

HME: And you don't use it anymore.

DC: No, because I no longer have that bank or doing any banking with that number.

HME: You said earlier that you have received some compensation for work that you were performing for a business in Nevada. Which social security number were you utilizing for the payment that you were receiving in that business?

DC: I haven't as of yet, and I will use the 548 number.

HME: 548 number

DC: Well, my brother paid me as an independent contractor. I do only -- I don't work a 40 hour week. I've done the books for him that take, took me anywhere from a day and a half to two days in order to complete, so he'll give me whatever form he has to give me at the end of the year and then I'll file it with IRS.

HME: Have you ever declared income under the 660 social security number?

DC: No.

HME: Have you sought to terminate that number given that _____ purpose in having it?

DC: I have in the past spoken to an attorney about what I should do and how I should do it because I have a concern.

HME: Whom do you believe are the owners of Canter's Delicatessen?

DC: Um, Allen Canter, Gary Canter, possibly Mark Canter may have an interest and/or Jacqueline Canter, a silent interest. Terry Bloomgarten and Harold Price.

HME: And what do you believe the percentage interest of each of those people.

DC: I'm not certain. I know my father-in-law owns at least 50 percent plus the property. As to how it's divided with the

other people, I'm not certain.

HME: I just want to confirm, you're claiming an ownership interest in the business?

DC: In my husband's percentage.

HME: And what percentage do you believe he owns?

DC: Twenty. He told me twenty.

SP: And that twenty is what the 2 million that you listed in Schedule B.

DC: Minimum \$2-million.

HME: And the basis of your claim is the oral statement that you state that Gary made to you?

DC: Oral statement that Gary made to me and my father-in-law has made to me on occasion that Gary is an owner as well.

HME: So it's the oral statements of Allen Canter and Gary Canter.

DC: And Gary Canter over the last 14 years before I would say, I want to say, August or September, I wasn't aware of the percentage until Gary was so angry at me after the deposition that he blurted out to me that he was only 20 percent owner and I wasn't going to get it.

HME: Have you ever seen any writings regarding this alleged ownership interest?

DC: No, other than the numbers that Gary keeps, the log that Gary kept that has 14 years of the weekly take on Canter's and told me that he was going to be sure he-- Gary has a problem with his cousin Terry and he doesn't trust her. Or Harold Price. And this is going on for years in the family, that they don't -- so.

HME: Just answer my question.

DC: I am answering your question.

SP: Counsel, there's just time for about three more questions because we have to give everybody an opportunity and then if you need a 2004 you can do that.

HME: Well, I suppose, but I guess then what I'd like you to know --

SP: I didn't say you couldn't ask any more questions, but it is limited _____.

HME: Has your name ever been on the title to the house?

DC: Not to -- uh well, when we purchased the house, the offer was made in my name and in my husband's name, and we gave our own

personal check for the deposit, I would say, not the down payment, for the deposit and at some point in escrow our name was changed and Allen Canter substituted his in.

SP: And that was in 1991?

DC: 1991, yes.

HME: Did you ever make any mortgage payments on this house?

DC: My husband did, during the course that we were married.

HME: Mortgage payments?

DC: Yes, I believe so.

HME: Not rent to Allen Canter or the family trust?

DC: I was told by Gary that he was helping his father, his father was paying half, and he was -- or his father was paying a portion and he was paying a portion.

HME: Did you ever make a property tax payment on this house?

DC: Um, my husband could have. To my knowledge, I'm not certain.

HME: Is it true that you've been convicted of five counts of felony fraud and false statement?

DC: I believe it was four counts. I made an agreement.

HME: Four counts of false statement and one count of fraud?

DC: I'm not exactly sure, certain of how the paperwork went.

HME: And you are still under probation?

DC: Yes, I am.

HME: And how much money did you obtain from the SBA that relates to that criminal activity?

AS: Well, hold on. What years are we talking about?

HME: There's only one --

AS: Well, I don't know. What year?

???: 1999.

AS: 1999. Okay, then I won't object. I don't want to her to back to '83.

SP: Now this opened up a whole new area so I'm not restricting counsel now to the three questions I said earlier because this is relevant, so go ahead and continue.

HME: How much money did you obtain from the SBA that was admitted to in the criminal action?

DC: \$25,000 dollars.

HME: And how much money did you obtain from Royal Thrift & Loan?

DC: I believe that was \$25,000 dollars also.

HME: And do you still have any of that money?

DC: No, I don't.

HME: What did you do with that money?

DC: It went right back into the property that it was borrowed for.

HME: To the other house on Highland.

DC: To the 308 S. Highland Avenue property.

HME: It went into it in what way?

DC: Improvements. Repairs because of earthquake damage.

SP: Counsel, I think you need to disclose if this criminal proceeding -- when, when, when were you convicted?

DC: Um, 19 -- April of 1999.

AS: Is there any questions on the forms about criminal proceedings?

SP: I think that statement four is broad enough to include that.

AS: I'm not sure.

???: I've attached a copy of the sentence order and a copy of the probation order to my objection.

DC: The sentencing was supposed to be under seal by the federal, by the federal judge, and I was told yesterday by my attorney that he wants to know how these attorneys are obtaining access to a federally sealed file.

SP: Okay.

AS: Let me ask, where did you say that this was? Statement of affairs number twelve?

SP: I think it's four. I'm just going to go off the record.

SP: Okay, go ahead, counsel.

HME: I have no further questions at this time.

SP: And the objections to the case are?

HME: My objections to the case are that the debtor is making completely false allegations to the ownership of the community property of the house, to the community property in the business, to the sports memorabilia. I believe that the debtor is making false statements under oath now regarding her employment. I don't believe that she has the wherewithal to be a chapter 13 debtor, and I will by the end of next week be filing a motion in the bankruptcy court to have this case dismissed as a bad faith filing and then if that is successful, I will be making a referral to the United States Attorney's office that the debtor be criminally prosecuted for making these false statements.

AS: _____ this will cut this short. My position is there is no stay in the _____

SP: There's no what?

AS: There is no stay to the divorce and if you want a stipulation. To be sure we will stipulate that there is no stay and the divorce can go ahead, but that brings up another question. My client states that she is being threatened with criminal prosecution just for the very fact of filing a 13. This happened on the city streets, some lady, who was it, screaming and yelling?

DC: My mother-in-law, Allen Canter's wife

AS: Because she filed a 13..

SP: Okay, well, you know I don't have any...

AS: But that's the, I think

SP: ..ability to do anything about that.

AS: ...it seems to be a violation of the automatic stay to do that

SP: Well, perhaps it is, but, counsel, you know what the _____ are, I am limited in what I have the authority to do.

DC: I called the trustee's office and they told me to present this to you when I came to the meeting because I just don't know what to do with these people anymore. They seem to feel that I don't have civil rights or whatnot, and I really --

SP: I'm not a judge.

DC: I understand.

SP: Okay, let me just ask you this. Do you have to pay restitution for any of these issues as to the fraud?

DC: No, I don't.

SP: There was no restitution required? Okay, can you just explain what were the activities that led to the convictions?

DC: Yes, I will. I purchased the property at 308 S. Highland Avenue in 1993. It would have been September. In January of 1994 came the big earthquake that we had and I sustained approximately \$200,000 of damage to the property that I had just gotten into. Um, I went to the real estate broker that represented me in purchasing the property, at the time referred me to a mortgage broker to get a refinance on the house to get to do the improvements and repairs and whatnot that the earthquake had caused. And that mortgage broker sent me a blank package in which to sign and told me that it was very complicated and he would fill it out with me over the telephone, so he needed my signature, we Fed-Exed it back to him, then he completed it himself, and at one point he misrepresented my income on those documents and at some point, like my attorney in the federal case explained to me, if I had knowledge at some point whether it was late in the situation or not, I still signed the docs, the loan docs, so at some point I knew, I had, I had knowledge that something wasn't right and I didn't do anything about it, so I had to admit to some guilt in the matter. And originally I was indicted on 14 counts which were then reduced to four, I believe.

SP: Okay, and do you have any debts in regards to, your, to repay your criminal attorney for representation?

DC: No, I went with a public defender.

SP: Okay, Mr. Brenner, do you have questions for the debtor or objections you'd like to state?

MB: Yes, I do. I have some questions. Um, Ms. Canter, I represent the Canter Family Trust.

DC: Okay

MB: Are you aware of that entity?

DC: Yes, I just became aware of it maybe a month or two ago.

MB: Okay. As part of your probation in the federal loan fraud case, you were ordered to provide your probation officer with accurate financial statements with supporting documentation as to all sources and amount of income and all expenses. Have you done that?

DC: Yes, I believe so.

MB: So your probation officer has this information?

DC: Yes. I believe so.

MB: And when did you do that?

DC: Um, immediately I guess after the April, April or May.

MB: You did it in April or May?

DC: Right.

SP: Do you have a copy of those still?

DC: I believe I should have somewhere.

SP: Could you provide a copy to the Trustee's office?

DC: _____ provide me with a copy.

MB: You currently, you stated that you had lived in the real property at 446 Highland, S. Highland since 1991?

DC: Yes.

MB: Is, has there ever been a written agreement allowing you to live there, a rental agreement?

DC: No.

MB: And --

DC: Not to my knowledge anyway. I don't know.

MB: Is there any writing that you know about that, that gives you an interest in the property? Any written document?

DC: Not to my knowledge.

AS: I would add that's a legal question and I already have _____ in support _____.

MB: To your knowledge there's no written document. Just to your knowledge.

DC: There are some, like my attorney said, some writings that would--

MB: But you don't know what they are?

DC: Yes, I do have knowledge...

MB: What are they?

DC: ...of some writings. The original offer, on the property. A statement from the real estate broker that claimed, that states what took place. And the, my husband's logging on a weekly basis for the past 9 years or including, inclusive of the past 14 years, or 15 years, that he's kept numbers on figures, weekly take on Canter's restaurant. And you also asked a

question prior about what would give me the right to be in the house. The Superior Court document gives me the right to be in the house.

MB: You stated that you're an independent contractor working for Ramirez Restoration?

RC: Roman. Roman's Auto Restoration.

MB: Roman's Auto Restoration. They do not withhold from your, your, the payment that is made to you for your services, is that correct?

DC: I don't know what he's done or how he's done it. And I'm saying he, my brother.

MB: On your Schedule I you list \$1500 dollar a month payment.

DC: Yes. And I also included that I worked there for one month prior to filing, so it's only been two months that I have done this.

MB: You received \$1500 dollars a month for two months?

DC: Yes, I have.

MB: Have they withheld anything from that \$1500 dollars a month?

DC: I received \$1500 clear. How he did his end, I don't know.

SP: You need, you need to find that out, what's going on with that, counsel and if there's no taxes being taken out of that, you'll need to put an itemization in for income taxes on her Schedule J. Anything else, counsel?

MB: Yes, I do. I have a couple more written down a lot of them have already been answered

SP: okay

MB: by the examination. Your, your father and brother own that business, is that correct?

DC: My brother does.

MB: Your brother does. On Schedule J you list that you are not making any payments on a mortgage or rent, is that correct?

DC: At the present time I'm not.

MB: But you do list on your Schedule J that insurance and taxes are being paid on the property. From what source are they being paid?

DC: I believe from Allen Canter and Gary Canter.

SP: Are they included in the mortgage payments or do you know if those property taxes and property insurance expenses are separate from the mortgage payments?

DC: I'm not certain.

MB: On your Schedule B you list a 1985 Mercedes Benz.

DC: Yes.

MB: Do you have insurance for that?

DC: I did. I don't know if my husband has discontinued it as of yet. He took the car February 24th, um...

SP: So you don't actually have possession of it?

DC: I don't have possession of that vehicle.

SP: Is the title in your name or your husband's?

DC: I believe it's in my husband's name.

SP: Did you have a premarital agreement?

DC: No.

MB: Do you pay anything for medical insurance?

DC: No, I don't.

MB: Who pays that?

DC: My husband does out of his paycheck, I believe.

SP: And has the court made an order that he's required to continue to do so or anything like that?

DC: No, they haven't, as of yet.

MB: Did you or did you not file a chapter 13 bankruptcy in '97 on July 7, 1997?

DC: I possibly could have.

MB: Do you recall if that was dismissed 20 days later?

DC: It could have been dismissed 20 days later.

MB: Did you or did you not file a chapter 13 in 1996?

DC: I could have.

MB: Do you recall when it was filed? Does February 27th sound like a possible date?

DC: It could be.

MB: Did you also file a chapter 13 in 1996 in January?

DC: I don't recall.

MB: And you told us about your chapter 7 in 1992, is that correct?

DC: '91 or '92, I don't remember.

MB: Was this like four prior filings?

SP: Yeah and counsel, you're going to have to provide a declaration as to why she didn't disclose all these. We got the explanation when I raised, I think it was, two and now there's actually more than that, so it's difficult to believe that the debtor didn't know that she had any prior bankruptcies.

DC: I never claimed that I didn't know that I had any prior bankruptcies. When I typed this, the paperwork myself, I didn't know where to put them or how to list them. And that's why I obtained an attorney because I knew I would need legal advice because I didn't know what I was doing.

AS: We'll provide a declaration explaining.

MB: Yeah, I just a couple more. On any of these prior bankruptcies, did you list the 446 S. Highland property as property of the estate?

DC: I don't recall.

MB: On any of these prior bankruptcies did you use anything other than your social security number that you received since you've been a child?

DC: I probably included both. I don't recall.

MB: Did you ever include anything other than your social security number that you have since birth?

AS: I think she said she probably did both. She's not sure.

MB: You're also known as Maristina Canter?

DC: Deborah Maristina Canter, yes.

MB: Okay, and Deborah Maristina Romano, is that correct?

DC: That's my maiden name. Yes.

MB: Okay, but you've used that, is that correct?

DC: Not since I've been married. I used Deborah Maristina Romano before I was married.

MB: In fact isn't that the name that's on the criminal judgment?

DC: Maristina? Canter.

MB: Deborah Maristina Romano.

DC: No, it's Canter, to my knowledge.

SP: Okay, Mr. Brenner, we just have time for a couple more.

MB: I've only got a couple more.

DC: Can I ask him a question?

AS: There's no reason too or need to

DC: There is a reason to.

AS: It doesn't help anything to ask the lawyer questions. I don't think we should ask him questions.

DC: I need to,

MB: well let's go outside

DC: I need to, I need for him to disclose here where he got a sealed record from federal court. The judge would like to know and my federal attorney would like to know as well as the probation officer.

AS: He doesn't have to answer if he doesn't want to.

SP: There are other forums for your counsel to address that. It sounds relevant, it should be addressed, but this isn't the proper place for it necessarily, okay? If he doesn't

MB: I have one last question.

SP: That's okay. We'll give it counsel time and then that's it.

???: Okay, when did you acquire interest in the 446 property?

DC: When we purchased it in 1991.

???: Have you ever listed that 446 property on any loan document or loan application?

DC: I'm not certain.

???: Were you present when the escrow documents, the final escrow documents were actually signed?

DC: I don't believe I was.

???: Were you --

DC: I don't recall. It was 1991.

???: Were you ever present when the purchase sale, when the final purchase sale agreement was signed.

DC: I don't recall.

???: Did you ever contribute any funds to the purchase of that property?

DC: I believe my husband did.

???: I'm asking if you did. Did you bring money into the property?

AS: Well, her husband's funds are her money, too or your money too.

???: Okay, are you aware of any property your husband put in?

DC: Um.

???: to purchase that property?

DC: I'm not certain. I don't remember.

???: Is there any writing that you know of indicating that your husband put in or you put in any funds for the purchase of that property?

DC: Well, as far as writing, I'm not certain, but back in -- my husband did originally give a check and then somehow it was replaced in escrow. We gave our check.

???: Is that the check during the strike at Canter's that was originally, Canter's Delicatessen, are you familiar with the strike that occurred down there?

DC: Of course I am.

???: Okay, and you recall that there was originally a check placed into there just because of the strike and Mr. Canter --

DC: The strike has nothing to do with the property.

???: Are you obligated to pay any other loans or any loans on that property?

DC: No. Not to my knowledge.

???: Did you sign any loan documents for First Nationwide Mortgage Company for the loan on that property?

DC: No, I did not.

???: Do you know what the loan for First Nationwide Mortgage Company is for?

DC: I believe it's for the mortgage on that 446 property?

???: Is it a first?

DC: I believe so.

???: But you don't know.

DC: I'm not certain.

???: Is your name on any deed or any other conveyance regarding this property?

DC: Not to my knowledge.

???: Did you list the 446 property as an asset on any -- that was asked, I'm sorry. I withdraw that. On any prior bankruptcy, was that asked?

???: Yes.

???: Have you ever paid any property taxes on the 446 property?

DC: I'm not certain. If my husband paid it on my behalf.

???: He did, you know that?

DC: I'm not certain.

???: Okay. Have you ever made a mortgage payment on that property?

DC: My husband I believe did.

???: Okay. Do you know to whom that mortgage payment was made?

DC: I believe to Allen Canter.

???: And did, was that made by way of a writing or check, do you know?

DC: I believe he was making checks and/or cash.

SP: Anything more, counsel?

AS: Payments in lieu of wages is also our assertion.

???: Just a couple more. Do you pay any homeowners insurance on your property, the 446 property?

DC: No, my husband was I believe.

???: How about fire?

DC: I believe my husband was.

???: Liability?

DC: My husband was I believe.

???: You recall when you went to court on the unlawful detainer the first time for trial, you remember that?

DC: Yes.

???: That was on October 19th, is that correct?

DC: Yes.

???: And you asked for a continuance of that trial date, do you recall that?

DC: Yes, I did.

???: And that then trial date went to October 26th at 8:30 a.m., do you recall that?

DC: I don't recall the date, but we did get a continuance and then we came back another day.

???: And this bankruptcy -- now at the time you asked for that continuance, had you planned to file bankruptcy on that date?

DC: No.

???: And when we returned to court on the 26th or thereabout, you filed bankruptcy about 24 minutes before we returned to court that morning, is that correct?

DC: Possibly.

???: When you obtained financing for the 308 property, did you list the 446 property as an asset?

DC: I don't recall.

???: When you purchased the 308 property, was Gary Canter's name on any of the deeds or paperwork for the purchase of that property?

DC: I don't believe so.

SP: Okay, counsel, we just have time for two more questions and then you can state your objections on the record if you'd like.

???: I'm just about done. I am just about at the end.

DC: He signed a quitclaim deed.

???: I've got three more. I'm trying to decide.

SP: Well go ahead with your three.

???: Are you paying rent on the 446 property?

DC: Not at this time.

???: Have you ever paid rent on the 446 property?

DC: My husband could be. I'm not certain.

???: I'm asking if you ever, if you personally, have you ever paid any rent --

DC: I haven't worked since we've lived in the house, other than the last two months, and my husband was paying a part of the mortgage payment to his father. On my behalf being that I was his wife in a community property state.

???: Since February of 1999, have you ever made a rent payment on that property?

DC: No, I have not.

???: Thank you. I have nothing further.

SP: Okay.

???: I have one last question.

SP: Okay.

???: Are the wages that you're being paid from the business in Nevada being paid in cash or by check?

DC: My husband, or my brother paid me cash.

???: Could I ask -- I promise

DC: um hum, Yes.

RB: Why am I listed as a creditor, Robert Brodney?

DC: I don't why you're listed as a creditor. Possibly because I made an error. It could be an error. Being that I --

AS: For service perhaps.

DC: Could be. Yeah, I'm not certain.

???: He's listed in Schedule F.

SP: Well lets figure that out and whether that's appropriate, okay?

DC: I have an attorney now.

SP: Two questions. Are you claiming that your husband is liable for any of the debts that you've listed in this bankruptcy as the fact that they're community debts as well?

DC: Yes, if, if there is rent that is due on the property, my husband should --

SP: And the credit cards or anything else you've listed as pretty much as unsecured debts. Are these community debts. Meaning, did they arise during the time you that you were married and before you separated?

DC: Some of them.

SP: And do you know if in the divorce you are seeking your husband to compensate you for or to absorb the cost of some of these debts.

DC: I don't know what I'm doing in the divorce

SP: Okay, so you would want to look at that and find out. And are you going to be asking for an increase on the support payments beyond the approximately \$1000 dollars that you receive?

DC: Oh, absolutely.

SP: Do you have a particular figure that you're asking for?

DC: I don't know that, as of yet.

SP: You'll have to inform the trustee's office if you did get an increase, okay?

DC: Yes, I will.

SP: We're going to go ahead and set this for a confirmation hearing. It was a long one, but at least we didn't have to come back for a continued examination. The hearing date as set by the court previously is February 24th in the year 2000 at 9:00.

???: We're keeping the same date?

SP: Yes.

???: 10:00?

SP: At 9:00, February 24th at 9:00. Mr. Smith, any amended or new documents are due at least two weeks before the hearing date. If we don't have them by then, we will ask that the case be dismissed, and you must comply with that. Mrs. Canter, please make sure your counsel meets those deadlines. You must be current on your plan payments. If you're not current, we'll ask that your case be dismissed. I'm not requiring that the debtor attend that hearing, but follow the advice of your

counsel as to whether or not you should attend in any event.
Okay? That's it. February 24th

DC: Let me ask you a question. What do I do regarding restraining
Mr. Canter's --

SP: I can't give you any legal advice, Mr. Smith, or counsel,
divorce counsel can help you.

DC: Thank you.

CERTIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

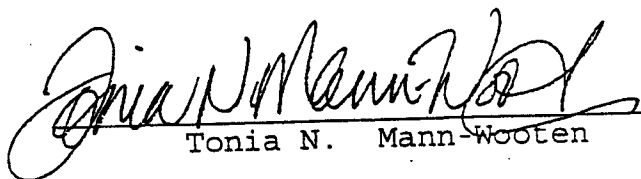
I, Tonia N. Mann-Wooten, do hereby certify:

That the foregoing transcript was recorded on audiocassette by the Office of Chapter 13 Trustee Edwina Dowell on December 10, 1999 and subsequently heard by me on or about the 27th day of December 1999;

That the foregoing transcript was transcribed into typewriting by me and contains a true and correct transcription of what I heard on the audiocassette.

I further certify that I am not related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of December, 1999.



Tonia N. Mann-Wooten

REQUEST FOR JUDICIAL NOTICE -EXHIBIT L--ANSWERS TO
INTERROGATORIES

1 LAWRENCE D. SLAVETT, ESQ.
LAW OFFICES OF LAWRENCE D. SLAVETT
2 5850 Canoga Avenue, Suite 400
Woodland Hills, California 91367
3 Telephone (818) 992-1088

4 State Bar No. 39868
Attorney for Respondent
5 DEBORAH MARIE CANTER

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 In Re the Marriage of:) CASE NO. BD295236
12 GARY PAUL CANTER,)
13 Petitioner,) RESPONDENT'S RESPONSES
14 and) TO FORM INTERROGATORIES
15 DEBORAH MARIE CANTER) Set No. One
16 Respondent.)

17
18 PROPOUNDING PARTY : Petitioner GARY PAUL CANTER
19 RESPONDING PARTY : Respondent DEBORAH MARIE CANTER
20 SET NO. : ONE

21 COMES NOW, DEBORAH MARIE CANTER, and responds to Interrogatories propounded on
22 her as follows.

23 PRELIMINARY STATEMENT

24 Investigation and discovery by Respondent in this action has not yet been completed. As
25 discovery proceeds, witnesses, facts and evidence may be discovered which are not set forth in these
26 responses but which may have been responsive to these interrogatories. Facts and evidence now
27 known may be imperfectly understood, or the relevance of consequence of such facts and evidence
28 may in good faith not be included in the following responses.

1 Respondent reserves all rights to refer to, to conduct discovery with reference to, or to offer
2 into evidence at the time of trial, any and all such witnesses, facts and evidence developed during the
3 course of the discovery proceedings, notwithstanding evidence or reference to witnesses, facts and
4 evidence in these responses.

5 In addition, Respondent assumes no obligation to voluntarily supplement or amend these
6 responses to reflect witnesses, facts or evidence discovered following services of these responses.

7 Finally, as some of these responses may have been ascertained by Respondent's attorneys,
8 investigators or agents, Respondent may not have personal knowledge of the information from which
9 these responses were derived.

10 1. Deborah Marie Canter, 446 S. Highland Avenue, Los Angeles, California; Social Security
11 number 548-94-0669. I am not currently employed. same as above. Deborah Maristina Romano from
12 1955-1985. Canter from 1985 to the present.

13 2. Yes. Assets in regards to our house located at 446 South Highland Avenue, Los Angeles,
14 California, which was purchased or I should say closed escrow in September 1991. My husband and
15 myself were looking for a house for approximately two or three years and made several offers before
16 deciding on the one I live in now. My husband told me many times that his father was holding his
17 money for him and had it invested and was giving it to us as a gift because of tax purposes. My
18 father-in-law, Alan Canter, assured me of this. We would make the offers in Gary's or our names and
19 once the offer was accepted it was switched to Alan Canter's name. I believe the real estate agent
20 said it was an assignee. Most of the furnishings in the house were sold to Gary outside of escrow with
21 cash for approximately \$2,800.00 that Gary paid to Charles Bush directly in front of me. Gary
22 constantly told me after we became engaged approximately around April 1984 and up until
23 approximately 1998 that everything he owned and inclusive of his portions of his private not on paper
24 percentage of Canter's Deli that his father held aside for him was to be considered equally mine. He
25 constantly told me and showed me a lot of cash and holdings in Alan Canter's name. Gary kept a
26 weekly dollar take because of this (of Canter's Deli in Fairfax) in his closet. These figures go back
27 to 1984. Regarding debts, my husband always paid all the bills and expenses and told me he would
28 always take care of Jenifer and myself. He was always very generous. We never had to worry about

1 paying for anything. Regarding support, since before we were married Gary told me he would take
2 care of me "beautifully" and he did. For the first four years of our marriage I contributed \$1,000.00
3 a month towards our savings. In approximately 1990, Gary asked me to stay home and stop working
4 so we could start a family. He told me and assured me that he would always support me and any
5 children we had. We never ever had money issues.

6 3. No. None that I am aware of at this moment. I was previously involved in a federal
7 criminal matter, but that proceeding has been completed.

8 4. Jenifer Canter, age 7, daughter, and Jennie Romano, age 64, my mother.

9 5. None.

10 6. My daughter and I have been supported by Gary Canter during the last 12 months. Since
11 the Court order of March 23, 1999, I have received from Gary Canter child support of \$420.00 per
12 month, and spousal support of \$600.00 per month. In addition, pursuant to court order, Gary Canter
13 has paid \$2,500.00 towards my attorney's fees.

14 7. No income other than current spousal support.

15 8. None.

16 9. I do not have access to any documents of taxes or otherwise. Gary took every copy of
17 returns after being completed to his father I was told.

18 10. See attached Schedule of Assets and Debts.

19 11. None known to me at this time.

20 12. No.

21 13. The property at 446 South Highland Avenue and my engagement ring. Gary confiscated
22 my engagement ring approximately one year ago, he said I no longer needed it. I do not know the
23 current values of these items at present.

24 14. None from my employment. I do not know if I have an interest in any retirement or other
25 employment benefits of Gary Canter.

26 15. None known at the present time.

27 16. No.

28 17. 1. Auto mobile insurance; State Farm, see attached.

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2. Health insurance, Blue Cross, see attached.

3. Gary insured me for \$500,000.00 in life insurance. The only information I know is the carrier Transamerica Occidental Life. Gary told me his father is holding the the policies. I do not know if Jenifer is insured. He told me I was the beneficiary his life insurance policy but I have never seen one.

18. Yes. Physically I cannot work because of a neck injury. Also Gary's behavior and abuse has me and my daughter so nervous it is hardly bearable.

19. Yes. Jennifer is in need of psychological counseling as well as dental treatment because of the stress level Gary has caused. I do not yet know the cost or duration.

20. To date I have incurred the amount of \$6,965.00 in attorney's fees plus costs. To date I have paid \$2,500.00 in attorney's fees and costs. \$1,500.00 of the money was a loan from my father who is on social security, and \$1,000.00 from an auto accident settlement in March of 1999. The arrangement with my attorney is \$225.00 per hour plus costs. Gary Canter has paid \$2,500.00 per court order.

21. None.

wp/act/canter/responserog2/9632

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONDENT'S RESPONSE TO FORM INTERROGATORIES SET NO. ONE and know their contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on ~~April~~ ^{JUNE} 2, 1999, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



DEBORAH MARIE CANTER

EXHIBIT 4

#35

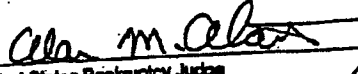
47

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Mark E. Brenner Mark E. Brenner, A.P.C. 7009 Owensmouth, No. 201 Canoga Park Ca 91303 CB#106962		FOR COURT USE ONLY
Fax No.: Bar No.: <input type="checkbox"/> Individual appearing without counsel <input checked="" type="checkbox"/> Attorney for <u>Canter Family Trust</u>	ENTERED JAN 27 2000	FILED JAN 26 2000
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		CHAPTER: 13 CASE NO.: LA99-49126
In re: <u>Doborah Canter</u> Debtor(s). <i>32</i>		DATE: January 26, 2000 TIME: 2:30 CTM: 1375 FLOOR: 13th

**ORDER GRANTING MOTION FOR RELIEF FROM STAY
 UNDER 11 U.S.C. § 362
 (Unlawful Detainer)
 (MOVANT: CANTER FAMILY TRUST)**

- The Motion was: Contested Uncontested Settled by Stipulation
- The street address of the residential property (the "Property") to which this Order applies is as follows (specify):
 Street: 446 S. HIGHLAND
 Apartment/Suite no.:
 City, State, Zip Code: LOS ANGELES CA 90010
- The Court orders that the Stay Motion is granted under 11 U.S.C. § 362(d)(1) and (d)(2). The stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a), if applicable, (the "Stay") is/are terminated as to Debtor and Debtor's bankruptcy estate with respect to Movant, its successors, transferees and assigns ("Movant"). Movant may enforce its remedies to obtain possession of the Property in accordance with applicable non-bankruptcy law, but may not pursue any deficiency claim against the Debtor(s) or property of the estate, except by filing a Proof of Claim in this bankruptcy case pursuant to 11 U.S.C. § 501.
- This Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- The Court further orders as follows:
 - Movant shall not cause the Debtor(s) to be locked out before the following date (specify):
 - The Stay is annulled retroactive to the petition date. Any post-petition acts taken by Movant to enforce its remedies to obtain possession of the Property shall not constitute a violation of the Stay.
 - This Order shall be binding and effective in any bankruptcy case commenced by or against the above-named Debtor(s) for a period of 180 days from the date of entry of this Order.
 - All provisions of this Order also apply to relief from the co-debtor stay under 11 U.S.C. § 1201 or § 1301, as applicable to the above-named co-debtor.
 - See Extraordinary Relief Attachment (Use Optional Form 351ER) for additional provisions
 - Other (See attached page): THE REQUIREMENT OF FBR 4001(a)(3) IS WAIVED

Dated: JANUARY 26, 2000


 United States Bankruptcy Judge
 HONORABLE ALAN M. AHART *35 NPM*

Order Granting Motion for Relief from Stay - Page 2 of 2

351UD

In re Deborah Canter (SHORT TITLE) Debtor(s).	CHAPTER: 13 CASE NO.: LA99-49126-AA
--	--

NOTICE OF ENTRY OF JUDGMENT OR ORDER AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1, that an ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (in whole or in part) was entered on (specify date):

JAN 27 2000

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date):

JAN 27 2000

Dated:

JAN 27 2000

Jon D. Ceretto
Clerk of the Bankruptcy Court

By: 
MARTA P. MENDEZ
Deputy Clerk

SERVICE LIST
MOTION FOR RELIEF FROM AUTOMATIC STAY

Edwina Dowell
Chapter 13 Trustee
700 S. Figueroa, Ste. 1950
Los Angeles, Ca 90017

Andrew Smith, Esq.
4929 Wilshire Blvd., Ste. 988
Los Angeles, Ca 90010

Deborah Canter
446 S. Highland
Los Angeles, Ca 90036

Deborah Canter
PO Box 480400
Los Angeles, CA 90048

Mark E. Brenner
7009 Owensmouth, No. 201
Canoga Park, CA 91303

EXHIBIT 5

NOTICE THAT THIS DOCUMENT WAS SERVED BY
POSTAGE GUARANTEED TO ALL COUNSEL
EFFECTIVE MOST RECENT ADDRESS...

FILED
CLERK, U.S. DISTRICT COURT
FEB - 2 2000
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

2/16/00
Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
RECEIVED

FEB 7 2000
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

DISTRICT COURT CASE NUMBER
CV 00-01185 R

IN RE

DEBORAH M. CANTER

I hereby attest and certify on 2/16/00
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.



CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy

DEBTOR(S)

BANKRUPTCY COURT CASE NUMBER

LA99-49126-AA

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 16 2000
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

DEBTOR(S)

ADVERSARY CASE NUMBER

APPELLEE(S)

Pursuant to Section 16.1 of General Order 224, the Motion to Withdraw Reference, or
 Application for Leave to Appeal an Interlocutory Order
from the Bankruptcy Court to the District Court for the above-entitled matter has been ~~assigned~~ assigned to Judge
MANUEL L. REAL for determination

After considering the above, IT IS HEREBY ORDERED that the :

- Motion for Leave to Appeal is DENIED.
- Motion to Withdraw Reference is DENIED and referred back to the Bankruptcy Court.

The District Court case number is hereby closed and all subsequent documents should be filed in the Bankruptcy
Court under the Bankruptcy No. and Adversary No. (ENT _____ JS-6)

Dated: _____ United States District Court Judge

After considering the above, IT IS HEREBY ORDERED that the

- Motion for Leave to Appeal is GRANTED
- Motion to Withdraw Reference is GRANTED.

Dated: Jun. 27, 2000 United States District Judge
MANUEL L. REAL

NOTICE TO COUNSEL FROM THE CLERK

Pursuant to the above order granting the motion, this matter has been assigned to District Court Judge
MANUEL L. REAL for:

- determination of appeal. The Clerk shall issue forthwith the Notice Regarding Appeal.
- all further proceedings. All subsequent documents addressing the above issue must be filed in the District Court in duplicate and the caption MUST include the following information: District Court Case No., Bankruptcy Court Case No. and Adversary No. (please refer to above).

To expedite the transfer of this matter from the Bankruptcy Court to the District Court, please submit
a written designation specifying which documents are required to be transferred to the District Court.
The written designation should be submitted to the Bankruptcy Court within three (3) days and should
be directed to the Supervisor, Intake Division, Federal Building, 300 No. Los Angeles Street, 1st Floor,
Los Angeles, CA 90012.

1 copy Phys
Mid Notice Ptry
K.S.F.

cc: Bankruptcy Judge ALAN M. AHART
Supervisor, Intake Division, Bankruptcy Court
All Interested Parties

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

EXHIBIT 6

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FILED
FEB 29 2000
FEDERAL BUREAU OF INVESTIGATION
CENTRAL DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:
DEBORAH M. CANTER

CASE NO. CV00-1185-R
BANKRUPTCY CASE NO. LA 99-49126-AA

Pending further proceedings in this Court the judgment of February 7, 2000, in the matter of ALAN S. CANTER v. DEBORAH MARISTINA ROMANO in Municipal Court No. 99UI8116 is stayed.

DATED: February 29, 2000.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

EXHIBIT 7

1 MARIA E. STRATTON (No. 090986)
Federal Public Defender
2 GUY C. IVERSEN (No. 150883)
Deputy Federal Public Defender
3 Suite 1503, United States Courthouse
312 North Spring Street
4 Los Angeles, California 90012-4758
Telephone (213) 894-2235
5 Facsimile (213) 894-0081
6 Attorneys for Defendant
MARISTINA CANTER

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
10

2000 MAR 28 PM 2:56
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

11
12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15 MARISTINA CANTER,)
16 Defendant.)
17

NO. CR 98-576-R
EX PARTE APPLICATION FOR
ORDER TO SHOW CAUSE AND FOR
HEARING ON ORDER RE: VIOLATION
OF LOCAL RULE 10.8;
DECLARATION OF COUNSEL;
(PROPOSED) ORDER

18 Defendant, MARISTINA CANTER, hereby applies to this Honorable
19 Court for issuance of an Order to Show Cause and hearing on Order
20 regarding violations of United States Central District Court Local
21 Criminal Rule 10.8, mandating that all presentence reports are
22 confidential records of the court, by attorneys Lauren Nemiroff and
23 Mark E. Brenner.

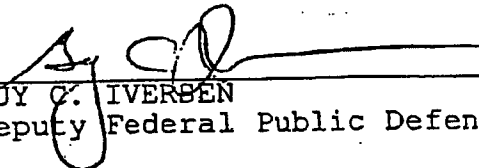
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1 This application is based on the attached declaration of
2 counsel, all files and records in this case, and such further
3 information as may be provided to the court with respect to this
4 application.

5
6 Respectfully submitted,

7 MARIA E. STRATTON
8 Federal Public Defender

9 DATED: March 27, 2000

10 By 
11 GUY C. IVERSEN
12 Deputy Federal Public Defender
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DECLARATION OF GUY C. IVERSEN

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3 I, GUY C. IVERSEN, hereby state and declare as follows:
4

5 1. I am a Deputy Federal Public Defender in the
6 Central District of California appointed to represent MARISTINA
7 CANTER in the above-entitled criminal action. In that action, a
8 presentence report was prepared and filed under seal with this
9 court as required by Local Criminal Rule 10.8. Local Rule 10.8
10 is attached as exhibit A.
11

12 2. Ms. CANTER is currently involved in three separate
13 civil actions. She has a dissolution of marriage proceeding
14 filed in Los Angeles Superior Court case #BD295236. Her husband
15 Gary Canter is represented in that action by Lauren Nemiroff of
16 Blumberg, Canter, Cohen, and Nemiroff. Ms. CANTER also has a
17 Chapter 13 bankruptcy petition pending before this court, LA99-
18 49126-R. In that action, Gary Canter is represented by Wesley
19 H. Avery of Sulmeyer, Kupetz, Baumann, and Rothman. Gary
20 Canter's father Alan Canter, and the Canter Family Trust, are
21 represented in the bankruptcy proceeding by Mark E. Brenner.
22 There is also an unlawful detainer action filed against her by
23 Alan Canter, Los Angeles Municipal Court case #99U18116. In that
24 proceeding Alan Canter is represented by Robert Brodney.
25

26 3. Ms. CANTER has provided me with copies of various
27 pleadings filed against her in the bankruptcy proceedings. From
28 my review of those pleadings it appears that Lauren Nemiroff and

1 Mark E. Brenner have filed Ms. CANTER's presentence report in
2 the instant criminal case, as an exhibit. Specifically, the
3 presentence report appears to have been filed as an exhibit by
4 Lauren Nemiroff in the "Notice of Motion and Motion to Compel
5 Respondent to Attend a Further Deposition and Answer Questions",
6 and by Mark E. Brenner in "Objection to Confirmation of Chapter
7 13 Plan". This appears to be a prima facie violation of Local
8 Criminal Rule 10.8, promulgated by the United States District
9 Judges of the Central District and issued as an order of the
10 court. As such, I am seeking with this application, an Order to
11 Show Cause, and hearing on the Order, regarding this purported
12 contempt of court by Lauren Nemiroff and Mark E. Brenner. At
13 that hearing Ms. CANTER will seek whatever relief the court
14 deems appropriate, including but not limited to, the withdrawal
15 of all presentence report exhibits currently filed in either the
16 bankruptcy or divorce proceeding as well as the return to her
17 possession of all copies of that presentence report known to
18 exist and within the possession of the litigants and their
19 clients.

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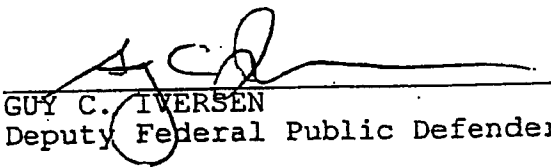
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4. On March 23, 2000, I spoke with Assistant United States Attorney Ted Moreton who indicated he takes no position with respect to this request. I also spoke with Mr. Brenner and Ms. Nemiroff on March 27, 2000, and informed them of this application.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

March 27, 2000


GUY C. IVERSEN
Deputy Federal Public Defender

after appeal unless the judgment of conviction shall specifically provide to the contrary.

10.4 [Deleted]

10.5 (32.1–10.5) **Supervised Release and Probation—Arrest of Violator—Duty of Marshal.** As soon as practicable after taking into custody any person charged with a violation of supervised release or probation, the Marshal shall give written notice to the United States Attorney, the Probation Officer and the Clerk of the date of such arrest and the place of confinement of the alleged probation violator.

10.6 [Deleted]

10.7 (32.1–10.7) **Supervised Release and Probation Violation—Notice to Attorney for Defendant.** The Clerk shall promptly inform any attorney of record for an alleged supervised release or probation violator of the arrest of the violator and the place of confinement. If no attorney of record appears or the attorney of record cannot be found, the notice shall be given to the Federal Public Defender.

10.8 (32–10.8) **Supervised Release and Probation Records.** Pre-sentence investigation and reports, supervised release or probation supervision records, and reports of studies and recommendation pursuant to 18 U.S.C. Sec. 4208(b), 4252, 5010(e) or 5034, are confidential records of this Court.

10.8.1 [Deleted]

10.8.2 [Deleted]

Eff. April 1, 1998.

RULE 11. [DELETED]

RULE 12. [DELETED]

RULE 13. (57–13) ORDERS AND JUDGMENTS

The date and at least two lines of the text of the order or judgment and signature line shall appear on the page that provides for the signature of the judge or magistrate judge.

Eff. April 1, 1998.

RULE 14. (57–14) SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES

14.1 (57–14.1) **Policy.** It is the policy of the Court to facilitate the parties' efforts to dispose of complex criminal cases without trial. It is also the policy of the Court that the judge assigned to preside over a complex criminal case (the trial judge) may ask if parties desire a settlement conference but shall not participate in facilitating settlement. Participation in settlement conferences under this rule shall be completely voluntary.

14.1.1 (57–14.1.1) **Definition.** A "complex case" is a criminal case in which the government estimates that the presentation of evidence in its case-in-chief will require more than sixteen (16) days.

14.1.2 (57–14.1.2) **Assignment of Settlement Judge.** A settlement judge from the Criminal Settlement Panel shall be randomly assigned to any complex case upon the filing of a request and the approval of the trial judge.

14.1.3 (57–14.1.3) **Role of Settlement Judge.** The role of the settlement judge shall be limited to facilitating a voluntary settlement between parties in criminal cases. The settlement judge shall not preside over any aspect of the case other than facilitation of a voluntary settlement according to this Rule. All matters related to the case other than settlement shall be handled by the trial judge assigned to preside over that case.

14.2 (57–14.2) **Request for Conference.** A settlement conference can be requested only by the attorney for the government and the attorney for the defendant acting jointly. (This rule does not require that all defendants in a multi-defendant case join in the request.)

14.2.1 (57–14.2.1) **Time of Request.** A settlement conference may be requested at any time up to the settlement conference cut-off date established by the trial judge. If no cut-off date is established, a settlement conference request may be made at any time up to twenty-one (21) days before the date scheduled for the commencement of trial, unless a later request is permitted by the trial judge.

14.2.2 (57–14.2.2) **Form of Request.** The request for a settlement conference shall be in writing and shall be signed by both the attorney for the government and the attorney for the defendant, and the defendant personally. It shall list the dates on which counsel are available for the conference and shall be filed in the case.

14.2.3 (57–14.2.3) **Response to Request.** Upon a timely request for a settlement conference, the trial judge may, at his or her discretion, refer the matter for assignment to a settlement judge in accordance with Local Rule 14.1.2.

14.2.4 (57–14.2.4) **Withdrawal of Request.** A request for a settlement conference may unilaterally be withdrawn any time. A withdrawal shall be in writing, shall be signed by the attorney and shall be filed in the case.

14.3 (57–14.3) **Presiding Officer.** The settlement conference shall be presided over by the settlement judge who was randomly assigned to the case in accordance with Local Rule 14.1.2. If the settlement judge assigned becomes unavailable or otherwise cannot hear the settlement conference, the case shall be returned to the Clerk for the random assignment to another settlement judge.

PROOF OF SERVICE

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I, the undersigned, declare that I am a resident or employed in Los Angeles County, California; that my business address is the Office of the Federal Public Defender, 321 East Second Street, Los Angeles, California 90012-4206; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, and at whose direction I served the EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND FOR HEARING ON ORDER RE: VIOLATION OF LOCAL RULE 10.8; DECLARATION OF COUNSEL; [PROPOSED] ORDER.

On March 28, 2000, following ordinary business practice, service was:

<input checked="" type="checkbox"/> Placed in a closed envelope, for collection and interoffice delivery addressed as follows:	<input type="checkbox"/> By hand-delivery addressed as follows:	<input checked="" type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:
--	---	--

EDWARD B. MORETON, JR.
Assistant United States Attorney
United States Court House
312 North Spring Street, Suite 1319
Los Angeles, California 90012

Lauren Nemiroff
Blumberg, Canter, Cohen & Nemiroff
5900 Sepulveda Blvd, Suite 331
Van Nuys, CA 91411-2577

Mark E. Brenner
Attorney at Law
7009 Owensmouth, No 201
Canoga Park, CA 91303

This proof of service is executed at Los Angeles, California, on March 28, 2000.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Diana Elliott

EXHIBIT 8

1 MARIA E. STRATTON (No. 090986)
Federal Public Defender
2 GUY C. IVERSEN (No. 150883)
Deputy Federal Public Defender
3 Suite 1503, United States Courthouse
312 North Spring Street
4 Los Angeles, California 90012-4758
Telephone (213) 894-2235
5 Facsimile (213) 894-0081

6 Attorneys for Defendant
MARISTINA CANTER

FILED
APR - 7 2000
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

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12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15 MARISTINA CANTER,)
16 Defendant.)
17

NO. CR 98-576-R
[PROPOSED] ORDER TO SHOW
CAUSE AND ORDER SETTING
HEARING

18 GOOD CAUSE HAVING BEEN SHOWN, AN ORDER TO SHOW CAUSE IS
19 HEREBY ISSUED TO Lauren Nemiroff, Wesley H. Avery, and Mark E.
20 Brenner, regarding violations of Local Criminal Rule 10.8. IT IS
21 FURTHER ORDERED THAT Lauren Nemiroff and Mark E. Brenner be
22 present at the hearing on this Order April 17, 2000, at
23 10:00 Am

24
25 DATED: ~~March~~ April 7, 2000

HONORABLE MANUEL L. REAL
United States District Judge

26 Presented by:
27 Guy C. Iversen
28 Deputy Federal Public Defender

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ENTER ON ICMS
APR 11 2000

PROOF OF SERVICE

no other business...
and all...
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CENTRAL DISTRICT COURT
SANTA ANA, CALIFORNIA

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I, the undersigned, declare that I am a resident or employed in Los Angeles County, California; (that) my business address is the Office of the Federal Public Defender, 321 East Second Street, Los Angeles, California 90012-4206; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, and at whose direction I served the [PROPOSED] ORDER TO SHOW CAUSE AND ORDER SETTING HEARING.

On March 28, 2000, following ordinary business practice, service was:

[X] Placed in a closed envelope, for collection and interoffice delivery addressed as follows: [] By hand-delivery addressed as follows: [X] Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

EDWARD B. MORETON, JR.
Assistant United States Attorney
United States Courthouse
312 North Spring Street, Suite 1319
Los Angeles, California 90012

Lauren Nemiroff
Blumberg, Canter, Cohen & Nemiroff
5900 Sepulveda Blvd, Suite 331
Van Nuys, CA 91411-2577

Mark E. Brenner
Attorney at Law
7009 Owensmouth, No 201
Canoga Park, CA 91303

This proof of service is executed at Los Angeles, California, on March 28, 2000.

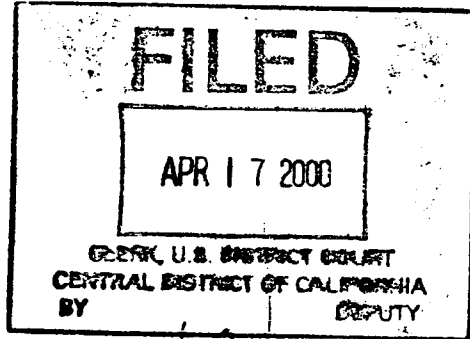
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Diana Elliott
DIANA ELLIOTT

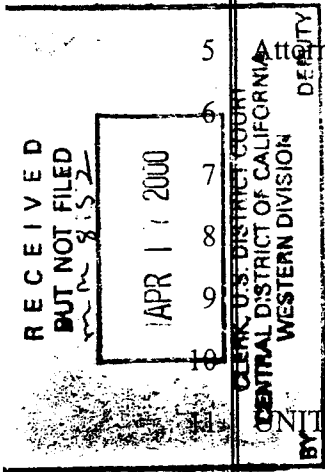
EXHIBIT 9

1 JOHN YZURDIAGA
Attorney at Law
2 State Bar No. 49031
800 Wilshire Boulevard, Suite 1510
3 Los Angeles, California 90017
Telephone: (213) 622-9262
4 Facsimile: (213) 622-0445

5 Attorney for Lauren Nemiroff



6 UNITED STATES DISTRICT COURT
7
8 CENTRAL DISTRICT OF CALIFORNIA
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10



11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MARISTINA CANTER,

15 Defendant.

CASE NO.: CR 98-576-R

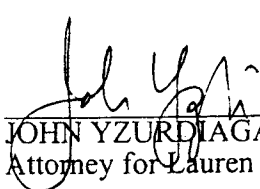
SUBMISSION IN RESPONSE AND
MITIGATION TO ORDER TO SHOW
CAUSE; DECLARATION OF LAUREN
NEMIROFF; DECLARATION OF
SHAUNA L. BECKSTEAD; EXHIBITS

Date: April 17, 2000
Time: 10:00 a.m.

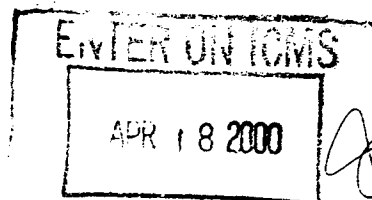
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17 Lauren Nemiroff, by and through her attorney, John Yzurdiaga, hereby submits the following
18 points and authorities and declarations in response to the Court's Order to Show Cause.
19

20 Dated: April 14, 2000

Respectfully submitted,

21
22 
23 JOHN YZURDIAGA
Attorney for Lauren Nemiroff

24
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 On March 27, 2000, Lauren Nemiroff, the attorney representing Gary Canter in a state court
5 dissolution proceeding, was advised by Deputy Federal Public Defender Guy C. Iversen that he
6 would seek sanctions against her for a violation of Local Criminal Rule 10.8, which states that
7 Presentence Investigative Reports ("PSR") "are confidential records of this court." The respondent
8 in the dissolution, Deborah Marie Canter, had been convicted in a federal case, United States v.
9 Maristina Canter, Case No. CR 98-576-R, and is represented by Mr. Iversen in that case. During
10 the course of the dissolution proceedings, Ms. Nemiroff had filed Ms. Canter's PSR as an exhibit
11 in the state court dissolution proceedings.

12 On April 11, 2000, Ms. Nemiroff received the Court's Order to Show Cause. Ms. Nemiroff
13 respectfully submits this memorandum in response to the Order.

14 II.

15 STATEMENT OF FACTS

16 Lauren Nemiroff has never represented a criminal client, appeared in a criminal proceeding
17 in either state or federal court, and has never appeared in any federal appellate or district court on
18 any case. She is a family law practitioner and is totally unversed in criminal procedure. The Court
19 is requested to find that the filing of the confidential document in the dissolution action was an
20 innocent mistake rather than a willful, reckless or grossly negligent act.

21 Ms. Nemiroff represents Gary Canter in the dissolution of marriage proceedings, Marriage
22 of Canter, Gary and Deborah, Case No. BD 295236. During her representation of Mr. Canter, Ms.
23 Nemiroff came into possession of the PSR in Deborah Marie Canter's federal case. She filed the
24 PSR as an exhibit to pleadings during the dissolution litigation. The report does not reflect its
25 confidential nature by any statement, stamp or other notice, either on its face or within its contents.
26 Ms. Nemiroff has never practiced or appeared in federal court, nor has she ever handled a criminal
27 case, thus she was entirely unaware of the confidential nature of the PSR.

28 Upon learning of her mistake, Ms. Nemiroff immediately set out to correct her error. She

1 sent an apology to Ms. Canter through her counsel, and requested a stipulation to withdraw the PSR
2 from the state court file. [Exhibits A and B, respectively] Upon receipt of the signed stipulation,
3 she obtained an Order from the Superior Court and has removed the PSR from the family court file.
4 [Exhibit B and Declaration of Shauna L. Beckstead]

5 Mr. Iversen, in his *ex parte* application, requested that all PSR exhibits be withdrawn, that
6 all PSR's filed as exhibits and in possession of the litigants be returned to Ms. Canter, and "whatever
7 relief the court deems appropriate." All PSR's filed as exhibits in the dissolution matter have been
8 withdrawn from the Superior Court file and will be provided to Mr. Iversen along with all other
9 copies in possession of Ms. Nemiroff and Mr. Canter prior to the hearing on April 17, 2000. The
10 Court is requested to find that further sanctions are unnecessary.

11 III.

12 ATTORNEY NEMIROFF'S ACTIONS WERE NOT WILLFUL, GROSSLY
13 NEGLIGENT OR RECKLESS, AS REQUIRED BY LOCAL RULE 27

14 Deputy Federal Public Defender Guy C. Iversen, counsel for Maristina Canter in the matter
15 of United States v. Maristina Canter, U.S.D.C. Case No. CR 98-576-R, seeks relief from attorney
16 Nemiroff for attaching the PSR as an exhibit in proceedings for dissolution of marriage pending in
17 state family court, in the matter of Marriage of Canter, Gary and Deborah, Los Angeles Superior
18 Court Case No. BD 295236. Civil Local Rule 27 provides for imposition of monetary or other
19 sanctions against an "offending party or attorney" for conduct which was "willful, grossly negligent,
20 or reckless." Local Rule 10.8 provides that pre-sentence investigation reports are confidential
21 records.

22 Attorney Nemiroff does not deny violating the rule. [Exhibit A] However, regrettable as
23 the occurrence may have been, it is suggested to this Court that her actions were not willful, grossly
24 negligent, or reckless and do not warrant the imposition of sanctions under the Local Rule.

25 Ms. Nemiroff's practice is limited to family law matters in state court. She has never
26 involved herself in federal litigation, and has never been involved in the practice of criminal law in
27 either state or federal court, and thus had no knowledge of a rule of confidentiality regarding
28 Presentence Reports. In fact, two different opposing counsel representing Ms. Canter in the

1 dissolution, and two separate family law judges presiding over the dissolution and hearings in that
2 case apparently saw no impropriety in the filing of the PSR because no one at any time mentioned
3 to Ms. Nemiroff that filing the PSR was improper. [Declaration of Lauren Nemiroff]

4 Local Criminal Rule 10.8 is an exception to the general rule that legal pleadings and filings
5 are matters of public record. While an attorney is obligated to know and abide by the rules of any
6 court in which she practices, attorney Nemiroff has never practiced in the United States District
7 Court for the Central District of California, nor any other federal court, and had no knowledge of
8 this Local Rule. Ms. Nemiroff's lack of knowledge of the local rule is not offered as an excuse for
9 her actions, rather as an explanation.

10 Local Rule 27 provides sanctions for conduct accompanied by a state of mind analogous to
11 that required for proof of criminal contempt, that is, conduct that was "willful, grossly negligent, or
12 reckless." See United States v. Kouri-Perez, 187 F.3d 1 (9th Cir. 1999) [district court's criminal
13 contempt power is reserved for conduct that is accompanied by criminal mens rea, that is, intentional
14 or reckless conduct]. By analogy to these principles of criminal contempt, it does not appear that
15 attorney Nemiroff's conduct rises to the level warranting sanctions under the local rule.

16 Ms. Nemiroff made an unintentional mistake and immediately set about to correct her error.
17 She had no intention of violating an order of this Court, or of breaching the confidentiality of a court
18 record, as she was entirely unaware of Local Rule 10.8. Although her actions were inappropriate,
19 they were those of an unwitting advocate and devoid of any improper intent.

20 IV.

21 MS. NEMIROFF HAS MOVED EXPEDITIOUSLY TO REMEDY

22 THE IMPROVIDENT SUBMISSION BY WITHDRAWING

23 THE PSR FROM THE STATE PROCEEDINGS

24 From the moment she became aware of her error, Ms. Nemiroff has made every effort to
25 comply with the rules and orders of this Court, and to this end has already moved expeditiously to
26 remedy the situation in state court by withdrawing the PSR from the dissolution proceedings. By
27 analogy to the rules of civil contempt, it would appear that there is no need to impose sanctions to
28 coerce her compliance.

1 The general rule is that civil contempt monetary sanctions are remedial, that is, they are
2 designed primarily to coerce the offending party into prompt compliance with a judicial mandate.
3 Once the contemnor comes into compliance, the contempt is purged and no further fines are
4 appropriate. United States v. Kouri-Perez, *supra*, 187 F.3d at 6-7 & fn. 2.^{1/} The very purpose of
5 civil contempt is to offer the contemnor “the opportunity to purge himself of contempt by complying
6 with prescribed purgation conditions.” N.L.R.B. v. J. P. Stevens Co., 563 F.2d 8, 16 (2d Cir. 1977);
7 see also N.L.R.B. v. A-Plus Roofing, Inc., 39 F.3d 1410 (9th Cir. 1994) [substantial compliance
8 purges civil contempt]; In re Dua-Deck Video Cassette Recorder Antitrust Litigation v. The Motion
9 Picture Association of America, 10 F.3d 693, 695 (9th Cir. 1993) [substantial compliance is a
10 defense to civil contempt].)

11 By analogy to this body of law, the Court is urged to find that sanctions under Local Rule
12 27 are unnecessary. Attorney Nemiroff needs no coercing; she is embarrassed, she has apologized
13 for her action, and she has acted diligently to remedy the violation of confidentiality.

14 V.

15 SANCTIONS SHOULD NOT BE IMPOSED ON A NON-PARTY
16 FOR VIOLATION OF A COURT RULE OF WHICH
17 THE NON-PARTY HAD NO ACTUAL NOTICE

18 Local Rule 27 provides that sanctions may be imposed on an “offending party or counsel.”
19 This rule appears to apply only to parties in federal litigation or their counsel and is consonant with
20 the general principles governing contempt, which provide for sanctions against non-parties only
21 under certain circumscribed conditions, not applicable here.

22 As an additional ground to mitigate against sanctions, it is submitted that non-parties to
23 litigation may be held in contempt only where: (1) where the non-party aids or abets a named party
24 or is legally identified with him; or (2) where the non-party acts in concert with a party to violate
25 a court order, of which he has actual notice. United States v. Laurins, 857 F.2d 529, 535 (9th Cir.

26 _____

27 ^{1/} By contrast, a monetary sanction imposed in connection with a criminal contempt finding
28 is punitive and deterrent, rather than remedial, and “vindicates judicial authority by assessing a one-
time penalty for past disobedience of a court order.” Ibid.

1 1988); Peterson v. Highland Music, Inc., 140 F.3d 1313, 1323 (9th Cir. 1998). Arguably, the
2 imposition of sanctions on Ms. Nemiroff for violating the Local Rules may not be appropriate
3 because she is neither a party to the proceedings in federal court nor is she legally affiliated with any
4 party. Ms. Nemiroff is not a party or legally identified with a party in this case, nor has she injected
5 herself into the federal proceedings. She did not have actual notice of the confidentiality rule; if she
6 had, she would have strictly abided by it. In order to correct her error, she has made every effort to
7 comply with the federal rules.


8 VI.

9 CONCLUSION

10 It is respectfully submitted that the Court need not order any additional relief because in
11 submitting the PSR, Ms. Nemiroff was unaware of the local rule of confidentiality. Her lack of
12 knowledge of local federal rules regarding criminal procedure is mitigated because her practice is
13 confined to state court family law proceedings; and she has acted expeditiously to remedy the breach
14 of confidentiality. The Court is urged not to sanction Lauren Nemiroff.

15
16 Dated: April 14, 2000

Respectfully submitted,

17
18 
19 _____
JOHN YZURDIAGA
Attorney for Lauren Nemiroff

DECLARATION OF LAUREN NEMIROFF

I, LAUREN NEMIROFF, declare:

1. I was admitted to the State Bar of California in 1987, and for one and one-half years I worked for a civil litigation firm with an emphasis on family law. For the past eleven years, I have exclusively practiced family law.

2. In the thirteen years that I have been a lawyer, I have never appeared in any criminal court or represented a client on a criminal matter.

3. I was sworn into the federal bar (en masse) in 1987. Since my admission I have never represented a client or made an appearance in the district court in any case at any time.

4. I represent Gary Paul Canter in the dissolution proceeding entitled Marriage of Canter, Gary and Deborah, Case No. BD 295236, in the Los Angeles Superior Court, Central District.

5. Gary Paul Canter is the petitioner, and Deborah Marie Canter (Maristina Canter) is the respondent in that dissolution action. As part of the dissolution proceedings, I submitted copies of Ms. Canter's PSR as an exhibit. In doing so, I was not aware that the document was confidential or that there was a local federal rule stating that the report was confidential.

6. During the course of the dissolution proceedings, Ms. Canter has been represented by two different attorneys: Lawrence Slavett and Andrew Smyth. Both of these attorneys received pleadings that included a copy of the PSR. Neither attorney ever suggested to me that it was in any way improper to have attached a copy of the PSR as an exhibit.

7. Two separate family law judges have presided over hearings and received pleadings that included a copy of the PSR as an exhibit, the Honorable John H. Sandoz and the Honorable Richard E. Denner. Neither of these judges mentioned or questioned the propriety of attaching the PSR as an exhibit in the case.

8. On March 27, 2000, I received a telephone call from Guy C. Iversen, the Deputy Federal Public Defender who represents Maristina Canter, advising me that he was going to file an Order to Show Cause regarding my violation of Local Criminal Rule 10.8. He advised that the violation was including a copy of Ms. Canter's PSR as an exhibit to a pleading in a dissolution case.

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9. Before Mr. Iversen's telephone call, I had no idea that I had violated a local rule of the United States District Court for the Central District of California, nor that I had done anything improper by including the PSR as an exhibit to pleadings in the family law matter.

10. A few days later, I received a copy of Mr. Iversen's request for an Order to Show Cause for violation of Local Criminal Rule 10.8.

11. I immediately set about to rectify my mistake.

12. I sent a letter of apology to opposing counsel and his client, Maristina Canter, and requested that he stipulate to an order to withdraw copies of the PSR from the Superior Court files. [Exhibit A]

13. Ms. Canter's attorney, Andrew Smyth, immediately signed the Stipulation which was promptly filed with the Superior Court. The Order to remove copies of the PSR was filed on April 13, 2000. [Exhibit B]

14. All copies of the PSR were removed from the Superior Court file on April 14, 2000. [Declaration of Shauna L. Beckstead]

15. All copies of the PSR from the Superior Court file and from my own files will be handed over to Guy Iversen on Monday, April 17, 2000.

16. In thirteen years of practice, I have never been cited for contempt nor sanctioned by any court.

17. I am extremely embarrassed that my lack of knowledge of criminal procedure and specifically the local criminal rules for the district court allowed me to violate Local Criminal Rule 10.8. If I had known of the confidential nature of the PSR, I would never have filed it as an exhibit in the dissolution case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2000, at Van Nuys, California.


LAUREN NEMIROFF

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DECLARATION OF SHAUNA L. BECKSTEAD

I, SHAUNA L. BECKSTEAD, declare:

1. I am employed by the law firm of Blumberg, Canter, Cohen & Nemiroff as a legal secretary to Lauren Nemiroff. I have personal knowledge of the facts set forth herein and if called upon to testify, I could competently do so.

2. On April 14, 2000, I delivered a conformed copy of the Stipulation Re Withdrawal of All Presentence Report Exhibits and Order Thereon, filed April 13, 2000, to Willie Moore, Supervisor of the Records Department of the Los Angeles Superior Court, Central District, located at 111 North Hill Street, Room 112, Los Angeles, California 90012.

3. Mr. Moore pulled the court file of Marriage of Canter, Case No. BD 295236, which consisted of two volumes and gave them to me. He instructed me to go through each volume and back-fold all of the Presentence Report ("PSR") exhibits that were in the court file.

4. Once I had reviewed both volumes of the court file and back-folded each PSR exhibit, Mr. Moore called his supervisor, Cora Ardizada.

5. Ms. Ardizada instructed me to stand next to her as she removed each PSR exhibit from the court file.

6. Ms. Ardizada then gave me the copies of the PSR exhibits that she removed from the court file.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2000, at Van Nuys, California.


SHAUNA L. BECKSTEAD

BLUMBERG, CANTER, COHEN & NEMIROFF

ATTORNEYS AT LAW

HOWARD P. CANTER
LAWRENCE BLUMBERG
GAIL R. COHEN
LAUREN NEMIROFF
DAVID J. BLUMBERG

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CERTIFIED SPECIALIST IN FAMILY LAW
CALIFORNIA BOARD OF LEGAL SPECIALIZATION

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April 6, 2000

VIA FACSIMILE & MAIL

Andrew E. Smyth, Esq.
Smyth Law Office
4929 Wilshire Boulevard
Suite 988
Los Angeles, CA 90010

Re: Marriage of Canter

Dear Mr. Smyth:

It has recently come to my attention that it was inappropriate to attach the United States Probation Office's Presentence Report for Maristina Canter as an exhibit to any of the court filings. Therefore, I would like to withdraw the Presentence Report exhibits as soon as possible. Pursuant thereto, I have prepared the enclosed Stipulation Re Withdrawal of All Presentence Report Exhibits and Order Thereon, whereby the exhibits previously filed in this matter would be removed from the court file and returned to your client. My client and I extend our sincerest apologies for any embarrassment or inconvenience caused by the filing of the Presentence Report.

If the enclosed Stipulation is acceptable, please sign and return it to my office for execution and filing. If you have any changes you would like to make, please call me as soon as possible. If for any reason you are unwilling to agree to the Stipulation, I will file an *ex parte* application to have all of the exhibits withdrawn.

Very truly yours,



LAUREN NEMIROFF
of Blumberg, Canter, Cohen & Nemiroff

LN:slb
Enclosure
cc: Gary Canter (w/enclosure)
Smyth.405

EXHIBIT A

1 BLUMBERG, CANTER, COHEN & NEMIROFF
 2 Lauren Nemiroff (Bar No. 130411)
 3 5900 Sepulveda Boulevard, Suite 331
 4 Van Nuys, California 91411-2577
 5 (818) 901 8900
 6 Attorneys for Petitioner
 7
 8
 9

ORIGINAL FILED

APR 13 2000

LOS ANGELES
SUPERIOR COURT.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

10 GARY PAUL CANTER)
 11)
 12) Petitioner.
 13)
 14) and
 15) DEBORAH MARIE CANTER
 16) Respondent.
 17)

No. BD 295236

STIPULATION RE
WITHDRAWAL OF ALL
PRESENTENCE REPORT
EXHIBITS AND ORDER
THEREON

17 It is hereby stipulated by and between Petitioner GARY PAUL CANTER and
 18 Respondent DEBORAH MARIE CANTER, by and through their attorneys of record, Lauren
 19 Nemiroff of Blumberg, Canter, Cohen & Nemiroff for Petitioner and Andrew Smyth of Smyth

20 //
 21 //
 22 //
 23 //
 24 //
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 26 //
 27 //
 28 //

Stip 2 Stipulation Re Withdrawal of All Presentence Report Exhibits and Order Thereon

FROM BLUMBERG/CANTER 918 9018900

4-09-200 3:25PM

EXHIBIT B

FROM BLUMBERG/CANTER 818 9018900

4-13-200 3:42PM

1 Law Office for Respondent that all Presentence Report exhibits currently filed in the above-
2 entitled case shall be withdrawn forthwith and returned to Respondent.

3 APPROVED AS TO FORM AND CONTENT:

4 BLUMBERG, CANTER, COHEN
5 & NEMIROFF

6 Dated: April 10, 2000

7 By: Lauren Nemiroff
8 LAUREN NEMIROFF
9 Attorneys for Petitioner

10 SMYTH LAW OFFICE

11 Dated: April 7, 2000

12 By: Andrew E. Smyth
13 ANDREW E. SMYTH
14 Attorney for Respondent

15 **ORDER**

16 Pursuant to the Stipulation of the parties, and good cause appearing, IT IS SO ORDERED.

17 Dated: APR 13 2000, 2000

18 **RICHARD E. DENNER**
19 THE HONORABLE JUDGE RICHARD E. DENNER
20 JUDGE OF THE SUPERIOR COURT

EXHIBIT 10

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HONORABLE MANUEL L. REAL, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) vs.)
)
) MARISTINA CANTER,)
)
) Defendant.)

NO. CR 98-576-R

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, April 17, 2000

LEONORE A. LeBLANC, CSR 2525
Reporter Pro Tem
8801 Eton Ave, #59
Canoga Park, California 91304
(818) 734-7285

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APPEARANCES:

For the Defendant:

GUY IVERSEN
Deputy Federal Public Defender
321 East Second Street
Los Angeles, California 90012
(213) 894-2854

For Lauren Nemiroff:

TALCOTT, LIGHTFOOT, VANDEVELDE, SADOWSKY,
MEDVENE & LEVINE
Attorneys at Law
By: MICHAEL J. LIGHTFOOT
655 South Hope Street, 13th Floor
Los Angeles, California 90017
(213) 622-4750

For Mark Brenner:

JOHN YZURDIAGA
Attorney at Law
800 Wilshire Boulevard, Suite 1510
Los Angeles, California 90017
(213) 622-9262

Also Present:

WES AVERY
Attorney at Law

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I N D E X

PROCEEDINGS

Order to Show Cause re violations of Local
Criminal Rule 10.8 as to Lauren Nemiroff
and Mark Brenner

1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 17, 2000; 10:00 AM

2 THE CLERK: Item Number 1, CR 98-576, United
3 States of America vs. Maristina Canter.

4 Counsel, your appearances, please.

5 MR. LIGHTFOOT: Good morning, your Honor. Michael
6 Lightfoot on behalf of Mark Brenner, who's present in court
7 this morning.

8 MR. YZURDIAGA: Good morning, your Honor. John
9 Yzurdiaga present and representing Lauren Nemiroff. She is
10 also present.

11 MR. IVERSEN: Good morning, your Honor. Guy
12 Iversen on behalf of Maristina Canter, the defendant in the
13 underlying criminal action, who is also present.

14 THE COURT: All right. I've received a response
15 from Mr. Yzurdiaga, but I haven't from you, Mr. Lightfoot.

16 MR. LIGHTFOOT: We were just retained on Friday.
17 Mr. Brenner received a notice on Tuesday. I can't add
18 anything more than that, your Honor. I mean, I've read the
19 order that your Honor signed, and it indicates that the
20 hearing regarding violations of Local Criminal Rule 10.8 my
21 client is ordered to be present at the hearing.

22 THE COURT: Right. Has he done anything about --

23 MR. LIGHTFOOT: Well, your Honor, the reports that
24 he filed were in the bankruptcy proceedings, which are now
25 before your Honor. We'd be perfectly willing to withdraw

1 those. I personally have the copies of the Presentence
2 Report which were in his files, and I would do whatever the
3 Court desires me to do with them. I'll go back to my office
4 and shred them. I'll file with the Court --

5 THE COURT: Why don't you just return them to
6 Mr. Iversen.

7 Any other problems, Mr. Iversen?

8 MR. IVERSEN: Your Honor, Mr. Yzurdiaga handed me
9 this morning two packets which he has represented to me
10 contain the Presentence Reports that were filed in the
11 underlying divorce proceedings in State Court.

12 If Mr. Lightfoot returns to me the copies that
13 were filed in the bankruptcy proceeding I think that
14 rectifies the situation with respect to the Presentence
15 Reports being filed. At this point in time I leave it to
16 the Court's discretion whether any further sanctions are
17 necessary. I'm not moving for them on behalf of Miss Canter
18 at this point.

19 The biggest concern I think she has -- and I will
20 discuss this with Mr. Smyth, her attorney in the divorce
21 proceedings -- is whether the filing of the reports had any
22 prejudicial effect on her status in that proceeding, but
23 I'm --

24 THE COURT: That's one thing that concerned me,
25 Mr. Yzurdiaga, in terms of that is whether they affected

1 anything having to do with the custody and with the support
2 or anything of that kind.

3 MR. YZURDIAGA: Well, they were filed for the
4 purposes that bore on her credibility. And I have gone
5 through the motions to compel answers, and, frankly, there
6 was nothing included in the questions that were asked that
7 were not included in the indictment and the plea agreement,
8 which are public documents, but it bore solely on
9 credibility.

10 THE COURT: I'm talking about the use of the
11 reports since they were filed --

12 MR. YZURDIAGA: I didn't see --

13 THE COURT: -- on motions there.

14 MR. YZURDIAGA: I didn't see anything that would
15 have prejudiced her in any personal nature whatsoever, other
16 than the issue of credibility, and even then --

17 THE COURT: It does to questions of support and
18 child custody, doesn't it?

19 MR. YZURDIAGA: Well, it does, but those are
20 documents that are available in the public portion of the
21 file.

22 THE COURT: Well, the reports aren't. They were
23 given --

24 MR. YZURDIAGA: No, the indictment is and the plea
25 agreement are a matter of public record, and the J&C also.

1 THE COURT: Well, I think the matter should be
2 resolved, but I want to be assured that those reports, as
3 such, were not used by the judges in making their
4 determination. Whether they had any other public record,
5 the reports are much more detailed than the public record.

6 MR. YZURDIAGA: Certainly. The only thing in
7 response to that I cannot advise to the Court what the
8 judges may actually have entertained, but there was never a
9 mention made, to my knowledge, from my client anyway, from
10 the PSR itself. The questions that were asked at a
11 deposition bore solely on the issues of credibility, and the
12 child custody matter is one of which happens commonly
13 nowadays. They have joint custody, each parent has 50
14 percent custody. So I don't believe that she was prejudiced
15 in any way by the PSR itself. Frankly, I think it was
16 largely disregarded, including the questions bearing on
17 credibility.

18 THE COURT: Well, I'm going to ask you and
19 Mr. Lightfoot to get together and see whether or not there
20 has been any problem in that respect, and maybe just
21 continue this to June 5th at 10:00 a.m., and then you can
22 advise me as to whether or not there's been any problem.

23 With reference to the bankruptcy and the fact that
24 there's a turnover of those as against Mr. Brenner, that
25 order to show cause is discharged.

1 MR. LIGHTFOOT: Thank you, your Honor.

2 MR. IVERSEN: Your Honor, with respect to the date
3 of June 5th, I'm slated to be out of town at the Defender
4 conference in New Orleans.

5 THE COURT: June 12th, will you be back?

6 MR. IVERSEN: June 12th is fine, your Honor.

7 THE COURT: June 12th at 10 o'clock.

8 MR. YZURDIAGA: Your Honor, on that date I'm
9 sorry --

10 THE COURT: June 12th.

11 MR. YZURDIAGA: -- might we go to the 19th?

12 THE COURT: 19th?

13 MR. LIGHTFOOT: Well, your Honor, if the order
14 discharging Mr. Brenner I imagine I don't have to be there.

15 THE COURT: That's right.

16 It looks like I'm not available that date. Let's
17 put it over to July 10th.

18 MR. AVERY: Judge Real?

19 THE COURT: Yes.

20 MR. AVERY: My name is Wes Avery. I was the
21 bankruptcy attorney. I wasn't ordered to appear today, but
22 to the extent the Court has bankruptcy questions I'm
23 prepared to answer them very concisely right now.

24 There's only two things on the bankruptcy. That
25 was the relief from stay in the divorce proceeding and the

1 relief from stay and conviction proceeding, both of them by
2 stipulation. Neither were done by motions. There's been no
3 papers before the Court that could have prejudiced.

4 MR. LIGHTFOOT: I'd like to interrupt and indicate
5 the Court has discharged the order with respect to that
6 proceeding. I don't know this is relevant.

7 MR. AVERY: I'm just questioning whether or not
8 it's necessary to continue this or not.

9 THE COURT: Okay.

10 MR. IVERSEN: I'm sorry, on what date are we going
11 to?

12 THE COURT: July 10th.

13 MR. YZURDIAGA: Thank you, your Honor.

14 MR. IVERSEN: Thank you.

15 (Proceedings concluded.)

16

17 REPORTER'S CERTIFICATE

18

19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
20 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER,
21 AND THAT THE PAGE FORMAT USED IS IN CONFORMANCE WITH THE
22 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

23

24 _____ August 9, 2006 _____

25 LEONORE A. LEBLANC
Reporter Pro Tem

EXHIBIT 11

1 JOHN YZURDIAGA
Attorney at Law
2 State Bar No. 49031
800 Wilshire Boulevard, Suite 1510
3 Los Angeles, California 90017
Telephone: (213) 622-9262
4 Facsimile: (213) 622-0445
5 Attorney for Lauren Nemiroff

FILED
2000 JUN 16 PM 2:57
LENA, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 MARISTINA CANTER,)
15 Defendant.)
16

CASE NO.: CR 98-576-R

STATUS REPORT AND STIPULATION
TO TAKE CONTINUED ORDER TO
SHOW CAUSE OFF CALENDAR;
DECLARATION OF JOHN YZURDIAGA

Date: July 10, 2000
Time: 10:00 a.m.

17 Lauren Nemiroff, by and through her attorney, John Yzurdiaga, and Guy C. Iversen, attorney
18 for defendant Maristina Canter, hereby submit this status report and stipulation to take continued
19 order to show cause off calendar.

20 On April 7, 2000, the Court ordered Lauren Nemiroff, attorney at law, to answer to a
21 violation of Local Criminal Rule 10.8. Ms. Nemiroff violated the Local Rule by filing the
22 Presentence Investigative Report ("PSR") of Maristina Canter in the dissolution proceedings
23 between Ms. Canter and her husband, Gary Canter.

24 Pursuant to a stipulation between Andrew Smythe, Ms. Canter's counsel in the dissolution
25 proceedings, and Ms. Nemiroff, all copies of the PSR were withdrawn from all pleadings in the state
26 court file, Marriage of Canter, Gary and Deborah, Case No. BD 295236, on April 14, 2000. At a

27 hearing before this Court on April 17, 2000, the Court ordered John Yzurdiaga, Attorney at Law, Ms.
28 Nemiroff, and Deputy Federal Public Defender Guy C. Iversen, counsel for Ms. Canter in this

45
ENTER ON INDEX
JUN 19 2000
SL-209

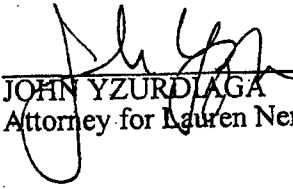
1 action, to determine if the judge before whom the dissolution proceedings were heard was in any
2 way prejudiced by his reading of Maristina Canter's PSR.

3 On May 24, 2000, Mr. Iversen and Mr. Yzurdiaga spoke with the Honorable Richard Denner,
4 the judge presiding over the matter of Marriage of Canter, Gary and Deborah, Case No. BD 295236.
5 Judge Denner stated that he did not recall the case and said that he had approximately 1600 cases
6 a year, and although a very small percentage of them have discovery hearings, he still did not
7 remember anything about this case. He did not recall reading a PSR and stated that he did not think
8 he had been prejudiced against Ms. Canter by reading the report.

9 The Court is requested to find that no further action is warranted in this matter, and that the
10 calendared appearance currently set for July 10, 2000, may be taken off calendar.

11
12 Dated: May 31, 2000

Respectfully submitted,

13
14 
15 JOHN YZURDIAGA
16 Attorney for Lauren Nemiroff

17 Dated: May ____, 2000

18 GUY C. IVERSEN
19 Deputy Federal Public Defender
20 Attorney for Defendant Maristina Canter
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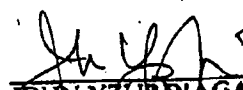
1 action, to determine if the judge before whom the dissolution proceedings were heard was in any
2 way prejudiced by his reading of Maristina Canter's PSR.

3 On May 24, 2000, Mr. Iversen and Mr. Yzardiaga spoke with the Honorable Richard Denner,
4 the judge presiding over the matter of Marriage of Canter, Gary and Deborah, Case No. BD 295236.
5 Judge Denner stated that he did not recall the case and said that he had approximately 1600 cases
6 a year, and although a very small percentage of them have discovery hearings, he still did not
7 remember anything about this case. He did not recall reading a PSR and stated that he did not think
8 he had been prejudiced against Ms. Canter by reading the report.

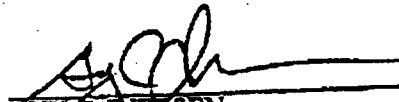
9 The Court is requested to find that no further action is warranted in this matter, and that the
10 calendared appearance currently set for July 10, 2000, may be taken off calendar.

11
12 Dated: ~~May~~ ^{June} 14, 2000

Respectfully submitted,

13
14 
15 JOHN YZURDIAGA
Attorney for Lauren Nemiroff

16
17 Dated: ~~May~~ ^{June} 14, 2000

18 
19 GUY C. IVERSEN
20 Deputy Federal Public Defender
21 Attorney for Defendant Maristina Canter
22
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DECLARATION OF JOHN YZURDIAGA

I, JOHN YZURDIAGA, declare

1. I am an attorney licensed to practice law before all of the courts of the State of California and am a member of the bar of this Court. I represent Lauren Nemiroff on an order to show cause in this matter, and I submit this declaration in support of the parties' status report and stipulation to take continued order to show cause hearing off calendar.

2. On May 24, 2000, at approximately 2:30 p.m., a conference call was arranged among the Honorable Richard Denner, Los Angeles Superior Court Judge, Guy C. Iversen, DFPD, counsel for defendant Maristina Canter, and myself, counsel for Lauren Nemiroff. The parties discussed the matter of the Presentence Investigative Report ("PSR") of Maristina Canter and any prejudice that may have accrued to Ms. Canter as a result of Judge Denner's reading of that report.

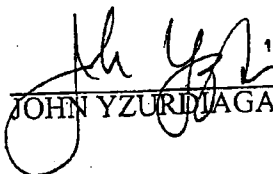
3. Judge Denner indicated that he did not recall having read the PSR and inquired what contents within the PSR may have been of concern to counsel for Ms. Canter or Ms. Nemiroff.

4. When advised that the concern was that he may have been prejudiced or biased against Ms. Canter, Judge Denner's response was, "I don't think so." He further stated that he did not recall reading the report.

5. Mr. Iversen and I agree that it does not appear that any further proceedings are warranted in this matter since Ms. Nemiroff has removed all copies of the PSR from the state court file and all copies were turned over to Mr. Iversen on April 17, 2000, prior to the hearing on the order to show cause.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2000, at Los Angeles, California.


JOHN YZURDIAGA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 800 Wilshire Boulevard, Suite 1510, Los Angeles, California 90017.

On June 16, 2000, I served the foregoing document described as **Status Report and Stipulation to Take Continued Order to Show Cause Off Calendar; Declaration of John Yzurdiaga and [Proposed] Order** all interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Edward B. Moreton, Esquire
Assistant United States Attorney
1300 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Phone: (213) 894-3358
Fax: (213) 894-6436

Guy C. Iversen, Esquire
Deputy Federal Public Defender
321 East Second Street
Los Angeles, California 90012
Phone: (213) 894-2235
Fax: (213) 894-0081

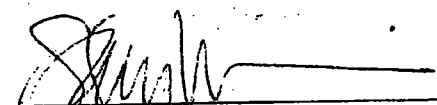
XXX BY MAIL: I deposited said envelopes with the United States Postal Service at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

BY FEDEX: I caused said envelopes to be delivered via FedEx for next business day delivery to the addressee.

BY FACSIMILE TRANSMISSION: I transmitted said document by facsimile at approximately _____:_____.m., on June 16, 2000, from (213) 622-0445. True and correct copies of the transmission reports are attached hereto.

FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

Executed on June 16, 2000, at Los Angeles, California.



STACI J. MOMII

EXHIBIT 12

SEND
FILED
CLERK, U.S. DISTRICT COURT
JUL 19 2001
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE DEBORAH M. CARTER
PLAINTIFF(S),

SACV 01-688 DOC
CASE NO. ~~CV 00-1185-R~~
(BK Case #: LA 99-49126-AA)

v.

ORDER TRANSFERRING
ACTION UNDER SECTION 3.1
OF GENERAL ORDER 224


DEFENDANT(S).

in accordance with Section 3.1 of General Order 224,


I HEREBY ORDERED that the above-entitled action be transferred to the calendar of Judge

DAVID O. CARTER for all further proceedings.

Dated: JULY 9, 2001


United States District Court Judge
MANUEL L. REAL

Dated: July 23, 2001


United States District Court Judge
DAVID O. CARTER

NOTE TO COUNSEL FROM CLERK:

On all documents subsequently filed in this case, please substitute the initials DOC after the case number in, so that the case number will read SACV 01-688 DOC. This is very important because documents are routed to the assigned Judge by means of these initials.

56

FILED
CLERK, U.S. DISTRICT COURT
JUL 19 2001
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:
Deborah M. Canter

CASE NUMBER:
SACV 01-688 DOC
CV 00-1185 R

NOTICE RE INTRA-DISTRICT
TRANSFER BY CLERK OF COURT

ALL PARTIES/COUNSEL OF RECORD:

The case referred to above has been reassigned to the

- Western
- Southern Division of the United States
- Eastern

District Court by Order Transferring Action Under GO 224/3.1

dated 7/19/01

This case has been reassigned to case number SA CV 01-688 DOC and assigned to Judge David O. Carter for all further proceedings. Any discovery matters that are or may be referred to a Magistrate Judge are hereby referred to Magistrate Judge

N.A.

All documents subsequently filed in this case must reflect the new case number and Judge and Magistrate Judge initials, SACV 01-688 DOC

CLERK, U. S. DISTRICT COURT

By [Signature]
Deputy Clerk

- Orig: Case File
- Previously Assigned Judge
- Newly Assigned Judge
- Previously Assigned Magistrate Judge
- Newly Assigned Magistrate Judge
- Deputy-In-Charge
- Case Assignment Administrator
- Statistics Clerk
- Counsel of Record

57

EXHIBIT 13



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
7th at Mission Street
P.O.Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

April 18, 2003

(415) 556-9800

Stephen Yagman, Esq.
YAGMAN & YAGMAN
& REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

APR 21 2003

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Mr. Yagman:

We have received the complaint of judicial misconduct filed pursuant to 28 U.S.C. § 372(c) against Judge Real. Docket Number 03-890 has been assigned to this matter.

Pursuant to the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability, a copy of the complaint has been forwarded to Chief Judge Schroeder, Chief Judge Marshall and Judge Real.

Very truly yours,


Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's Office

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MAR - 6 2003

03-89087

COMPLAINT FORM
JUDICIAL COUNCIL OF THE NINTH CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT AND DISABILITY FILED

FILED
APR 18 2003

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, P.O. BOX 193939,
SAN FRANCISCO, CA 94119-3939. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR
"JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED FOR FILING.

03-03-03

1. Complainant's name: **STEPHEN YAGMAN**
Address: **LAW OFFICE
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270
(310) 452-3200**

2. Name of judge complained about: **MANUEL L. REAL**
Court: **C.D. CAL.**

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?
 Yes No

If "yes" give the following information about each lawsuit (use reverse side if there is more than one):

Court: **C.D. Cal.**
Docket Number: **See attached**

Are (were) you a party or lawyer in the lawsuit? Party Lawyer Neither

If a party, give the name, address, and telephone number of your lawyer:

Docket numbers of any appeals to the Ninth Circuit: **see attached**

4. Have you filed any lawsuits against the judge? Yes No

If yes, give the following information about each lawsuit (use the reverse side if there is more than one):

Court:
Present status of suit:
Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. Statement of Facts: On separate sheets of paper, not larger than the paper this form is printed on, describe the facts and evidence that support your charges of misconduct or disability. See Rules 1(c) (proper

See attached

Stephen Yagman

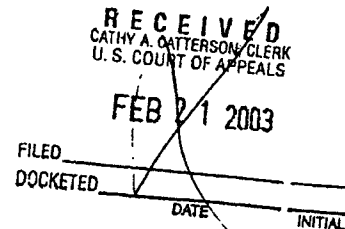
LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

STEPHEN YAGMAN

February 7, 2003

Honorable Mary M. Schroeder
Chief Judge
230 North First Avenue
Phoenix, AZ 85025



Re: Complaint against U.S. Dist. Judge Manuel L. Real

Dear Judge Schroeder:

This letter is written to make a complaint against the above-named Judge pursuant to 28 U.S.C. § 372(c), based on the following.

In re Deborah M. Canter: Canter v. Canter, 2002 DJDAR 9407 (9th Cir. August 15, 2002), the owners of Los Angeles' Canter's Delicatessen were stuck for two years, to the tune of \$35,000 they never will be able to recoup, until the Ninth Circuit wrested the case away from U.S. Dist. Judge Manuel L. Real, who had hijacked the case from the U.S. Bankruptcy Court in Los Angeles.

Elizabeth and Alan Canter, the owners of Canter's Deli bought a house as an investment in 1991, and rented it out to their son, Gary Canter, who, from 1991 to 1999, lived there with his wife, comely Deborah M. Canter, aka D. Maristina Canter, until their separation. Gary Canter always paid rent to his parents on the house.

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. *He put her on probation*, not to the United States Probation Dept., but rather to *himself, personally*. The Ninth Circuit disposition omits fact from its opinion probably because this fact was not in the record of this case, but my curiosity in the opinion that led to a little district court docket research revealed this fact.

Deborah Canter stayed on in the Canter house. The Canters filed an unlawful detainer action against her in state court, but the proceedings were stayed twenty-four minutes before the unlawful detainer trial was to have begun, when Deborah Canter filed a Chapter 13 bankruptcy proceeding.

Three months later, on January 26, 2000, the bankruptcy court lifted the stay and allowed the Canter parents to pursue their unlawful detainer action.

On February 7, 2000, Deborah signed a stipulated judgment providing that she would vacate the premises, and judgment was entered.

Judge Real, on February 17, 2000, withdrew the matter from bankruptcy court, and on February 29, 2000 Judge Real stayed enforcement of the state

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VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

STEPHEN YAGMAN

court unlawful detainer judgment, which required Deborah Canter to vacate the premises. She remained on personal probation to Judge Real.

Twice the Canter parents asked Judge Real to lift the stay, and twice Judge Real refused.

When the Canter parents asked Judge Real why the stay was reinstated, his response was "because I said it."

Under then-current federal law Judge Real's refusal to lift the stay was an unappealable interlocutory order. Then this court rendered its disposition.

In *In re Canter*, the Ninth Circuit re-stated the old rule of *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1997), that five conditions governed eligibility for mandamus: (1) no other adequate means of relief, such a direct appeal; (2) damage not correctable on appeal; (3) a clearly erroneous order; (4) an oft-repeated error or manifestation of a persistent disregard of federal rules; and (5) new and important problems, or issues of law of first impression. In a rarity, the Circuit found all five factors to be present.

Citing *In re Kemble*, 776 F.2d 802, 806 (9th Cir. 1985), the court restated that it does not "have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court." Thus, no direct appeal was available.

The court found the Canters would be damaged and prejudiced in a way not correctable on appeal, citing *DeGeorge v. U.S. Dist. Ct.*, 219 F.3d 930, 934 (9th Cir. 2000). It held the Canters "sit in limbo . . . [and] Deborah [bankrupt and on probation to Judge Real] continues to reside in the property . . . without any rental payments"

The court held that "[t]he district court's [action] was an inefficient allocation of judicial resources, . . . [r]ather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings[,] negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case[,] [and] derailed the [bankruptcy] process provided by statute." Moreover, the court said that "[t]he district court's [action] also resulted in great delay and costs to Appellants[] . . . [and] encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations."

The court found the final two *Bauman* factors met because Judge Real's action "manifests a persistent disregard of the federal court rules," and because the case raised an issue of first impression. The court commented on the phenomenon: "In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus[,] " which is what was done.

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

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VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

STEPHEN YAGMAN

Rather than send the case back to Judge Real, perhaps in light of its knowledge of *Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), cert. denied, 484 U.S. 963 (1987), a case remanded by the Ninth Circuit to Judge Real in which he simply refused to turn over the files to a new judge, the court itself remanded the case directly to the bankruptcy court.

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Thank you.

Very truly yours,



STEPHEN YAGMAN

c: Hon. Alex Kozinski

EXHIBIT 14



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
7th at Mission Street
P.O.Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

July 14, 2003

(415) 556-9800

JUL 16 2003

Stephen Yagman, Esq.
YAGMAN & YAGMAN &
REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

Re: Complaint of Judicial Misconduct 03-89037

Dear Mr. Yagman:

Chief Judge Schroeder has issued an order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge dismissing a complaint may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 372 (c) (10); Misconduct Rule 5, 6(a).

Very truly yours,

Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's office

[Faint, illegible text at the bottom of the page, possibly bleed-through or a stamp]

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

FILED

JUL 14 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re Charge of)
Judicial Misconduct)
_____)

No.03-89037
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

Complainant, an attorney, intimates that the judge acted for his own salacious interests by placing an "attractive female" criminal defendant on probation, "not to the United States Probation Depart., but rather to himself, personally." (Emphasis in original.) He states that "a little district court docket research revealed this fact." Complainant adds that the judge's actions in withdrawing the underlying bankruptcy matter from the bankruptcy court and staying enforcement of the state

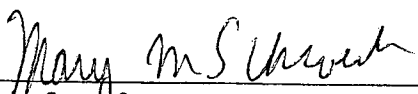
unlawful detainer judgment further support the allegation of improper conduct. The Court of Appeals reviewed the judge's withdrawal of the matter from the bankruptcy court, determined that his actions were in error, and remanded the case to bankruptcy court. Complainant requests investigation into the relationship between the judge and the defendant, which was not discussed in the Court of Appeals opinion.

Upon inquiry the allegations of inappropriate conduct were not substantiated. Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents, or transcripts) supporting his allegations of misconduct. Furthermore, complaints alleging misconduct occurring in open court should be supplied with the specific date of occurrence, the details of the hearing, and if possible, copies of transcripts. Conclusory charges that are unsupported, as here, will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

The judge's decisions pertaining to the bankruptcy case have already been reviewed by the Court of Appeals. A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). Charges relating to

those decisions are, therefore, also dismissed.

COMPLAINT DISMISSED.



Chief Judge

EXHIBIT 15

OFFICE OF THE CLERK
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

RECEIVED

MEMORANDUM

August 7, 2003

CHAMBER OF
HON. ALEX KOZINSKI
U.S. COURT OF APPEALS

To: Members of the Ninth Circuit Judicial Council:
Circuit Judges B Fletcher, Kozinski, Tashima, Thomas and W
Fletcher, District Judges Patel, Huff, Bryan, Ezra and Shanstrom

From: Cathy A. Catterson, Clerk of Court

Re: Petition for Review of Complaint of Judicial Misconduct
No. 03-89037

Pursuant to Chapter III of the Rules of the Judicial Council Governing
Complaints of Judicial Misconduct or Disability enclosed is a petition for review
of Chief Judge Schroeder's order of dismissal in the above complaint.

A copy of the file in this matter is also enclosed. Please return your
completed ballot within 20 days. You may keep the file materials in your office or
destroy them. If I may provide you with any further assistance please let me
know.

CAC/gb

Encls.

cc: Complainant

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's Office

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

STEPHEN YAGMAN

FILED

AUG -7 2003

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

July 21, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals for the
Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: Complaint against Judge Manuel L. Real, 03-89037

Dear Ms. Catterson:

This letter is written to petition the judicial council for review of Chief Judge Schroeder's July 14, 2003 order and memorandum dismissing the above-referenced complaint of judicial misconduct.

The grounds for the petition are these: (1) it would appear to a reasonable person knowledgeable of the pertinent facts that the complaint was processed in a way that seems intended to result in its dismissal, and not diligently or thoroughly, or with a view toward getting to the truth; (2) it appears there was no real investigation at all; (3) there is a serious issue of judicial misconduct that appears, so far, to have been whitewashed; (4) any novice prosecutor would have done more to investigate the complaint; (5) the stated purposes of 28 U.S.C. 372(c) seem to have been ignored; (6) 28 U.S.C. 372(c) is undermined by the way in which the complaint was addressed, and is rendered a mere façade, that creates an illusion that there actually is a remedy for federal judicial misconduct; (7) it would appear to a reasonable layperson (in fact, it did so appear to three intelligent laypersons who were shown the order of dismissal) that the complaint was blown-off and rejected based on illusory technicalities that only a lawyer or a judge could make up; (8) there is a serious question as to whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress and did some special favors for her, perhaps in exchange for something that someone might consider to be of value; (9) section 372(c) has to mean something, and can't mean nothing; (10) that this court reversed the withdrawal of the bankruptcy matter from bankruptcy court to the district judge surely can't be the end of the matter, given that this court did not have all the facts before it and couldn't, at least in the appeal to it, do anything else. Indeed, this court surely remanded the case directly to the bankruptcy court because it feared that if it remanded it to the district judge, with instructions to transfer the case back to the bankruptcy court, he simply would not, as he has not before, *see, e.g., Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), *cert. denied sub nom. Real v. Yagman*, 484 U.S. 963 (1987), do what he was told to do; (11) dumping the complaint as this court did will foster disrespect for the Ninth Circuit, the federal court system, and section 372(c).

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270

(310) 452-3200

STEPHEN YAGMAN

Complainant could not submit any more "objectively verifiable proof" than he had, and asserting he should have done this is misplaced. This court had and has the power to obtain any proof it wants to get in order to do a real investigation. If the standard applied here were applied in federal criminal investigations, the number of federal criminal charges surely would be halved.

Complainant no longer has any copies of the original complaint and requests that the court make 10 copies for itself; but, if it declines to do so, it is requested that one copy be provided to complainant, who then will make 10 copies and provide them back to the court.

Very truly yours,



STEPHEN YAGMAN

EXHIBIT 16



JUDICIAL COUNCIL OF THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

TEL. 415-556-2000
FAX. 415-556-6179

SEP 16 2003

September 10, 2003

CONFIDENTIAL

The Honorable Manuel L. Real
United States District Judge
312 North Spring Street
Los Angeles, California 90012

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Judge Real:

As you know, a complaint of judicial misconduct has been lodged against you. Chief Judge Schroeder dismissed the complaint, but the complainant has appealed to the Judicial Council pursuant to Circuit Misconduct Rule 5. Because Chief Judge Schroeder is recused from reviewing her own decision, I am the senior member of the Judicial Council and am writing to you in this capacity.

The Council has reviewed the complaint, the petition for review and the supporting materials, and wishes to give you an opportunity to provide additional information before we act in this matter. Specifically, the Judicial Council would appreciate answers to the following questions:

1. On February 17, 2000, you withdrew the reference in Bankruptcy of Deborah M. Canter, Bankruptcy No. 99-49126. We have confirmed this from reviewing both the docket sheet in that case and the district court docket sheet in the withdrawn case, No. CV 00-1185-R. What is unclear is how that case came to

The Honorable Manuel L. Real

September 10, 2003

Page Two

be assigned to you rather than to another district judge in the Central District of California. Was this case assigned to you through the ordinary random assignment process--the so-called "wheel"--or in some other manner? Also, it isn't clear why you withdrew the reference, as the docket discloses no petition seeking such relief. Please advise us how the case came to be assigned to you and what prompted you to withdraw the reference.

2. On February 29, 2000, you ordered reinstatement of the automatic bankruptcy stay in case No. CV 00-1185-R, which had the immediate effect of precluding the Canter Family Trust from proceeding with its unlawful detainer action against debtor Deborah Canter with respect to the property at 446 S. Highland Avenue, Los Angeles, where the debtor was then residing. A check of the docket discloses no motion seeking such relief, nor any opposition. Nor, according to the opinion of the Court of Appeals, did you give any explanation for your action when you addressed the parties in open court. In re Canter, 299 F.3d 1150, 1152 (9th Cir. 2002) ("When the Canter Trust inquired why the stay was reinstated, the district court's only explanation was, 'because I said it.'"). The Court of Appeals held that you abused your discretion in doing so and caused "great delay and costs" to the Canter Trust, and ordered the case sent back to the bankruptcy court. Id. at 1154. What is unclear, and what we would like you to tell us, is what motivated you to take this action in the absence of any formal petition from the debtor.

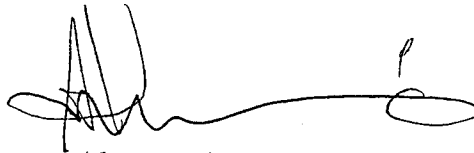
3. Complainant has alleged, and we have confirmed, that the debtor Deborah Canter was a defendant in United States v. Canter, No. CR 98-576-R, and that on April 13, 1999, you placed her on probation in that case, with the condition that she personally report to the court every 120 days. Please advise us whether, during your supervision of Deborah Canter's probation or at any other time, you spoke to her concerning her bankruptcy petition, the unlawful detainer action pending against her, the lifting of the automatic bankruptcy stay, the possibility of withdrawing the reference in her bankruptcy case or any other matter pertaining to her bankruptcy petition. If you had such communications with the debtor, please tell us, to the best of your recollection, the substance of those communications.

The Honorable Manuel L. Real
September 10, 2003
Page Three

The Council would appreciate it if you would answer these questions as fully and completely as possible. If you have additional information that might shed light on the matters alleged in the complaint of judicial misconduct, please feel free to provide it. Please send your answer to our Circuit Executive, Greg Walters, at the following address: Office of the Circuit Executive, Post Office Box 193939, San Francisco, California 94119-3939.

We hope to receive an answer from you within 30 days of the date of this letter. If you need additional time, please call Robin Donoghue of the Circuit Executive's Office and let her know how much additional time you need. Ms. Donoghue's telephone number is (415) 556-9588.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Kozinski', with a long horizontal flourish extending to the right.

Alex Kozinski
Circuit Judge

AK:kd

cc: Judicial Council
Greg Walters

EXHIBIT 17

memorandum

DATE: October 9, 2003

REPLY TO
ATTN OF:

SUBJECT:

Response to request of the Judicial Council

TO: Members of the Judicial Council

Chief Judge Schroeder dismissed the complaint filed by Mr. Stephen Yagman for 1. "Complaint failed to include any objectively verifiable proof... supporting his [the court] allegations of misconduct," and 2. "The judge's decisions pertaining to the bankruptcy case have already been reviewed by the Court of Appeals." It would appear therefor that Chief Judge Schroeder's decision should be affirmed by the Judicial Council since Mr. Yagman has produced no further evidence particularly since Mr. Yagman was neither involved in the bankruptcy case nor does he appear to be representing any party other than himself in this proceeding. Since the Court of Appeals found only an abuse of discretion in the bankruptcy matter and Mr. Yagman's claim of misconduct with a probationer is palpably untrue these accusations do not reach "conduct prejudicial to the effective and expeditious administration or justice" required by Rule 1c of the rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability. If anything, this comes as a reason for Mr. Yagman to be in a position to recuse me should a case come before me in which he is counsel. He has already done that without success in at least five cases during my 37 years as an active judge on the Central District of California.

Because the Judicial Council has requested it I will try to clarify the matter for them.

In answer to question 1.

There is no wheel for the purpose of withdrawing the reference in a bankruptcy matter. I felt it was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents. She was still living in the house

with her 8 year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so it could not be adequately presented to the state court. Counsel for her husband had asked the Probation Officer to release Mrs. Cantor's probation report so it would be used in the divorce proceedings. I denied that request upon the recommendation of the Probation Officer.

Before the unpublished opinion in the bankruptcy matter I transferred the case to Judge David Carter on July 19, 2001, so that he could independently resolve the return of the case to the Bankruptcy Court. On October 24, 2001 Judge Carter re-referred all matters to the Bankruptcy Court.

It is difficult for me to understand why Mr. Yagman is concerned about this procedure since neither counsel for the parties nor the parties themselves have complained or requested re-referral to the bankruptcy judge before me. Judge Carter had the case pursuant to the Local Rules of the Central District.

In answer to question 2.

I have no exact memory of any specific conversation with Mrs. Canter concerning the withdrawal of the reference in the bankruptcy matter. But what I can re-construct from the records I have in the criminal case is that at a 120 day meeting with Mrs. Canter in connection with her performance of community service advised me that there was an unlawful detainer action pending in the Municipal Court to evict her from the property in which she and her minor daughter were living that was nominally owned by the senior Canters but was given to them when she married her then estranged husband.

I have that recollection because shortly after that meeting and my withdrawal of the reference in the bankruptcy case Mrs. Canter's lawyer in the criminal matter filed an application for an order to show cause to find counsel for Gary Canter in the matrimonial matter and counsel for Alan Canter (Gary's father) in the bankruptcy matter in contempt for filing a copy of Mrs. Canter's confidential probation report against her privacy interest in both courts, matrimonial and bankruptcy. After a hearing on the order to show cause it was discharged by

stipulation of counsel to withdraw the probation reports although I never learned how the probation report got into the hands of counsel in the matrimonial or bankruptcy matter in the first instance.

In answer to your question No. 3 concerning my placing Mrs. Canter on probation.

I have had a program of probation for more than 25 years in which the probationer generally gets a jail type sentence to be served on weekends so they don't lose a job and is to perform community service during the period of probation. The probationer is required to meet with me in person generally each 120 days with their probation officer. I do this because I believe it helps a person to realize that this monolithic entity they have appeared before really cares about their rehabilitation and re-integration into a law-abiding society. From what the probation officers tell me it is a successful program.

On the 120 day meetings - in chambers - there is always a probation officer present and the door to my chambers always remains open. These meetings are to discuss the probationers progress in community service and any other problems that may arise with them. Mrs. Canter was one of those probationers who was what we colloquially refer to as "120 dayers." She was treated in the same way I have treated, in my over 25 years of the program, probably thousands of men and women probationers. I am proud of that program and am surprised that anyone would question my intentions as to any person I have sentenced to such a program. Chief Judge Schroeder was right when she decided "the allegations of inappropriate conduct were not substantiated." Mr. Yagman's accusation is a figment of a fertile mind after searching an unpublished order of the 9th Circuit and so often subject to mis-cite of court opinions searching for ways to recuse me unsuccessfully in cases in which he has appeared as counsel. See Brown v. Baden, 796 F.2d 1165 (9th Cir. 1986).

I hope this has clarified my actions and reasons for withdrawing the reference to permit Mrs. Canter to pursue her claims in the state courts.

EXHIBIT 18



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
7th at Mission Street
P.O.Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

December 18, 2003

(415) 556-9800

Stephen Yagman, Esq.
YAGMAN & YAGMAN &
REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

DEC 22 2003

Re: Complaint of Judicial Misconduct No.03-89037

Dear Mr. Yagman:

The Judicial Council has issued an order in response to the petition for review filed in your complaint of judicial misconduct. A copy is enclosed.

Very truly yours,


Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's Office

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

FILED

DEC 18 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

IN RE COMPLAINT OF

No. 03-89037

JUDICIAL MISCONDUCT

ORDER

Before: **ALARCÓN, KOZINSKI, THOMAS, McKEOWN** and **W. FLETCHER**, Circuit Judges, and **PATEL, HUFF, COUGHENOUR, HATTER** and **SILANSTROM**, District Judges.

A complaint of judicial misconduct was filed against a district judge of this circuit pursuant to 28 U.S.C. § 351-64. Complainant, an attorney who was not involved in the matters alleged in the complaint, claims that the district judge committed misconduct in the handling of a bankruptcy matter, which has been the subject of an adverse ruling by the Court of Appeals. See In re Canter, 299 F.3d 1150 (9th Cir. 2002). Specifically, complainant alleges that the district judge acted improperly in withdrawing the reference from the bankruptcy court and then re-imposing the automatic stay that the bankruptcy court had vacated on the motion of certain creditors. Re-imposition of the stay precluded the creditors from enforcing an unlawful detainer judgment that would have entitled them to immediate possession of premises occupied by the debtor. The Chief Judge dismissed the complaint, noting that "[a] complaint will be dismissed if it is

directly related to the merits of a judge's ruling or decision in the underlying case." Chief Judge Order at 2 (citing 28 U.S.C. § 352(b)(1)(a)(ii); 9th Cir. Misconduct R. 4(c)(1)).

While legal error alone will not amount to misconduct, the converse is not necessarily true: Misconduct can cause error. That a judge's ruling can be, or has been, subject to appellate review does not automatically insulate the judge's conduct from disciplinary proceedings. Jeffrey M. Shaman, Steven Lubet & James J. Alfani, Judicial Conduct and Ethics § 2.02, at 36 (3d ed. 2000) ("In some instances . . . legal error may amount to judicial misconduct calling for sanctions . . ."). If the misconduct claimed consists of nothing more than the judge's erroneous ruling, the complaint will be deemed to be "directly" related to the subject of the underlying proceeding, and must be dismissed summarily by the Chief Judge. However, where the complainant presents solid evidence that the judge's ruling was the result of "conduct prejudicial to the effective and expeditious administration of the business of the courts," 28 U.S.C. § 351(a), then such underlying conduct will not be deemed "directly" related to the merits of the ruling and the Chief Judge must make an initial determination whether it amounts to misconduct. In so doing, she must bear in mind that "[t]he purpose of the complaint procedure is to improve the administration of justice in the federal

courts by taking action when judges engage in conduct that does not meet the standards expected of federal judicial officers." 9th Cir. Misconduct R. 1(a).

Complainant alleges, and the public record supports these allegations, that the district judge withdrew the reference from the bankruptcy court and re-imposed the stay without a motion from any party. The district judge gave no explanation for his actions, despite repeated inquiries from the aggrieved creditors. At the time of the bankruptcy proceeding, the debtor was on probation in a criminal case presided over by the district judge. The district judge had placed the debtor-defendant under his personal supervision, which means that he met with her and the probation officer personally at 120-day intervals. Probation office records indicate that there had been a meeting between the debtor, the probation officer and the district judge less than a month before the judge withdrew the case from the bankruptcy court. In response to an inquiry from our council, the debtor's bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor "a day or two before . . . [the district judge] withdrew the reference," and the next time they saw each other, the debtor told her "the letter had 'worked.'" Though this information is based on hearsay and should be investigated further, it

Page 4

suggests the district judge may have withdrawn the reference in response to a direct plea for help from the debtor.

In response to our inquiry, the district judge gives the following explanation:

I felt . . . [the bankruptcy case] was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents. She was still living in the house with her 8 year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so it could not be adequately presented to the state court. . . .

.....

I have no exact memory of any specific conversation with . . . [the debtor] concerning the withdrawal of the reference in the bankruptcy matter. But what I can re-construct from the records I have in the criminal case is that at a 120 day meeting with . . . [the debtor] in connection with her performance of community service[, she] advised me that there was an unlawful detainer action pending in the Municipal Court to evict her from the property in which she and her minor daughter were living that was nominally owned by . . . [the creditors] but was given to them when she married her then estranged husband.

The district judge's explanation confirms what complainant alleges and the evidence suggests: The district judge withdrew the reference in a bankruptcy case

Page 5

that was not previously assigned to him, and entered an order in that case based upon information he obtained ex parte from an individual who benefitted directly from that order.

It is well established that a judge may not exercise judicial power based on secret communications from one of the parties to the dispute. United States v. Thompson, 827 F.2d 1254, 1258-59 (9th Cir. 1987). The district judge did not, either before or after his ruling, disclose to the parties that this ex parte communication had taken place, its substance or the fact that it formed the basis of his ruling.

While parties do not have a due process right to the random assignment of cases, a judge may not assign a case in order to affect its outcome. See Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction. The debtor, represented by her counsel, had stipulated to a judgment requiring her to vacate the premises, and the unlawful detainer court had entered the judgment. The district judge acted based on his belief that the dispute over possession of the property should be "finalized" in the divorce proceeding rather than the unlawful detainer proceeding, because "it appeared to . . . [him] that her counsel had abandoned her interest so it could not

Page 6

be adequately presented to the state court." However, we are not aware of any authority for a bankruptcy court to determine whether parties in state court proceedings were adequately represented by their counsel. Nor are we aware of any authority allowing the district court to allocate jurisdiction between two state courts dealing with related subject matter.

That the district judge believed his actions would help his probationer's rehabilitation is of no consequence. A judge may not use his authority in one case to help a party in an unrelated case. Exercise of judicial power in the absence of any arguably legitimate basis can amount to misconduct.

The line between abuse of discretion and misconduct is not always clear. It depends, rather, on the balancing of a variety of factors. See Shaman, supra, § 2.02. We need not decide whether that line was crossed in this case. We hold only that the Chief Judge erred in dismissing the complaint as frivolous or unsubstantiated; it is plainly neither. We therefore vacate the Chief Judge's dismissal order and remand to the Chief Judge for further proceedings consistent with our order.

Judges Huff, Coughenour, Hatter and Shanstrom would affirm the order of dismissal.

EXHIBIT 19



*United States District Court
Central District of California
411 West Fourth Street
Santa Ana, California 92701*

January 24, 2004

*Chambers of
David O. Carter
United States District Judge*

*Telephone
(714) 338-4545*

Honorable Mary M. Schroeder
Chief Judge
United States Court of Appeals
Sandra Day O'Connor U.S. Courthouse, Suite 610
401 W. Washington Street, SPC 54
Phoenix, AZ 85003-2156

Re: Complaint of Judicial Misconduct No. 03-89037 (In re Judge Manuel L. Real)

Dear Judge Schroeder:

Pursuant to Federal Rule of Appellate Procedure 10(e)(2), I am writing to make you and the Judicial Council aware of material that was omitted from the record by error or accident involving a judicial complaint filed by Stephen Yagman, Esq., against Judge Manuel L. Real. (Complaint of Judicial Misconduct No. 03-089037.)

In May 2001, Judge Real spoke to me and said that he wanted another judge of the District Court to review a case that he had withdrawn from the Bankruptcy Court. He asked if I would accept an Intra-District Transfer of the case and "take another look at it." A few weeks to a month later, he reaffirmed my willingness to take the transfer of the case he had mentioned before. At the time, I was aware that Judge Real had maintained a probation calendar for many years in which hundreds of probationers, in addition to their normal meeting with the probation officer, also checked in with Judge Real with the probation officer present. I agreed to the Intra-District Transfer. The "Order Transferring Action Under Section 3.1 of General Order 224" was signed by Judge Real on July 9, 2001 and accepted by my court on July 23, 2001. The transfer order clearly sets forth that "on all documents filed in this case, please substitute the initials DOC after the case number in, so that the case number will read SACV 01-688 DOC. This is very important because documents are routed to the assigned Judge by means of these initials." The Transfer Order also shows that the prior case number, CV 00-1185-R (BK Case #: LA 99-49126-AA), was lined out with the new case number, SACV 01-688 DOC, inserted by the Clerk's Office. (See Attachment 1)

After the case was transferred to this Court, the Defendants filed a motion to re-refer the case to the Bankruptcy Court. On September 14, 2001, in a written opinion, I granted Defendants' motion

to re-refer the case to the Bankruptcy Court. (See Attachment 2)

After the case was referred back to the Bankruptcy Court, proceedings continued despite the filing of a notice of appeal. On January 9, 2002, Bankruptcy Judge Ahart granted the bankruptcy trustee's motion to abandon the estate's interest in the residence at 446 South Highland Avenue, Los Angeles (the house at issue in the appeal). On February 19, 2002, weeks before the hearing on the appeal, Ms. Canter's debts were discharged. The bankruptcy case was closed on April 25, 2002, almost three months before the panel filed its opinion. (See Attachment 3)

In August of 2002, I read the Ninth Circuit published opinion, "In re: Deborah M. Canter from the United States District Court for the Central District of California Manuel L. Real, District Judge, Presiding." (USCA No. 01-56151). The opinion states that the case was argued and submitted March 7, 2002, in Pasadena, before the Ninth Circuit. The attorney for the debtor-appellee was Andrew E. Smyth and the attorney for the creditors-appellants was Herbert Katz, the same attorneys who brought the motion to re-refer the case to the Bankruptcy Judge before me which I had granted on September 14, 2001, eight months before argument in the Ninth Circuit. (See Attachment 4)

I immediately called the Circuit Executive Office to talk to the Circuit executive who was not in and was referred to Cathy Catterson, the chief clerk. I asked her about the appropriate protocol to let the three judge panel know that they had rendered an improper advisory opinion. I had vacated Judge Real's order and had re-referred this case back to the Bankruptcy Court eight months before argument to the Circuit. I was astounded that the Circuit panel was not informed by counsel that the issue before them was moot. Cathy said she would look into the matter.

On October 2, 2002, my court sent out a "Notice of hearing IN COURT HEARING RE: Judgment From the 9th Circuit U.S. Court of Appeal is set on 8:30 10/28/02." This hearing was continued to December 16, 2002 at 8:30 a.m. when counsel appeared. At the hearing, I asked the attorneys why they did not inform the Circuit of the transfer and that the matter before the panel was moot. I do not recall their exact explanation, but I can have my court reporter prepare the transcript of the hearing if it would be useful.

To help follow the chronology of events I have also included the Civil Dockets for this case which clearly sets forth the case numbers, the transfer and all relevant dates. (See Attachments 5a and 5b)

- In CASE NO. CV 00-1185-R, please note the transfer of the case on 7/19/01 with the new case number for SACV 01-688-DOC.
- In CASE NO. SACV 01-688-DOC, please note the transfer of this case on 7/19/01 from case number CV 00-1185-R.

All dockets clearly reflect the transfer of the case from Judge Real to Judge Carter. How the Circuit was not aware that the issue before it was moot and why counsel did not inform the Circuit is perplexing.

I read in an article in the Los Angeles Times, dated January 18, 2004, that Stephen Yagman states "that when he learned about the dispute involving Canter, he filed a misconduct charge against Real, suggesting that the judge's actions stemmed from a relationship with Canter, whom Yagman characterized as an attractive female." I have no memory or record of this attorney ever having appeared in my court on this case.

I hope this information is helpful to you and the Judicial Council.

Sincerely,



David O. Carter
United States District Judge

cc: Judge Alarcon
Judge Kozinski
Judge Thomas
Judge McKeown
Judge W. Fletcher
Judge Patel
Judge Huff
Judge Coughenour
Judge Hatter
Judge Shanstrom
Chief Judge Marshall
Judge Real
Robin Donoghue

SEND

FILED CLERK, U.S. DISTRICT COURT <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> JUL 19 2001 </div> CENTRAL DISTRICT OF CALIFORNIA BY _____ DEPUTY
--

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE DEBORAH M. CANTER
PLAINTIFF(S),
v.

SACV 01-688 DDC
CASE NO. ~~CV-00-1185-R~~
(BK Case #: LA 99-49126-AA)

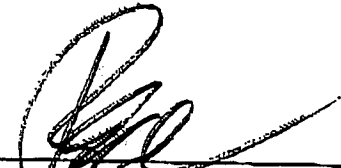
ORDER TRANSFERRING
ACTION UNDER SECTION 3.1
OF GENERAL ORDER 224 ...

DEFENDANT(S).

Pursuant to Section 3.1 of General Order 224,


I HEREBY ORDERED that the above-entitled action be transferred to the calendar of Judge
DAVID O. CARTER for all further proceedings.

Dated: JULY 9, 2001



United States District Court Judge
MANUEL L. REAL

Dated: July 23, 2001



United States District Court Judge
DAVID O. CARTER

NOTICE TO COUNSEL FROM CLERK:

In all documents subsequently filed in this case, please substitute the initials DGC after the
number in, so that the case number will read SACV 01-688 DDC. This is very important
because documents are routed to the assigned Judge by means of these initials.

EXHIBIT 1

56

SSWD
 FILED
 CLERK, U.S. DISTRICT COURT
 JUL 19 2001
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

In Re:
 Deborah M. Canter

CASE NUMBER:
 SACV 01-688 DOC
 CV 00-1185 R

NOTICE RE INTRA-DISTRICT
 TRANSFER BY CLERK OF COURT

TO: ALL PARTIES/COUNSEL OF RECORD:

The case referred to above has been reassigned to the Western Southern Eastern Division of the United States

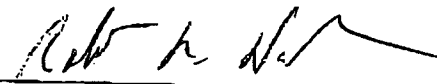
District Court by Order Transferring Action Under GO 224/3.1

filed 7/19/01

This case has been reassigned to case number SA CV 01-688 DOC and assigned to Judge David O. Carter for all further proceedings. Any discovery matters that are or may be referred to a Magistrate Judge are hereby referred to Magistrate Judge N.A.

All documents subsequently filed in this case must reflect the new case number and Judge and Magistrate Judge initials, SACV 01-688 DOC

CLERK, U. S. DISTRICT COURT

By 
 Deputy Clerk

- Orig: Case File
- cc: Previously Assigned Judge
- Newly Assigned Judge
- Previously Assigned Magistrate Judge
- Newly Assigned Magistrate Judge
- Deputy-In-Charge
- Case Assignment Administrator
- Statistics Clerk
- Counsel of Record

57

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 01-687; SA CV 01-688; Bankruptcy Case No. LA-99-49126-AA

Date: October 24, 2001

Title: In Re Deborah M. Canter

DOCKET ENTRY

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]

Date: _____ Deputy Clerk: _____

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kristee Hopkins
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT

NONE PRESENT

PROCEEDING (IN CHAMBERS): CLARIFICATION OF ORDER DATED SEPTEMBER 14, 2001

The Court's Order of September 14, 2001 applied to 1) SA CV 01-687; 2) SA CV 01-688; and 3) Bankruptcy Case No. LA-99-49126-AA. Pursuant to that Order, all three cases are shall be REFERRED to the Bankruptcy Court.

The Clerk shall serve this minute order on all parties to the action.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 01-687; SA CV 01-688; Bankruptcy Case No. LA-99-49126-AA

Date: September 14, 2001

Title: In Re Deborah M. Canter

DOCKET ENTRY

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]

Date: _____ Deputy Clerk: _____

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kristee Hopkins
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT

NONE PRESENT

PROCEEDING (IN CHAMBERS): GRANTING DEFENDANT'S MOTION TO RE-REFER ALL MATTERS

Before the Court is Defendant's motion to re-refer this case to the Bankruptcy Court, as well as his motion to dismiss. The Court deems these matters appropriate for resolution without oral argument. Fed. R. Civ. P. 78; Local Rule 7.11. Accordingly, the hearing set for September 17, 2001 is removed from the Court's calendar. After consideration of all papers, the Court GRANTS Defendants' motion to re-refer the reference. The motion to dismiss is removed from the Court's calendar.

I. Introduction

This matter before the Court arises out of a bankruptcy and a state court proceeding for a dissolution of marriage. Debtor Deborah Canter filed for bankruptcy in October of 1999. In January of 2000, Deborah and defendant Gary Canter, her now ex-husband, stipulated to relief from the automatic stay in order to allow divorce actions then pending in the superior court to proceed. Also in January,

MINUTES FORM 11 DOC
CIVIL - GEN

Initials of Deputy Clerk _____
Page 1 of 3

the bankruptcy court granted defendant Alan Canter's (Gary's father) unopposed motion to permit an unlawful detainer action to proceed to judgment. Shortly thereafter, Deborah stipulated to a judgment to resolve the unlawful detainer action pursuant to which Deborah agreed to vacate a house which she and her husband had at one time occupied (the Highland property).

On February 2, 2000, the matter was withdrawn from the jurisdiction of the bankruptcy court. On February 29, 2000, the district judge stayed the enforcement of the stipulated judgement resolving the unlawful detainer action. About a year later, in February of 2001, there was a five day trial as part of the divorce proceedings; on May 1, 2001, a judgment was entered which determined that neither Deborah nor Gary held any community, quasi-community or separate property interest in a certain piece of real property, or in Canter's Fairfax, a business enterprise.

In the meantime, in January of 2001, Deborah filed an action in the bankruptcy court against Alan and Gary Canter for declaratory relief that the Highland premises are part of the bankruptcy estate and that Deborah has an interest in Canter's Fairfax. Defendants filed a motion to dismiss which was granted. Deborah filed an amended complaint, Defendants filed a new motion to dismiss. After the case was transferred to this Court, they subsequently filed a motion to re-refer the case to the Bankruptcy Court. The bankruptcy Trustee does not oppose the motion.

II. Analysis

Defendants argue that this case should be re-referred to the bankruptcy court because there is no "cause shown" justifying withdrawal of the matter. 28 U.S.C. § 157(d) permits a district court to "withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." While withdrawing the reference is within the sound discretion of the district courts, "good cause" is required. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985); *In re Hall, Bayoutree Assocs., Ltd.*, 939 F.2d 802, 805 (9th Cir. 1991). Cause may be shown by considering whether the proceeding is a core proceeding, judicial economy, convenience, and expertise of the court. *United States v. Star Route Box 1328*, 137 B.R. 802, 806 (Bankr. D. Or.1992).

Here, none of the factors justifying withdrawal are present. First, while this issue has not been briefed by either party, the complaint for declaratory relief is clearly a core proceeding, as it relates to or arises from the bankruptcy in that it seeks resolution regarding the assets of the estate; of course, the bankruptcy itself is appropriately handled in the Bankruptcy Court as well. 28 U.S.C. 157(a). Second, judicial economy does not require or justify withdrawal as this court has no familiarity with either the adversary proceeding or the bankruptcy itself. Third, given that the adversary proceeding is core, and that the bankruptcy court has previously handled this matter, the expertise of the bankruptcy court weighs against withdrawal.

Deborah's only argument to the contrary is that "a motion to move [the case] appears to be forum shopping unless some justification other than that Judge Real had no basis for his decision is given." The Court finds Deborah's argument unpersuasive as it ignores the premise of Defendants' joint that there must be cause shown for a matter to be withdrawn from the bankruptcy court and that here there is no cause. Deborah presents no cause why this bankruptcy matter and its related core matters should not proceed in bankruptcy court.

Legislative intent is clear that bankruptcy courts should hear bankruptcy matters. *See In Re Delorean Motors*, 49 B.R. 900, 912 (Bankr. E.D. Mich. 1985) (Congress "intended to have bankruptcy proceedings adjudicated in the bankruptcy court unless rebutted by a contravening policy. The presumption may be overcome only by an overriding interest based on a finding by the Court that the withdrawal of reference is essential to preserve a higher interest than that recognized by Congress and is narrowly tailored to serve that interest."). In light of that clear legislative intent, and in the absence of any cause to keep this matter before this Court, the Court finds that there is no cause to withdraw the reference.

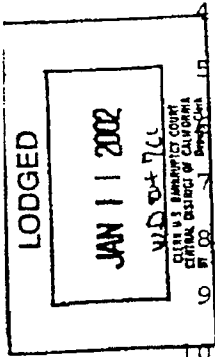
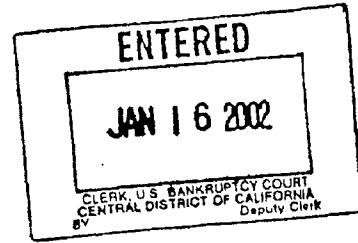
III. Disposition

The Court GRANTS Defendants' motion to re-refer case to the Bankruptcy Court. The motion to dismiss is removed from the Court's calendar.

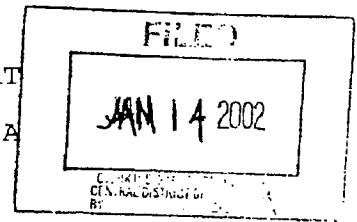
The Clerk shall serve this minute order on all parties to the action.

1 RICHARD K. DIAMOND (State Bar No. 070634)
2 2029 Century Park East, Third Floor
3 Los Angeles, California 90067-2904
Telephone: (310) 277-0077
Facsimile: (310) 277-5735

Chapter 7 Trustee



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION



11 In re)
12 DEBORAH M. CANTER aka D.) Bk. No. LA 99-49126-AA
13 MARISTINA CANTER,) [Chapter 7]
14) ORDER GRANTING TRUSTEE'S
15) MOTION TO ABANDON (1) SINGLE
16) FAMILY RESIDENCE LOCATED AT
17) 446 SOUTH HIGHLAND AVENUE,
18) LOS ANGELES, CALIFORNIA
19) 90036; AND (2) INTEREST IN
20) CANTER'S DELI
21) Date: January 9, 2002
22) Time: 10:30 a.m.
23) Place: Courtroom 1375
24) 255 E. Temple Street
25) Los Angeles, CA 90012
26 Debtor.)
27)
28)

21 On January 9, 2002 at 10:30 a.m., the Court heard and
22 considered the Notice of Motion and Motion to Abandon the Estate's
23 Interest in (1) a Single Family Residence Located at 446 South
24 Highland Avenue, Los Angeles, California 90036; and (2) Interest in
25 Canter's Deli (the "Motion") filed by Richard K. Diamond, Chapter 7
26 trustee herein (the "Trustee"), the Honorable Alan M. Ahart, United
27 States Bankruptcy Judge, presiding.

28 ///

W. J. P. M.
EXHIBIT 3

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Elan S. Levey of Danning, Gill, Diamond & Kollitz, LLP,
appeared on behalf of the Trustee. All other appearances were as
set forth on the record.

The Court having read and considered the Motion, and having
read and considered the Debtor's Opposition to the Motion, having
found that notice of the Motion was adequate and proper, and good
cause appearing, it is

ORDERED THAT:

1. The Trustee's Motion is granted;
2. The estate's interest in a single family residence located
at 446 South Highland Avenue, Los Angeles, California 90036, and
the estate's interest in Canter's Deli are hereby deemed abandoned.

DATED: 1/14/02

Alan M. Alast
UNITED STATES BANKRUPTCY JUDGE

**United States Bankruptcy Court
Central District of California**

255 East Temple Street, Los Angeles, CA 90012

**DISCHARGE OF DEBTOR
IN A CHAPTER 7 CASE**

DEBTOR(S) INFORMATION:

CANTER, DEBORAH M
SSN: 548-94-0669
EIN: N/A
AKA D MARISTINA CANTER
P O BOX 480400
LOS ANGELES, CA 90048

BANKRUPTCY NO. LA 99-49126-AA

CHAPTER 7

It appearing that the debtor is entitled to a discharge, IT IS ORDERED: The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT,

Jon D. Ceretto
Clerk of the Court

Date: February 19, 2002

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

UNITED STATES BANKRUPTCY COURT
Central District of California

Debtor(s) Name: CANTER, DEBORAH M	For Court Use Only <table border="1" style="margin-left: auto; margin-right: auto;"><tr><td style="text-align: center;">FILED</td></tr><tr><td style="text-align: center;">APR 24 2002</td></tr><tr><td style="text-align: center;"><small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY <i>CB</i> DEPUTY CLERK</small></td></tr></table>	FILED	APR 24 2002	<small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY <i>CB</i> DEPUTY CLERK</small>
FILED				
APR 24 2002				
<small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY <i>CB</i> DEPUTY CLERK</small>				
Chapter: 7 Case Number: LA99-49126-AA	ORDER CLOSING CASE			

Order of Discharge in the above referenced case was entered on 02/19/2002, and notice was provided to parties in interest. Since it appears that no further matters are required that this case remain open, or that the jurisdiction of this Court continue, it is ordered that the Trustee is discharged from his/her duties in this case, his/her bond is exonerated, and the case is closed.

By Order of the United States Bankruptcy Court

Date: 04/25/2002

Jon D. Ceretto
Clerk of Court

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: DEBORAH M. CANTER, aka D.
Maristina Canter,
Debtor,

ALAN CANTER; CANTER FAMILY
TRUST,
Creditors-Appellants,

v.

DEBORAH M. CANTER, aka D.
Maristina Canter,
Debtor-Appellee,

and

EDWINA E. DOWELL, Chapter 13
Trustee,
Trustee.

No. 01-56151
D.C. No.
CV 00-1185-R
OPINION

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted
March 7, 2002—Pasadena, California

Filed August 15, 2002

Before: Sidney R. Thomas and Johnnie B. Rawlinson,
Circuit Judges, and Sandra Brown Armstrong,*
District Judge.

*The Honorable Sandra Brown Armstrong, United States District
Judge for the Northern District of California, sitting by designation.

11970

IN RE CANTER

Opinion by Judge Rawlinson

COUNSEL

Herbert Katz, Kelly Lytton & Vann LLP, Los Angeles, California, for the creditors-appellants.

Andrew E. Smyth, Smyth Law Office, Los Angeles, California, for the debtor-appellee.

OPINION

RAWLINSON, Circuit Judge:

Creditors/Appellants Alan ("Alan") and Elizabeth ("Elizabeth") Canter, and the Canter Family Trust ("Canter Trust") appeal the district court's *sua sponte* withdrawal of reference, and its order denying their motion to vacate the stay of the municipal court's judgment in an unlawful detainer action against Deborah M. Canter ("Deborah").

Because the district court erred when it *sua sponte* withdrew the reference to the bankruptcy court without showing cause, and improperly enjoined the enforcement of the municipal court judgment, we vacate the withdrawal of reference and stay order, and remand the matter to the bankruptcy court.

BACKGROUND

On September 11, 1991, Alan and Elizabeth Canter purchased 446 S. Highland Avenue, Los Angeles, California ("446 S. Highland") as an investment. Alan's and Elizabeth's son, Gary Canter ("Gary"), and Gary's wife Deborah resided in Alan's and Elizabeth's house from September 25, 1991, until February 24, 1999, when Gary and Deborah separated. Since purchasing the property in 1991, Alan and Elizabeth have been the only persons with legal or equitable title to the property. They transferred title to the Canter Family Trust in 1997.

In Gary and Deborah's divorce proceedings, neither was found to have any ownership interest in the property. When Deborah filed for bankruptcy once in 1992 and twice in 1996, she never claimed an interest in the property, although she listed the property as her residence in both 1996 proceedings. In Deborah's 1999 bankruptcy, she listed the property under schedule A as property in which she had an interest, but did not claim an exemption for it.

When Gary and Deborah separated, Gary moved out of his parents' house. Although Gary consistently paid rent to his father during his residency, Alan has not received a rent payment since shortly after Gary moved out. On August 13, 1999, Alan filed an unlawful detainer action against Deborah, seeking her eviction and \$5,000 past due rent. The matter was set for trial on October 26, 1999, but the proceedings were stayed when Deborah filed her Chapter 13 bankruptcy petition twenty-four minutes before trial was to begin. On January 26, 2000, the bankruptcy court lifted the stay at the Canter Trust's request, thereby allowing pursuit of the unlawful detainer action. Alan and Deborah subsequently signed a stipulated judgment providing that Deborah vacate the premises. The municipal court entered a judgment pursuant to the stipulation on February 7, 2000, and ordered that Alan recover possession of the realty from Deborah.

On February 17, 2000, the district court withdrew the reference to the bankruptcy court, and on February 29, 2000, stayed enforcement of the municipal court's judgment. The district court twice denied the Canter Trust's motion to lift the stay. When the Canter Trust inquired why the stay was reinstated, the district court's only explanation was, "because I said it." The district court also denied the Canter Trust's motion to vacate the stay of the judgment. Alan, Elizabeth, and the Canter Trust filed a timely appeal of the district court's *sua sponte* withdrawal of reference and subsequent denial of the motions to lift the automatic stay or vacate the order staying enforcement of the municipal court judgment.

DISCUSSION**A. Jurisdiction**

[1] As a threshold matter, we must determine whether we have jurisdiction over this appeal. *Webb v. Ada County*, 285 F.3d 829, 835 (9th Cir. 2002). We have previously held that “we do not have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court.” *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802, 806 (9th Cir. 1985); *Abney v. Kissel Co. (In re Kissel Co.)*, 105 F.3d 1324, 1325 (9th Cir. 1997). Although we have not addressed jurisdiction over appeals from a *sua sponte* order withdrawing reference, the Third Circuit has defined such an order as “interlocutory and unreviewable under § 1291.” *In re Pruitt v. Landmark Sav. Ass’n (In re Pruitt)*, 910 F.2d 1160, 1166 (3d Cir. 1990). In its ruling, the Third Circuit reasoned that the *sua sponte* withdrawal “merely determine[d] the forum in which a final decision on the merits will be reached.” *Id.*

[2] We see no logical basis for distinguishing between withdrawal of reference at the request of a party and *sua sponte* withdrawal of reference. Accordingly, we follow the holding of the Third Circuit and conclude that a *sua sponte* order withdrawing reference to the bankruptcy court is interlocutory and unreviewable under 28 U.S.C. § 1291.

[3] However, *In re Kemble*, 776 F.2d at 806 n.5, presciently noted the availability of a writ of mandamus to review the otherwise unreviewable order withdrawing reference to the bankruptcy judge. The Third Circuit expressly applied this notion to review a *sua sponte* withdrawal of reference. *In re Pruitt*, 910 F.2d at 1167. We are persuaded that appellate review of the district court’s *sua sponte* withdrawal of reference is consistent with “the traditional use of the writ . . . to confine an inferior court to a lawful exercise of its prescribed jurisdiction” *Id.* (citation, internal quotation marks and

alterations omitted). Accordingly, we grant Appellants' alternative request to treat their appeal as a petition for a writ of mandamus, over which we have jurisdiction. *See id.*

B. Appropriateness of Mandamus Relief

[4] We apply the following five-factor test to determine whether the exercise of mandamus jurisdiction is proper:

- (1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal
- (3) The district court's order is clearly erroneous as a matter of law.
- (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
- (5) The district court's order raises new and important problems, or issues of law of first impression.

DeGeorge v. United States Dist. Ct. for the Cent. Dist. of Cal., 219 F.3d 930, 934 (9th Cir. 2000) (quoting *Bauman v. United States Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977)). We have acknowledged that the application of these factors is "by no means precise," *United States v. Amlani*, 169 F.3d 1189, 1194 (9th Cir. 1999), and the "factors should be weighed together based on the facts of the individual case." *SG Cowen Sec. Corp. v. United States Dist. Ct. for the N. Dist. of Cal.*, 189 F.3d 909, 913 (9th Cir. 1999).

[5] Application of the *Bauman* factors in this case favors granting the writ. Appellants have no other adequate means of

obtaining the relief desired. They may not directly appeal the withdrawal of reference because “we do not have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court.” *In re Kemble*, 776 F.2d at 806; see *In re Kissel Co.*, 105 F.3d at 1325. Appellants therefore satisfy the first *Bauman* factor. See *SG Cowen*, 189 F.3d at 914.

[6] Appellants “will be damaged [and] prejudiced in a way not correctable on appeal.” *DeGeorge*, 219 F.3d at 934. This factor is “closely related to the preceding one.” *Id.* at 935. Because the first two factors are closely related, and our case law precludes Appellants’ direct appeal of the *sua sponte* withdrawal, the damage and prejudice Appellants have suffered thus far cannot be corrected on direct appeal. See *id.* The withdrawal occurred over two years ago, and Appellants sit in limbo despite two attempts to lift the stay on the enforcement of the unlawful detainer order. With the enforcement of the judgment stayed, Deborah continues to reside in the property at 446 S. Highland without any rental payments, and Appellants are denied the use of the property. Because Appellants’ ability to bring a direct appeal is actually limited, and the type of damage and prejudice are relevant in determining mandamus relief, the second *Bauman* factor weighs in favor of Appellants. See *id.*

[7] The district court clearly erred in withdrawing the reference. The Bankruptcy Code provides that the district court may withdraw the reference of a bankruptcy case on its own motion for cause shown. 28 U.S.C. § 157(d) (Supp. V 1987). However, the district court failed to articulate any cause for its withdrawal of reference in this case.

[8] We have considered the following factors in determining whether cause exists under § 157(d): “the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors.” *Security Farms v. Int’l Bhd. of*

Teamsters, Chauffeurs, Warehousemen, & Helpers, 124 F.3d 999, 1008 (9th Cir. 1997) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993)).

[9] The district court's withdrawal of reference in this case was an inefficient allocation of judicial resources, especially because the bankruptcy court was more familiar with the facts and issues of the case, and had already lifted the stay to allow the unlawful detainer proceedings to continue.

Rather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings. The district court's action also negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case. The district court's withdrawal of reference effectively "derailed the [bankruptcy] process provided by statute." *Powelson v. More (In re Powelson)*, 878 F.2d 976, 982 (7th Cir. 1989).

[10] The district court's withdrawal also resulted in great delay and costs to the Appellants, implicating another "cause" factor. See *Security Farms*, 124 F.3d at 1008. Deborah has occupied the property rent-free for almost three years, resulting in a \$35,000 loss of rental income. Finally, the district court's action encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations.

[11] Consideration of the factors we have previously applied to determine good cause for withdrawal all weigh against the district court's action, and support the conclusion that the district court clearly erred. This conclusion in turn weighs in favor of granting the writ.

[12] Although the district court's *sua sponte* withdrawal does not appear to be an "oft-repeated error," it nevertheless "manifests a persistent disregard of the federal rules" in this case. *DeGeorge*, 219 F.3d at 934. Despite repeated requests

to reconsider its ill-advised *sua sponte* withdrawal, the district court perpetuated its excursion outside the confines of its lawful jurisdiction. The fourth *Bauman* factor favors granting the writ.

[13] Finally, the district court's *sua sponte* withdrawal raises "issues of law of first impression." *Id.* In this case we are called upon to apply, for the first time in this circuit, a writ of mandamus to support appellate review of an otherwise interlocutory, unappealable order. Accordingly, this fifth and final factor supports granting the writ. In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus.

C. District Court's Stay Order

[14] In staying enforcement of the municipal court judgment, the district court was acting pursuant to its powers under 11 U.S.C. § 105(a).¹ Section 105(a) authorizes the district court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11]." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506 (9th Cir. 2002). Section 105(a) "contemplates injunctive relief in precisely those instances where parties are pursuing actions pending in other courts that threaten the integrity of a bankrupt's estate." *In re Baptist Med. Ctr. of N.Y.*, 80 B.R. 637, 641 (Bankr. E.D. N.Y. 1987) (citations and internal quotation marks omitted).

¹The district court could not have been activating an automatic stay. The automatic stay is "self-executing, effective upon the filing of the bankruptcy petition." *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000); see 11 U.S.C. § 362(a). Because the stay under § 362 is "automatic" and "self-executing" only upon the filing of a bankruptcy petition, no authority exists for "reinstating" an automatic stay that has been lifted. We have expressly recognized that "the bankruptcy automatic stay is differentiated from a bankruptcy court-ordered injunction, which issues under 11 U.S.C. § 105." *Andreiu v. Reno*, 223 F.3d 1111, 1121 n.4 (9th Cir. 2000).

We may hear appeals from interlocutory orders of the district court which grant, continue, modify, refuse, or dissolve injunctions. 28 U.S.C. § 1292(a)(1). An order “regarding preliminary injunctive relief is subject to limited review,” and “will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or clearly erroneous findings of fact.” *United States v. Gila Valley Irrigation Dist.*, 31 F.3d 1428, 1442 (9th Cir. 1994).

[15] Federal Rule of Civil Procedure 65(a)(1) authorizes the issuance of an injunction upon notice to the adverse party. *See* Fed. R. Civ. Proc. 65(a)(1). Although the district court had the power under § 105 to issue an injunction against enforcement of the municipal court judgment, it abused its discretion when it withdrew the reference to bankruptcy court without cause, and imposed an injunction without regard to the requirements of Rule 65(a)(1). “[O]ne basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits.” *Union Pac. R.R. Co. v. Mower*, 219 F.3d 1069, 1077 (9th Cir. 2000) (citations and internal quotation marks omitted); *see also Weitzman v. Stein*, 897 F.2d 653, 657 (2d Cir. 1990) (acknowledging that notice requirements of Rule 65(a) are applicable to district court’s *sua sponte* injunction).

CONCLUSION

We have jurisdiction to review the district court’s *sua sponte* withdrawal of reference based on our construction of this appeal as a petition for a writ of mandamus. The district court’s reference was withdrawn without the requisite showing of cause, and application of the *Bauman* factors favors issuance of a writ of mandamus. *See In re Pruitt*, 910 F.2d at 1168-69. Also, the district court abused its discretion when it issued an injunction pursuant to § 105(a), because it failed to provide notice as required under Rule 65(a)(1). *See Mower*, 219 F.3d at 1077. Accordingly, we VACATE the order with-

drawing reference of this case to the bankruptcy court and the accompanying order staying the enforcement of the municipal court judgment. We REMAND this matter to the bankruptcy court for further proceedings consistent with this opinion.² Appellants are awarded costs of appeal.

VACATED AND REMANDED.

²In light of our rulings on the district court's abuse of discretion in withdrawing reference to the bankruptcy court and imposing an injunction, we need not address Appellants' argument that the district court erred in refusing to lift the stay. We also need not address the question of whether the district court was required to provide notice and a hearing before withdrawing reference *sua sponte*.

CHASER Live Civil Docket as of January 23, 2004 4:43 pm
TERMED

U.S. District Court

Central District of California (Southern Div)
CIVIL DOCKET FOR CASE #: 8:01cv00688-

Deborah M. Canter, et al v. Richard Diamond	Filed: 02/02/00
Assigned to: Judge David O. Carter	
Demand: \$0,000	Nature of Suit: 423
Lead Docket: None	Jurisdiction: Federal Question
Dkt # : is 2:00-cv-01185	
Dkt # in USBC C/D CA @ LA : is LA 99-49126-AA	
Cause: 28:0157 Motion for Withdrawal of Reference	

* Parties *	* Attorneys *
DEBORAH M CANTER debtor	Andrew Edward Smyth FAX 323-933-6089 [COR LD NTC] Andrew E Smyth Law Offices 4929 Wilshire Blvd, Ste 988 Los Angeles, CA 90010 323-933-8401
ALAN CANTER creditor	Peter C Bronson [COR LD NTC] Herbert Katz FAX 310-277-5953 [COR LD NTC] Kelly Lytton Mintz & Vann 1900 Avenue of the Stars, Ste 1450 Los Angeles, CA 90067 310-277-5333
CANTER FAMILY TRUST creditor	Peter C Bronson (See above) [COR LD NTC] Herbert Katz (See above) [COR LD NTC]
v.	
RICHARD K DIAMOND defendant	Richard K Diamond FAX 310-277-5735 [COR LD NTC] Danning Gill Diamond & Kollitz 2029 Century Park E, 3rd Fl Los Angeles, CA 90067-2904 310-277-0077
EDWINA E DOWELL, Chapter 13 Trustee	Edwina E Dowell 700 S Flower St

trustee	Ste 1950 Los Angeles, CA 90017
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Docket Proceedings

Date	Doc #	Docket Entry
10/26/99	--	VOLUNTARY PETITION by debtor Deborah M. Canter under chapter 13. (gk) [Entry date 02/24/00]
02/02/00	1	ORDER by Judge Manuel L. Real withdrawing reference from the Bankruptcy Court to the District Court. BK# LA99-49126 AA. (ENT 2/16/00) mld cpys & ntc. cc: Bankruptcy Court. (gk) [Entry date 02/16/00] [Edit date 02/16/00]
02/24/00	--	RECEIVED TRANSMITTAL of documents from U.S. Bankruptcy Court: Certified copy of docket sheet and all original documents in Bankruptcy Case No. LA99-49126 AA. (gk) [Entry date 02/25/00]
02/24/00	2	BANKRUPTCY COURT'S TRANSMITTAL LETTER re BK# LA99-49126 AA. (gk) [Entry date 02/25/00]
02/25/00	3	NOTICE OF MOTION AND MOTION by debtor Deborah M Canter to convert Chp 13 to Chp 7 ; motion hearing set for 10:00 3/27/00; decl of Debtor, Deborah M. Canter; P&A. Lodged ORD (ab) [Entry date 02/29/00]
02/29/00	4	ORDER by Judge Manuel L. Real pending fur proceedings in this crt the jgm on 2-7-00 inthe matter of Alan S. Canter v. Deborah Maristina Romano in Municipal crt no. 99U18116 is STAYED. (ab) [Entry date 03/03/00]
03/15/00	5	MINUTES: resetting hearing on motion to convert Chp 13 to Chp 7 [3-1] 10:00 4/10/00 by Judge Manuel L. Real CR: none (ab)
04/10/00	7	MINUTES: THE COURT GRANTS motion to convert Chp 13 to Chp 7 [3-1]; cnsl to submit a prospd ord; by Judge Manuel L. Real CR: Heather Pitvorec (ir) [Entry date 04/12/00]
04/11/00	6	ORDER by Judge Manuel L. Real granting motion to convert Chp 13 to Chp 7 [3-1]; this case is hereby ord converted to Chapter 7. (ab) [Entry date 04/12/00]
04/26/00	8	NOTICE by debtor Deborah M Canter of schedules converted frm Chp 13 to Chp 7 on 4-11-00. (ab) [Entry date 05/10/00]
05/30/00	9	ATTORNEY SUBSTITUTION: terminating attorney Mark E Brenner for Canter Family Trust, attorney Mark E Brenner for Alan

06/19/00	10	NOTICE OF MOTION AND MOTION by creditor Alan Canter, creditor Canter Family Trust to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116; Decl of Mark E. Brenner & Robert Brodney; motion hearing set for 10:00 7/17/00 (yl) [Entry date 06/20/00]
06/19/00	11	REQUEST by creditor Alan Canter, creditor Canter Family Trust for judicial notice re motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) [Entry date 06/20/00]
06/29/00	12	OPPOSITION by debtor Deborah M Canter to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (pbap) [Entry date 07/03/00]
07/07/00	13	MINUTES: resetting hearing on motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] 10:00 7/24/00 by Judge Manuel L. Real CR: n/a (dmjr) [Entry date 07/10/00]
07/10/00	15	RESPONSE by creditor Alan Canter, creditor Canter Family Trust to to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]; decl of Gary Canter, decl of Alan Canter, decl of Herbert Katz. (ab) [Entry date 07/14/00]
07/12/00	14	DECLARATION of Andrew E Smyth by debtor Deborah M Canter re motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (dmjr) [Entry date 07/14/00]
07/14/00	16	DECLARATION of Debbie Canter by debtor Deborah M Canter in reply to decls of Alan Canter & Gary Center. (ab) [Entry date 07/17/00]
07/14/00	17	DECLARATION of Vicky Bascoy by debtor Deborah M Canter concerning mot to dessolve injunction. (ab) [Entry date 07/19/00]
07/19/00	18	DECLARATION of Laura Nemiroff by debtor Deborah M Canter, creditor Alan Canter in resp to op to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) [Entry date 07/21/00]
07/19/00	19	DECLARATION of Alan Canter by creditor Alan Canter, creditor Canter Family Trust in resp to opp to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) [Entry date 07/21/00]
07/24/00	20	MINUTES: The Crt denies the motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]; Plf shall submit a prospd Ord; by Judge Manuel L. Real; CR: Leonore LeBlanc (ad) [Entry date 07/31/00]
07/28/00	--	LODGED/PROPOSED ORDER submitted by debtor Deborah M Canter for order [21-1] .(FWD TO CRD) (yl) [Entry date 08/02/00]
07/31/00	21	ORDER by Judge Manuel L. Real denying motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) [Entry date 08/02/00]

09/20/00	22	REQUEST by creditors for special ntc (jag) [Entry date 09/22/00]
09/22/00	23	NOTICE by trustee of appt of trustee & fixing of bond, acceptance orf appt as interim trustee (dmjr) [Entry date 09/25/00]
10/16/00	24	NOTICE by debtor Deborah M Canter of appl to employ Danning, Gill, Diamond & Kollitz, LLP as general cnsl. (ab) [Entry date 10/20/00]
10/26/00	25	APPLICATION of Chapter 7 Trustee to Employ Danning Gill, Diamond & Kollitz, llp as general cnsl; decl of Howard Killitz, comments of the US Trustee. (ab) [Entry date 10/30/00]
10/26/00	--	LODGED/PROPOSED ORDER submitted for motion application [25-1] .(FWD TO CRD) (ab) [Entry date 10/30/00]
11/13/00	26	ORDER by Judge Manuel L. Real denying motion application to employ Danning, Gill, Diamond & Kollitz, LLP as general cnsl [25-1]. (ab) [Entry date 11/15/00]
12/20/00	27	NOTICE by trustee Edwina E Dowell of Chp 7 Bankruptcy case, meeting of creditors and ddl. (ab) [Entry date 12/22/00]
01/25/01	28	NOTICE OF INTERESTED PARTIES filed by Chapter 7 Trustee Richard K Diamond (ab) [Entry date 01/26/01]
02/01/01	--	PLACED IN FILE - NOT USED ord auth Trustee etc. (ab) [Entry date 02/02/01]
02/05/01	30	PROOF OF SERVICE by debtor Deborah M Canter on 2/5/01 of decl of deborach Canter. (ab) [Entry date 03/23/01]
02/05/01	31	DECLARATION of Deborah M. Canter by debtor Deborah M Canter in req for enforcement of Bankruptcy Stay; req staying marriage dissolution trial on 2-15-01. (ab) [Entry date 03/23/01]
03/02/01	29	NOTICE by trustee Edwina E Dowell of cont meeting of creditores and apperance of Debtor. (ab) [Entry date 03/07/01] [Edit date 03/22/01]
03/27/01	32	NOTICE of Continued Meeting of Creditors & Appearance of Debtor filed by Chapter 7 Trustee, Richard K Diamond; (dw) [Entry date 03/29/01] [Edit date 03/30/01]
05/16/01	33	NOTICE OF MOTION AND MOTION by creditors for order for relief from 2/29/00 Order Staying the Jgm in the Unlawful Detainer Matter is Los Angeles Municipal Court Case No 99U19116 ; motion hearing set for 10:00 6/18/01; Decls of Lauren Neimroff, Alan Canter (dw) [Entry date 05/18/01] [Edit date 05/21/01]
05/16/01	34	REQUEST by creditor for judicial notice re motion for order for relief from 2/29/00 Order Staying the Jgm in the Unlawful Detainer Matter is Los Angeles Municipal

		Court Case No 99U19116 [33-1] (dw) [Entry date 05/18/01]
05/23/01	35	MINUTES: Counsel are notified that on the court's own motion the hearing on the motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1], is continued to 10:00 6/18/01 by Judge Manuel L. Real CR: N/A (bp) [Entry date 05/25/01]
05/23/01	36	SECOND SUPPLEMENT TO NOTICE OF MOTION AND MOTION by creditors to dismiss cmp purs to FRCP 12(b)(6), or, in the alt, to abstain purs to 28 USC 1334 (c); Decls of Lauren Nemiroff, Alan Canter; motion hearing set for 10:00 6/11/01 (jp) [Entry date 05/25/01]
05/23/01	37	REQUEST by creditors for judicial notice re 2nd supplement notice of motion and motion to dismiss cmp [36-1] or, in the alt, to abstain [36-2] (jp) [Entry date 05/25/01]
05/30/01	38	NOTICE of trustee's prospd sale or abandonment of property (rl) [Entry date 06/04/01]
06/05/01	39	OPPOSITION filed by resps Alan Canter, Canter Family Trust to ntc of trustee's prospd sale or abandonment of property [38-1]; req for hrg; decl of Lauren Nemiroff (rl) [Entry date 06/07/01]
06/07/01	40	OPPOSITION filed by debtor Deborah M Canter to trustee's ntc to sell or abandon [38-1] (rl) [Entry date 06/08/01]
06/07/01	41	RESPONSE by debtor Deborah M Canter to motion to dismiss cmp [36-1], or in the alt to abstain [36-2] (rl) [Entry date 06/08/01] [Edit date 06/13/01]
06/07/01	42	POINTS & AUTHORITIES IN OPPOSITION by debtor Deborah M Canter to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (rl) [Entry date 06/08/01]
06/08/01	43	RESPONSE by creditor re opposition to mot vacate ord of 2/29/00 staying judgment in Los Angeles Municipal Crt Case No 99U18116 [42-1]; Decl of Herbert Katz (dw) [Entry date 06/12/01]
06/08/01	44	REPLY to Debtor's Response to Second Supplement to Ntc of Mot & Mot to Dism Cmp Purs to FRCP 12(b)(6) or in the Alt to abstain [36-1] (dw) [Entry date 06/12/01]
06/18/01	46	MINUTES by Mag Judge Manuel Real denying motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] CR: Leonore LeBlanc (dw) [Entry date 06/26/01]
06/19/01	--	LODGED ORDER submitted by dfts re Mot to Vacate Ord on 2/29/00 Staying Jgm in LA Municipal Crt Case No 99 U18116 (FWD TO CRD) (dw) [Entry date 06/21/01]

06/19/01	--	LODGED ORDER submitted by dfts re Motion to Dism Cmp Purs to FRCP 12(b)(6) or in the Alt to Abstain Purs to 28 USC Sect 1334(c) (FWD TO CRD) (dw) [Entry date 06/21/01]
06/20/01	45	ORDER by Judge Manuel L. Real denying motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]. (ENT 6/25/01) mld cpys & ntc (pbap) [Entry date 06/25/01]
06/20/01	66	ORDER by Judge David O. Carter granting dfts' motion to dismiss cmp [36-1], finding the motion to abstain [36-2] moot; (Ent 9/27/01) (rmi) [Entry date 09/27/01]
06/26/01	47	NOTICE by dfts of Entry of Ord on Mot to Dism Cmp Purs to FRCP 12(b)(6) or in the Alt to Abstain Purs to 28 USC Section 1334(c) (dw) [Entry date 06/27/01]
06/26/01	48	Notice of Entry of Ord on Mot to Vac Ord of 2/29/00 Staying Jgm in Los Angeles Municipal Court Case No 99 U18116 by creditors (dw) [Entry date 06/27/01]
06/26/01	49	AMENDED COMPLAINT by Plf to Determine that the Real Property at 446 South Highland Ave Los Angeles CA is Property of the Bankruptcy Estate & that Canter's Fairfax (Restaurant) is in Part Property of the Bankruptcy Estate. Summons not issued (dw) [Entry date 06/27/01]
07/03/01	50	RECEIPT OF TRANSCRIPT of proceedings for the following date: 6/18/01 CR: Leonore A. LeBlanc. (wdc) [Entry date 07/05/01]
07/03/01	--	TRANSCRIPT filed for proceedings held on 6/18/01. (wdc) [Entry date 07/05/01]
07/06/01	51	NOTICE OF MOTION AND MOTION by dftsto dismiss amd cmp, or in the alt to abstain; Decls of Alan Canter, Lauren Nemiroff, Gary Canter, Herbert Katz (dw) [Entry date 07/09/01]
07/06/01	52	REQUEST by dfts, for judicial notice re motion to dismiss amd cmp [51-1] (dw) [Entry date 07/09/01]
07/17/01	53	PRELIMINARY INJUNCTION NOTICE OF APPEAL by creditor Alan Canter, Canter Family Trust to 9th C/A from Dist. Court ord fld 06/20/01 & ent 06/25/01 [45-1]. (cc: Herbert Katz, Kelly Lytton & Vann; Beborah M. Canter, Andrew E. Smyth, Richard K. Diamond, Office of the U.S. Trustee, Alan Canter) Fee: Paid. (cbr) [Edit date 07/18/01]
07/17/01	54	REPRESENTATION STATEMENT re appeal [53-1]. (cbr)
07/18/01	65	ANSWER filed by defendant Richard K Diamond to amended complaint [49-1] (rmi) [Entry date 09/27/01]
07/19/01	56	ORDER TRANSFERRING ACTION Under Section 3.1 of General Order 224 Case reassigned from Judge Manuel L. Real to Judge David O. Carter for all further proceedings. The case number will now reflect the initials of the transferee Judge

		[SACV 01-688 DOC] (cc: all counsel) (m) [Entry date 07/31/01]
07/19/01	57	NOTICE RE INTRA-DISTRICT TRANSFER filed. Case reassigned to Southern Division by order filed 7/19/01. New case no. SACV 01-688 DOC assigned to Judge David O. Carter for all further proceedings. (Original file transferred.) (cc: all counsel) (m) [Entry date 07/31/01]
07/20/01	55	TRANSCRIPT DESIGNATION and ordering form for dates: 06/18/01 re transcript [50-1] CR: Leonore A. Leblanc. (cbr)
07/30/01	58	OPPOSITION by debtor Deborah M Canter to Motion to dismiss amd cmp [51-1], or in the alt to abstain [51-2] (ad) [Entry date 08/21/01]
08/09/01	60	CHAPTER 7 TRUSTEE'S STATEMENT confirming his lack of opp to the mot to re-refer case to BANKruptcy Crt filed on or about 8/3/01 by Alan Canter & others (motion not on docket) (ad) [Entry date 08/21/01]
08/10/01	59	EX PARTE MOTION filed by debtor Deborah M Canter, creditors Alan Canter, Canter Family Trust, Specially Appearing for Gary Canter to advance hrg on Mot to re-refer case to Bankruptcy Crt to 8/27/01; Decl of Herbert Katz; Lodged Order (ad) [Entry date 08/16/01]
08/17/01	61	OPPOSITION by debtor Deborah M Canter to motion to refer matter to Bankruptcy Crt (not on docket), & opp to Motion to dismiss amd cmp [51-1], or in the alt to abstain [51-2] (ad) [Entry date 08/21/01]
08/21/01	--	PLACED IN FILE - NOT USED Ntc of mot & mot to re-refer case to Bankruptcy Crt Lodged 8/10/01 (ad) [Entry date 08/24/01]
08/21/01	62	NOTICE OF MOTION AND MOTION by creditors Alan Canter, Canter Family Trust, Specially Appearing for Gary Canter to re-refer case to Bankruptcy Crt & the Adversary Proceeding pending to the Honorable Alan Ahart, US Bankruptcy Judge; Decl of Herbert Katz; motion hearing set for 8:30 9/17/01 (ad) [Entry date 08/24/01]
08/21/01	63	DENIED ORDER by Judge David O. Carter denying ex parte motion to advance hrg on Mot to re-refer case to Bankruptcy Crt to 8/27/01 [59-1] DENIED (ad) [Entry date 08/24/01]
09/14/01	64	MINUTES (In Chambers) by Judge David O. Carter granting dft's motion to re-refer all matters to Bankruptcy Crt [62-1]. The motion to dismiss is removed from the crt's calendar; terminating case (MD JS-6). CR: Not Present (ENT 9/21/01) (PSEND/NTC) (mf) [Entry date 09/21/01]
10/31/01	--	TRANSMITTAL of documents: Original case file, cc order & docket sheet sent to USBC/CDCA L.A. (mt)
10/02/02	67	NOTICE of hearing IN COURT HEARING RE: Jgm from 9th Circuit US Court of Appeals is set on 8:30 10/28/02 (see doc for fur directives & specifics) (ln)

10/10/02	68	MINUTES (in chambers): on Crt's own mot IN COURT HEARING RE: Filing & Spreading of Jgm of Crt of Appeals is cont to 8:30 12/16/02 by Judge David O. Carter CR: none present; (see doc for specifics) (ln)
10/11/02	69	STATUS REPORT by creditors in resp to ntc of hrg on filing & spreading jgm of Crt of Appeals (civil) (mg) [Entry date 10/18/02]
12/16/02	70	MINUTES of filing and spreading mandate (In Court) by Judge David O. Carter: Court does not file and spread upon the minutes of this USDC as the remand matter is now deemed moot. CR: Debbie Gale (mt) [Entry date 12/27/02]
12/23/02	71	ORDER by Judge David O. Carter re hearing on filing and spreading judgment of court of appeals (civil) (mt) [Entry date 01/03/03]
[END OF DOCKET: 8:01cv688]		

TERMED

**U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:00cv01185
Internal Use Only**

Deborah M. Canter, et al v. Richard Diamond

Assigned to: Judge Manuel L. Real

Referred to:

Demand: \$0

Lead Docket: None

Related Cases: None

Case in other court: INTRATRANS, 8:01-cv-00688

USBC C/D CA @ LA, LA99-49126-AA

Cause: 28:0157 Motion for Withdrawal of Reference

Date Filed: 02/02/00

Jury Demand: None

Nature of Suit: 423 Bankruptcy

Withdrawal

Jurisdiction: Federal Question

In re Debtor

Deborah M Canter

represented by **Andrew Edward Smyth**
Andrew E Smyth Law Offices
4929 Wilshire Blvd, Ste 988
Los Angeles, CA 90010
323-933-8401
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Miscellaneous

Gary Canter

represented by **Peter C Bronson**
Kelly Lytton Mintz & Vann
1900 Avenue of the Stars, Ste 1450
Los Angeles, CA 90067
310-277-5333
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Wesley H Avery
SulmeyerKupetz
333 S Hope St, 35th Fl
Los Angeles, CA 90071
213-626-2311
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

EXHIBIT 5B

Creditor

Alan Canter

represented by **Herbert Katz**
 Kelly Lytton Mintz & Vann
 1900 Avenue of the Stars, Ste 1450
 Los Angeles, CA 90067
 310-277-5333
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mark E Brenner
 Mark E Brenner Law Offices
 7009 Owensmouth, Ste 201
 Canoga Park, CA 91303
 818-313-9966
TERMINATED: 05/30/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter C Bronson
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Canter Family Trust

represented by **Herbert Katz**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mark E Brenner
 (See above for address)
TERMINATED: 05/30/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter C Bronson
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Trustee

Edwina E Dowell, Chapter 13 Trustee

Filing Date	#	Docket Text

10/26/1999		VOLUNTARY PETITION by debtor Deborah M. Canter under chapter 13. (gk) (Entered: 02/24/2000)
12/09/1999		(Utility Event) - Adding creditor(s) Alan Canter, Canter Family Trust (gk) (Entered: 02/24/2000)
01/13/2000		(Utility Event) - Adding parties Gary Canter and Edwina E. Dowell, Chapter 13 Trustee. (gk) (Entered: 02/24/2000)
02/02/2000	1	ORDER by Judge Manuel L. Real withdrawing reference from the Bankruptcy Court to the District Court. BK# LA99-49126 AA. (ENT 2/16/00) mld cpys & ntc. cc: Bankruptcy Court. (gk) Modified on 02/16/2000 (Entered: 02/16/2000)
02/24/2000		RECEIVED TRANSMITTAL of documents from U.S. Bankruptcy Court: Certified copy of docket sheet and all original documents in Bankruptcy Case No. LA99-49126 AA. (gk) (Entered: 02/25/2000)
02/24/2000	2	BANKRUPTCY COURT'S TRANSMITTAL LETTER re BK# LA99-49126 AA. (gk) (Entered: 02/25/2000)
02/25/2000	3	NOTICE OF MOTION AND MOTION by debtor Deborah M Canter to convert Chp 13 to Chp 7 ; motion hearing set for 10:00 3/27/00; decl of Debtor, Deborah M. Canter; P&A. Lodged ORD (ab) (Entered: 02/29/2000)
02/29/2000	4	ORDER by Judge Manuel L. Real pending fur proceedings in this crt the jgm on 2-7-00 inthe matter of Alan S. Canter v. Deborah Maristina Romano in Municipal crt no. 99U18116 is STAYED. (ab) (Entered: 03/03/2000)
03/15/2000	5	MINUTES: resetting hearing on motion to convert Chp 13 to Chp 7 [3-1] 10:00 4/10/00 by Judge Manuel L. Real CR: none (ab) (Entered: 03/15/2000)
04/10/2000	7	MINUTES: THE COURT GRANTS motion to convert Chp 13 to Chp 7 [3-1]; cnsl to submit a propsd ord; by Judge Manuel L. Real CR: Heather Pitvorec (ir) (Entered: 04/12/2000)
04/11/2000	6	ORDER by Judge Manuel L. Real granting motion to convert Chp 13 to Chp 7 [3-1]; this case is hereby ord converted to Chapter 7. (ab) (Entered: 04/12/2000)
04/26/2000	8	NOTICE by debtor Deborah M Canter of schedules converted frm Chp 13 to Chp 7 on 4-11-00. (ab) (Entered: 05/10/2000)
05/30/2000	9	ATTORNEY SUBSTITUTION: terminating attorney Mark E

		Brenner for Canter Family Trust, attorney Mark E Brenner for Alan Canter by creditor Alan Canter, creditor Canter Family Trust and substituting attorney Herbert Katz, Peter C Bronson by Judge Manuel L. Real (ab) (Entered: 06/01/2000)
06/19/2000	10	NOTICE OF MOTION AND MOTION by creditor Alan Canter, creditor Canter Family Trust to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 ; Decl of Mark E. Brenner & Robert Brodney; motion hearing set for 10:00 7/17/00 (yl) (Entered: 06/20/2000)
06/19/2000	11	REQUEST by creditor Alan Canter, creditor Canter Family Trust for judicial notice re motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) (Entered: 06/20/2000)
06/29/2000	12	OPPOSITION by debtor Deborah M Canter to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (pbap) (Entered: 07/03/2000)
07/07/2000	13	MINUTES: resetting hearing on motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] 10:00 7/24/00 by Judge Manuel L. Real CR: n/a (dmjr) (Entered: 07/10/2000)
07/10/2000	15	RESPONSE by creditor Alan Canter, creditor Canter Family Trust to to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]; decl of Gary Canter, decl of Alan Canter, decl of Herbert Katz. (ab) (Entered: 07/14/2000)
07/12/2000	14	DECLARATION of Andrew E Smyth by debtor Deborah M Canter re motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (dmjr) (Entered: 07/14/2000)
07/14/2000	16	DECLARATION of Debbie Canter by debtor Deborah M Canter in reply to decls of Alan Canter & Gary Center. (ab) (Entered: 07/17/2000)
07/14/2000	17	DECLARATION of Vicky Bascoy by debtor Deborah M Canter concerning mot to dessolve injunction. (ab) (Entered: 07/19/2000)
07/19/2000	18	DECLARATION of Laura Nemiroff by debtor Deborah M Canter, creditor Alan Canter in resp to op to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) (Entered: 07/21/2000)
07/19/2000	19	DECLARATION of Alan Canter by creditor Alan Canter, creditor Canter Family Trust in resp to opp to motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) (Entered: 07/21/2000)

		07/21/2000)
07/24/2000	20	MINUTES: The Crt denies the motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]; Plf shall submit a propsd Ord; by Judge Manuel L. Real; CR: Leonore LeBlanc (ad) (Entered: 07/31/2000)
07/28/2000		LODGED/PROPOSED ORDER submitted by debtor Deborah M Canter for order [21-1] .(FWD TO CRD) (yl) (Entered: 08/02/2000)
07/31/2000	21	ORDER by Judge Manuel L. Real denying motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1] (yl) (Entered: 08/02/2000)
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09/22/2000	23	NOTICE by trustee of appt of trustee & fixing of bond, acceptance orf appt as interim trustee (dmjr) (Entered: 09/25/2000)
10/16/2000	24	NOTICE by debtor Deborah M Canter of appl to employ Danning, Gill, Diamond & Kollitz, LLP as general cnsl. (ab) (Entered: 10/20/2000)
10/26/2000	25	APPLICATION of Chapter 7 Trustee to Employ Danning Gill, Diamond & Kollitx, llp as general cnsl; decl of Howard Killitz, comments of the US Trustee. (ab) (Entered: 10/30/2000)
10/26/2000		LODGED/PROPOSED ORDER submitted for motion application [25-1] .(FWD TO CRD) (ab) (Entered: 10/30/2000)
11/13/2000	26	ORDER by Judge Manuel L. Real denying motion application to employ Danning, Gill, Diamond & Kollitz, LLp as general cnsl [25-1]. (ab) (Entered: 11/15/2000)
11/13/2000		NOTICE PARTY(S) added: US Bankruptcy Court (ab) (Entered: 11/15/2000)
12/20/2000	27	NOTICE by trustee Edwina E Dowell of Chp 7 Bankruptcy case, meeting of creditors and ddl. (ab) (Entered: 12/22/2000)
01/25/2001	28	NOTICE OF INTERESTED PARTIES filed by Chapter 7 Trustee Richard K Diamond (ab) (Entered: 01/26/2001)
02/01/2001		PLACED IN FILE - NOT USED ord auth Trustee etc. (ab) (Entered: 02/02/2001)

02/05/2001	30	PROOF OF SERVICE by debtor Deborah M Canter on 2/5/01 of decl of deborach Canter. (ab) (Entered: 03/23/2001)
02/05/2001	31	DECLARATION of Deborah M. Canter by debtor Deborah M Canter in req for enforcement of Bankruptcy Stay; req staying marriage dissolution trial on 2-15-01. (ab) (Entered: 03/23/2001)
03/02/2001	29	NOTICE by trustee Edwina E Dowell of cont meeting of creditores and apperance of Debtor. (ab) Modified on 03/22/2001 (Entered: 03/07/2001)
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05/23/2001	36	SECOND SUPPLEMENT TO NOTICE OF MOTION AND MOTION by creditors to dismiss cmp purs to FRCP 12(b)(6), or, in the alt, to abstain purs to 28 USC 1334(c); Decls of Lauren Nemiroff, Alan Canter; motion hearing set for 10:00 6/11/01 (jp) (Entered: 05/25/2001)
05/23/2001	37	REQUEST by creditors for judicial notice re 2nd supplement notice of motion and motion to dismiss cmp [36-1] or, in the alt, to abstain [36-2] (jp) (Entered: 05/25/2001)
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06/05/2001	39	OPPOSITION filed by resps Alan Canter, Canter Family Trust to ntc of trustee's prospd sale or abandonment of property [38-1]; req for hrg; decl of Lauren Nemiroff (rl) (Entered: 06/07/2001)

06/07/2001	40	OPPOSITION filed by debtor Deborah M Canter to trustee's ntc to sell or abandon [38-1] (rl) (Entered: 06/08/2001)
06/07/2001	41	RESPONSE by debtor Deborah M Canter to motion to dismiss cmp [36-1], or in the alt to abstain [36-2] (rl) Modified on 06/13/2001 (Entered: 06/08/2001)
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06/20/2001	45	ORDER by Judge Manuel L. Real denying motion to vacate ord of 2/29/00 staying jgm in LA Muni Crt Case no 99U18116 [10-1]. (ENT 6/25/01) mld cpys & ntc (pbap) (Entered: 06/25/2001)
06/26/2001	47	NOTICE by dfts of Entry of Ord on Mot to Dism Cmp Purs to FRCP 12(b)(6) or in the Alt to Abstain Purs to 28 USC Section 1334(c) (dw) (Entered: 06/27/2001)
06/26/2001	48	Notice of Entry of Ord on Mot to Vac Ord of 2/29/00 Staying Jgm in Los Angeles Municipal Court Case No 99 U18116 by creditors (dw) (Entered: 06/27/2001)
06/26/2001	49	AMENDED COMPLAINT by Plf to Determine that the Real Property at 446 South Highland Ave Los Angeles CA is Property of the Bankruptcy Estate & that Canter's Fairfax (Restaurant) is in Part Property of the Bankruptcy Estate. Summons not issued (dw)

		(Entered: 06/27/2001)
07/03/2001	50	RECEIPT OF TRANSCRIPT of proceedings for the following date: 6/18/01 CR: Leonore A. LeBlanc. (wdc) (Entered: 07/05/2001)
07/03/2001		TRANSCRIPT filed for proceedings held on 6/18/01. (wdc) (Entered: 07/05/2001)
07/06/2001	51	NOTICE OF MOTION AND MOTION by dfts to dismiss amd cmp , or in the alt to abstain ; Decls of Alan Canter, Lauren Nemiroff, Gary Canter, Herbert Katz (dw) (Entered: 07/09/2001)
07/06/2001	52	REQUEST by dfts, for judicial notice re motion to dismiss amd cmp [51-1] (dw) (Entered: 07/09/2001)
07/17/2001	53	PRELIMINARY INJUCTION NOTICE OF APPEAL by creditor Alan Canter, Canter Family Trust to 9th C/A from Dist. Court ord fld 06/20/01 & ent 06/25/01 [45-1]. (cc: Herbert Katz, Kelly Lytton & Vann; Beborah M. Canter, Andrew E. Smyth, Richard K. Diamond, Office of the U.S. Trustee, Alan Canter) Fee: Paid. (cbr) Modified on 07/18/2001 (Entered: 07/17/2001)
07/17/2001	54	REPRESENTATION STATEMENT re appeal [53-1]. (cbr) (Entered: 07/17/2001)
07/19/2001		NOTICE PARTY(S) added: David O Carter (rn) (Entered: 07/31/2001)
07/19/2001	56	ORDER TRANSFERRING ACTION Under Section 3.1 of General Order 224 Case reassigned from Judge Manuel L. Real to Judge David O. Carter for all further proceedings. The case number will now reflect the initials of the transferee Judge [SACV 01-688 DOC] (cc: all counsel) (rn) (Entered: 07/31/2001)
07/19/2001		NOTICE PARTY(S) added: David O Carter, Dep In Chg So Div (rn) (Entered: 07/31/2001)
07/19/2001	57	NOTICE RE INTRA-DISTRICT TRANSFER filed. Case reassigned to Southern Division by order filed 7/19/01. New case no. SACV 01-688 DOC assigned to Judge David O. Carter for all further proceedings. (Original file transferred.) (cc: all counsel) (rn) (Entered: 07/31/2001)
07/19/2001		Docket Modification (Utility Event) terminating case (MD JS-6) (rn) (Entered: 07/31/2001)
07/20/2001	55	TRANSCRIPT DESIGNATION and ordering form for dates:

		06/18/01 re transcript [50-1] CR: Leonore A. Leblanc. (cbr) (Entered: 07/20/2001)
07/30/2001	58	OPPOSITION by plf Deborah Marie Canter to motion to dismiss amd cmp [51-1]. (gk) (Entered: 07/31/2001)
08/02/2001	61	ORDER FROM USCA App fld 07/17/01 is P/I app. Accordingly, 9th CCA rule 3-3 shall apply. Within 7 days aft ent of this ord, pties shall make arrangements to obtain frm crt rpter an official transc of procs in Dist Crt which will be included in record on app. Brief sched set. (01-56151) (cbr) (Entered: 08/24/2001)
08/03/2001	59	NOTIFICATION by Circuit Court of Appellate Docket Number appeal [53-1] 01-56151 (pjap) (Entered: 08/03/2001)
08/24/2001	60	CERTIFICATE of Record Transmitted to USCA (01-56151). (cc: all parties) (cbr) (Entered: 08/24/2001)
09/25/2002		LODGED CC 9th CCA JGM of said Dist Crt hereby is vac & rmd. Applnts are awarded costs of app. (01-56151) (FWD TO CRD) (weap) (Entered: 10/02/2002)

EXHIBIT 20

Spiegel Liao & Kagay, LLP

LAWYERS

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mis@slksf.com

CHARLES M. KAGAY
cmk@slksf.com
CERTIFIED SPECIALIST
APPELLATE LAW
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

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DONALD C. SMALTZ
dsmaltz@aol.com

January 27, 2004

By US Mail & fax 626-229-7463

CONFIDENTIAL

Ms. Cathy A. Catterson, Clerk
U.S. Court of Appeals 9th Circuit
7th at Mission Street
P.O. Box 193939
San Francisco, CA 94119-3939

Re; Complaint of Judicial Misconduct No.03-89037

Dear Ms. Catterson:

This letter will serve to confirm our telephone discussion of yesterday, Monday, January 26, concerning my recent retention by the district judge who is the subject of the above-entitled complaint. Would you please enter my appearance on behalf of the judge and copy me on all future communications with him.

I have reviewed the Order of the Judicial Council filed December 18, 2003. and, on the basis of my very brief acquaintance with the underlying facts, it appears to me that the Order is predicated in part on some significant factual errors. So that the interests of the district judge, may be properly protected I would very much appreciate being furnished a copy of all the evidence placed before the Council, including documents, statements of witnesses, reports of telephone conversations, and court records.

In addition, I respectfully request that I be afforded 15 days from my receipt

of the requested evidence to submit a brief to the Chief Judge supporting our position as to the disposition of this matter.

Thank you for your courtesy and anticipated cooperation.

Sincerely

Don C. Smaltz

cc: Hon. Manuel L. Real

EXHIBIT 21



MARY M. SCHROEDER
CHIEF JUDGE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. COURTHOUSE, SUITE 610
401 W. WASHINGTON ST., SPC 64
PHOENIX, AZ 85003-2156
(602) 322-7320
FAX: (602) 322-7329

July 26, 2004

Don C. Smaltz
Spiegel Liao & Kagay, LLP
595 Market Street, Suite 1350
San Francisco, CA 94105

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Mr. Smaltz:

I understand that you represent Judge Real in this matter. I am in receipt of your request for discovery. At this point I am considering the interim order of the Judicial Council and evaluating whether to approve a special committee or to resolve the matter in a different manner.

I enclose copies of notes of investigation that preceded my dismissal of the complaint. When this complaint was filed, I recognized the seriousness of the allegations or insinuations that were being made against a district judge of great experience. I asked Robin to inquire into those allegations and she spoke with both the clerk of the district court and the chief probation officer. She reported to me that there was no merit to the suggestion that there had been any relationship between the district judge and the probationer other than the relationship between district judge and probationer. Of key significance to me was staff's confirmation with the chief probation officer that the probation officer always accompanied the probationer when the probationer visited Judge Real, and that a record was kept of the visits.

The complainant was not a party to the underlying litigation, and that litigation had ended some time before the disciplinary complaint was filed. The ex parte order issued by Judge Real had already been vacated by the panel that heard the appeal in a published opinion. I saw no basis for taking disciplinary action against the district judge at that point. I therefore dismissed the complaint.

Don Smaltz

-2-

July 26, 2004

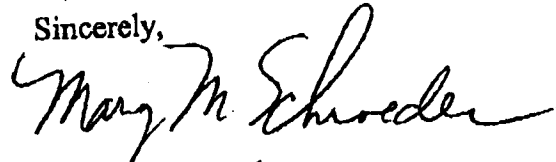
I also enclose a copy of the materials forwarded to me by Judge Carter.

I did not take part in the Council's review of my decision dismissing the complaint. I informed the Council of your request and provided it with copies of these materials. The Council has advised me that it has no discovery materials.

I would appreciate having a response from you with respect to the issues I have been directed to consider by the Council. If you need more than 15 days requested in your letter to Clerk Catterson of January 27, 2004, please contact Clerk Catterson.

Thank you.

Sincerely,



Mary M. Schroeder
Chief Judge

cc: Cathy Catterson

Enclosures

574

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

GREGORY B. WALTERS, CIRCUIT EXECUTIVE
PHONE: (415) 556-9588
FAX: (415) 556-6179

TO: Chief Judge Schroeder
FROM: *Robin Donoghue*
Robin Donoghue, *Assistant Circuit Executive for Legal Affairs*
DATE: May 28, 2003
RE: Complaint of Judicial Misconduct No. 03-89037

Complainant Stephen Yagman, Esq. has filed a complaint of judicial misconduct against District Judge Manuel Real (C.D. Cal.). He intimates that the judge acted for his own salacious interests by placing Deborah Canter, an "attractive female" criminal defendant, on probation, "not to the United States Probation Depart., but rather to **himself, personally.**" (Emphasis in original.) He states that "a little district court docket research revealed this fact." Complainant adds that Judge Real's actions in withdrawing the underlying bankruptcy matter from the bankruptcy court and staying enforcement of the state unlawful detainer judgment further supports the allegation of improper conduct. The Court of Appeals reviewed the judge's withdrawal of the matter from the bankruptcy court, determined that his actions were an "inefficient allocation of judicial resources," and remanded the case to bankruptcy court. Complainant requests investigation into the relationship between Judge Real and Ms. Canter, which was not discussed in the Court of Appeals opinion.

After reviewing the pertinent docket sheets, Sherri Carter, Central District Clerk, relayed over the telephone that in the one criminal case involving Deborah Canter, she had posted bond. There was no record of Judge Real taking Deborah Canter, or any other criminal defendants, into his personal custody on probation.

This complaint should be dismissed because the charges are conclusory. The judge's decisions pertaining to the bankruptcy case relate to the merits and were reviewed and corrected by the Court of Appeals.

Re: CJM No. 03-89037 (Yagman)

5/28/03 - Per Jay Kim

Sherri Carter checked the docket and said there was no personal probation; regular probation order. She said Judge Real has a long practice of having probationers see him, with the probation officer, periodically to report. Meetings are in chambers. Judge Real has received praise for his work with probationers. Nothing unusual.

Confirmed with Chief P.O. Latta that officer always accompanies the probationer and the visits are documented in their files.

Get copy of Probation order.

Docket as of June 30, 2000 7:14 pm

Web PACER (v2.4)

U.S. District Court
Central District of California (Western Div.)
CRIMINAL DOCKET FOR CASE #: 98-CR-576-ALL

USA v. Canter

Filed: 06/02/98
Dkt# in other court: None

Case Assigned to: Judge Manuel L. Real

MARISTINA CANTER (1)
 aka
 Deborah Canter
 aka
 Seal A
 defendant

[term 04/13/99]

Victor Cannon
 [term 04/13/99]
 FAX 213-894-0081
 [COR LD NTC pda]
 Office of the Federal Public
 Defender
 321 E 2nd St
 Los Angeles, CA 90012-4206
 213-894-2854

Pending Counts:

Disposition

18:1001 False Statements
(1)

Imposition of sent is susp. Dft
placed on probn for 5 yrs
under t&c of PO & GO 318.
Fines/costs wvd. Pay s/a \$200.
(1)

18:1014 Loan Fraud
(5)

Imposition of sent is susp. Dft
placed on probn for 5 yrs
under t&c of PO & GO 318.
Fines/costs wvd. Pay s/a \$200.
(5)

18:1001 False Statements
(9)

Imposition of sent is susp. Dft
placed on probn for 5 yrs
under t&c of PO & GO 318.
Fines/costs wvd. Pay s/a \$200.
(9)

18:1001 False Statements
(14)

Imposition of sent is susp. Dft
placed on probn for 5 yrs
under t&c of PO & GO 318.
Fines/costs wvd. Pay s/a \$200.
(14)

Offense Level (opening): 4

Terminated Counts:

Disposition

18:1001 False Statements
(2 - 4)

Any remaining cts are h/b dism.
(2 - 4)

18:1014 Loan Fraud
(6 - 8)

Any remaining cts are h/b dism.
(6 - 8)

18:1001 False Statements
(10 - 13)

Any remaining cts are h/b dism.
(10 - 13)

Offense Level (disposition): 4

Complaints:

NONE

U. S. Attorneys:

NONE

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
6/2/98	1	INDICTMENT filed against Maristina Canter (1) count(s) 1-4, 5-8, 9-14 filed by AUSA Edward Moreton, Jr.. Offense occurred in LA. (step) [Entry date 06/04/98]
6/2/98	2	CASE SUMMARY filed by AUSA Edward Moreton, Jr., attorney for USA, as to Maristina Canter. Defendant's date of birth: (Not Indicated). (step) [Entry date 06/04/98]
6/2/98	3	MEMORANDUM filed by USA as to Maristina Canter. This criminal action, being filed on 6/2/98, was not pending in the U.S. Attorney's Office before 11/2/92, the date on which U.S. District Judge Lourdes G. Baird began receiving criminal matters. (step) [Entry date 06/04/98]
6/2/98	--	BENCH WARRANT issued for Maristina Canter by Magistrate

Judge Carla M. Woehrle Bail set in the amount of \$50,000.00 AB, with following conditions of release: Secured (step) [Entry date 06/04/98]

- 6/5/98 4 EX PARTE APPLICATION to file under seal prev fld indict AND ORDER filed by Magistrate Judge Stephen J. Hillman as to Maristina Canter sealing case. It is hereby ord that indict is to be plc under seal until dft's initial apr in the case at which time indict shl be unsealed. (seal) [Entry date 06/11/98]
- 6/16/98 6 BENCH WARRANT returned executed as to Maristina Canter 6/16/98 (step) [Entry date 06/19/98]
- 6/16/98 7 REPORT COMMENCING CRIMINAL ACTION as to Maristina Canter arrested on 6/16/98. Defendant's date of birth: 1/27/55. (step) [Entry date 06/19/98]
- 6/16/98 8 NOTICE DIRECTING Defendant To Appear for Arraignment on Indictment/Information filed as to Maristina Canter. (step) [Entry date 06/19/98]
- 6/16/98 9 MINUTES OF ARREST ON INDICTMENT HEARING held before Magistrate Judge Virginia A. Phillips as to Maristina Canter: Dft states true name is Deborah Maristina Canter. First appearance of Maristina Canter entered. DFPD Attorney Victor Cannon present. Bail set in the amount of \$50,000.00 AB, with following conditions of release: w/aff of sur no just, signed by husband Gary Canter, PSA supv, surr passprt, trvl restr to CDC, avoid places of egress; and PSA can req psych test/cnslng if necessary as to Maristina Canter. Post indictment arraignment set for 8:30 am on 6/22/98 . Court ords Financial Afdt seal. Bond Posted on 6/16/98. Release Ordered #25761. Tape No.: 98-cr-8 (step) [Entry date 06/19/98]
- 6/16/98 10 BOND AND CONDITIONS OF RELEASE filed as to Deborah Maristina Canter, in the amount of: \$50,000.00 AB. Conditions of Release w/aff of sur no just to be signed by husband Gary Canter, PSA supv, trvl restr to CDC, avoid places of egress, surr psprt nlt 6/18/98. PSA can req psych/cnslng if necessary. Approved by Magistrate Judge Brian Q. Robbins. (step) [Entry date 06/19/98]
- 6/16/98 11 AFFIDAVIT OF SURETIES (No Justification - Pursuant to Local Criminal Rule 5.2.8) filed as to Maristina Canter in the amount of \$50,000.00, by Surety: Gary Paul Canter for bond [10-1]. (step) [Entry date 06/19/98]
- 6/17/98 12 NOTICE OF DELIVERANCE and Receipt of Passport and Abstract of Court Order filed as to Maristina Canter, in reference to bond [10-1]. Passport No.: 032949310. (step) [Entry date 06/19/98]
- 6/18/98 13 BENCH WARRANT returned executed as to Maristina Canter 6/4/98 (ca) [Entry date 06/23/98]
- 6/22/98 14 MINUTES OF POST-INDICTMENT ARRAIGNMENT HEARING held before Magistrate Judge Brian Q. Robbins as to Maristina Canter : case reassigned to Judge Manuel L. Real, Maristina

- Canter (1) count(s) 5-8, 9-14, 1-4 arraigned and states true name as chrgd. DFPD Attorney Victor Cannon present., Plea not guilty entered by , Maristina Canter (1) count(s) 5-8, 9-14, 1-4, jury trial set for 9:00 a.m., on 8/4/98 for Maristina Canter Tape No.: 2026/2027 (vf) [Entry date 07/02/98]
- 6/22/98 15 STATEMENT OF DEFENDANT'S CONSTITUTIONAL RIGHTS filed as to Maristina Canter . (vf) [Entry date 07/02/98]
- 7/27/98 16 NOTICE of filing U/S filed by Maristina Canter (vf) [Entry date 07/28/98]
- 8/7/98 18 Filing of defendant's PLEA AGREEMENT filed by USA (vf) [Entry date 08/10/98]
- 8/24/98 19 MINUTES OF CHANGE OF PLEA HEARING held before Judge Manuel L. Real as to Maristina Canter : Defendant moves to change plea to the indictment. plea of guilty entered by Maristina Canter (1) count(s) 5, 9-14, 1, The Court refers Maristina Canter to the Probation Office for investigation and report., ; sentencing hearing set for 1:30 12/14/98 for Maristina Canter C/R: Lenore LeBlanc (rm) [Entry date 08/26/98]
- 9/15/98 20 STIPULATION AND ORDER filed by Judge Mariana R. Pfaelzer for Judge Real as to Maristina Canter : modifying travel restriction ; declaration of counsel (vf) [Entry date 09/21/98] [Edit date 09/21/98]
- 10/9/98 21 EX PARTE APPLICATION filed by Maristina Canter for order to modify travel restriction. Lodged ord (ibar) [Entry date 10/09/98]
- 10/9/98 22 ORDER filed by Judge Manuel L. Real as to Maristina Canter: granting ex parte appl for ord to mod trvl restr [21-1]: Dft allowed to trvl to E/D of CA, Delano, from 10/9/98 to 10/17/98. (cc: all counsel) (ibar) [Entry date 10/13/98]
- 10/29/98 23 STIPULATION AND ORDER filed by Judge Manuel L. Real as to Maristina Canter : to modify travel restriction; Declar of cnsl. Ord tht the bond cond's previously set on 6/16/98 be modified to allow Ms. Canter to travel to the District of Nevada, & the E/D of CA w/24 hrs ntc to pre-trial services (ca) [Entry date 10/30/98]
- 11/10/98 24 NOTICE OF IN CAMERA FILING by USA as to Maristina Canter Re: position of ptys w/ resp to sent factors. (ibar) [Entry date 11/12/98]
- 12/3/98 26 NOTICE OF IN CAMERA FILING by Maristina Canter Re: stip to continue sentencing; declar of cnsl (ca) [Entry date 12/04/98]
- 1/29/99 28 STIPULATION TO CONTINUE SENTENCING AND ORDER fld by Judge Manuel L Real as to Maristina Canter: Sentencing cont to 3/15/99 @ 1:30 pm. (ibar) [Entry date 02/01/99]
- 2/16/99 30 STIPULATION AND ORDER filed by Judge Manuel L. Real as to Maristina Canter: It is ord that the bond conds previously

set on 6/16/98 be mod to eliminate the requirement that the bond be secured by a 3rd pty Aff of Sur. Fur, all other conds of the bond set on 6/16/98 are to remain in effect. (ew) [Entry date 02/22/99]

- 2/17/99 29 NOTICE OF CHANGE OF Address filed by Guy C. Iversen (ew) [Entry date 02/18/99]
- 3/10/99 31 NOTICE OF UNDER SEAL FILING by Maristina Canter (ibar) [Entry date 03/11/99]
- 3/30/99 33 NOTICE OF UNDER SEAL FILING by Maristina Canter. (ibar) [Entry date 03/31/99]
- 4/2/99 35 NOTICE OF FILING (UNDER SEAL) POSITION OF PARTIES WITH RESPECT TO SENTENCING FACTORS by USA as to Maristina Canter. (ibar) [Entry date 04/05/99]
- 4/5/99 37 MINUTES OF SENTENCING held bef Judge Manuel L Real as to Maristina Canter: Matter is cont to 4/19/99 @ 1:30 pm for sent. C/R: Leonore LeBlanc (ibar) [Entry date 04/08/99]
- 4/13/99 38 MINUTES OF SENTENCING held bef Judge Manuel L Real as to Maristina Canter (1) cts 1, 5, 9, & 14. Imposition of sent is susp. Dft placed on probn for 5 yrs under t&c of PO & GO 318. Fines/costs wvd. Pay s/a \$200. Dism cts as to Maristina Canter (1) cts 2-4, 6-8, 10-13. Any remaining cts are h/b dism. Bond is exon as to Maristina Canter [11-1] [10-1]. [\$50,000 a/b no just; sent passport ltr]. Crt ord transcript sealed. [Case termed.] C/R: Roger May (ibar) [Entry date 04/19/99] [Edit date 04/19/99]
- 4/16/99 39 JUDGMENT AND COMMITMENT issued to U.S. Marshal for Maristina Canter. Approved by Judge Manuel L Real. Entered on: 4/19/99. (ibar) [Entry date 04/19/99]
- 5/25/99 40 RECEIPT FOR RETURN OF PASSPORT filed as to Maristina Canter , in reference to bond. Passport No.: 032949310. (es) [Entry date 05/28/99]
- 3/28/00 41 EX PARTE APPLICATION filed by Maristina Canter for OSC & hrg on ord re viol of LR Rule 10.8 Lodged prop ord. (step) [Entry date 03/30/00]
- 4/7/00 42 ORDER filed by Judge Manuel L. Real as to Maristina Canter : gr ex parte appl for OSC & hrg on ord re viol of LR Rule 10.8 [41-1] In court hearing set for 10:00 4/17/00. (cc: all counsel) (step) [Entry date 04/12/00]
- 4/17/00 43 RESPONSE filed by Maristina Canter to order [42-2] . (step) [Entry date 04/18/00]
- 4/17/00 44 MINUTES OF OSC RE VIOL OF LR 10.8 HEARING held before Judge Manuel L. Real as to Maristina Canter: OSC is discharged re BK proceedings. Continuing mttr for 10:00 7/10/00. C/R: LeBlanc. (step) [Entry date 04/20/00]
- 6/16/00 45 STATUS REPORT filed fld by Lauren Nemiroff and stipultion to take contd OSC off cal. (step) [Entry date 06/19/00]

6/16/00 46

ORDER filed by Judge Manuel L Real as to Maristina Canter:
It is ord that the OSC proceddings is to be taken off cal
and no apr is required on that date. (cc: all counsel)
(step) [Entry date 06/30/00]

Case Flags:
TERMED
PASPR

END OF DOCKET: 2:98cr576-0

PACER Service Center			
Transaction Receipt			
05/27/2003 15:44:00			
PACER Login:	us5645	Client Code:	
Description:	docket report	Search Criteria:	2:98cr00576
Billable Pages:	6	Cost:	0.42

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

CR 98-576-R

Defendant MARISTINA CANTER

Soc Security #548-94-0669

T/N: DEBORAH MARISTINA ROMANO

Residence: 446 So. Highland Avenue

Mailing: SAME

Los Angeles, CA 90036

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person, on: APRIL 13, 1999

Month / Day / Year

COUNSEL:

 WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked if defendant desired to have counsel appointed by the Court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL Guy Iversen, Deputy Federal Public Defender

PLEA:

XX GUILTY, and the Court being satisfied that there is a factual basis for the plea.

 NOLO CONTENDERE

 NOT GUILTY

FINDING:

There being a finding of GUILTY, defendant has been convicted as charged of the offense(s) of:

False statements in violation of Title 18 United States Code Section 1001 as charged in counts 1, 9, and 14; Loan fraud in violation of Title 18 United States Code Section 1014 as charged in count 5 of the indictment.

JUDGMENT AND PROBATION/COMMITMENT ORDER:

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Imposition of sentence is suspended, and

IT IS FURTHER ADJUDGED that defendant is placed on probation for a term of five (5) years under the following terms and conditions: the defendant 1) shall comply with the rules and regulations of the U.S. Probation Office and General Order 318; 2) shall perform two thousand (2000) hours of community service, as directed by the Probation Officer; 3) shall report before the Court in person every 120 days as directed by the Probation Officer; 4) shall refrain from any unlawful use of a controlled substance, and shall submit to 1 drug test within 15 days of placement on probation and at least 2 periodic drug tests

-- GO TO PAGE TWO --

WA
Deputy Clerk

JUDGMENT AND PROBATION/COMMITMENT ORDER

thereafter as directed by the Probation Officer; 5) shall as directed provide to the Probation Officer an accurate financial statement with supporting documentation as to all sources and amounts of income and all expenses of the defendant, and in addition shall provide federal and state income tax returns as requested by the Probation Officer; 6) shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification without the prior written approval of the Probation Officer and further shall not use for any purpose or in any manner any name other than her true legal name.

IT IS FURTHER ORDERED that all fines are waived including the costs of imprisonment of supervision as defendant is unable to pay.

IT IS FURTHER ORDERED that defendant pay a special assessment of \$200.00.

IT IS FURTHER ORDERED that the bond of the defendant is exonerated.

IT IS FURTHER ORDERED that any remaining counts are hereby dismissed as to this defendant.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervised period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.



Signed by: District Judge

MANUEL L. REAL

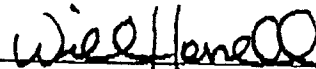
It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk of Court

Dated/Filed

April 16, 1999
Month / Day / Year

By



William Horrell, Deputy Clerk

to seizures for driving late at night in an old car, close to the border. Unfortunately, many of the travelers will be racial or ethnic minorities, particularly those of Latin or Spanish descent. *See Montero-Camargo*, 208 F.3d at 1131-35 (discussing the growing Hispanic population in the United States, particularly in the border states, and holding that "Hispanic appearance . . . may not be considered as a relevant factor where particularized or individualized suspicion is required.").

Under *Arvizu*, we cannot pick and choose which factors to consider. 122 S.Ct. at 751. At the same time, a multitude of minimally probative factors cannot meet the requirements of reasonable suspicion, i.e., "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Rodriguez*, 976 F.2d at 594; *see Arvizu*, 122 S.Ct. at 750. Here, the majority has made "much ado about nothing," creating reasonable suspicion out of many little nothings. When the totality of all the circumstances creates nothing that involves reasonable suspicion of criminal activity, then to hold otherwise violates the fundamental protections guaranteed by the Fourth Amendment. Moreover, it is worth repeating that, in this case, the agent testified under oath at the suppression hearing that he believed an illegal alien could be pulled over for an immigration violation, even if there was no reason to make the stop. For the reasons stated above, I must dissent.



In re Deborah M. CANTER, aka D.
Maristina Canter, Debtor,

Alan Canter; Canter Family Trust,
Creditors-Appellants,

v.

Deborah M. Canter, aka D. Maristina
Canter, Debtor-Appellee,

and

Edwina E. Dowell, Chapter
13 Trustee, Trustee.

No. 01-56151.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 7, 2002.

Filed Aug. 15, 2002.

Bankruptcy court lifted automatic stay to allow creditor to pursue unlawful detainer action against debtor. The United States District Court for the Central District of California, Manuel L. Real, J., withdrew reference to bankruptcy court and issued injunction precluding enforcement of municipal court judgment. Creditor appealed and sought writ of mandamus. The Court of Appeals, Rawlinson, Circuit Judge, held that: (1) Court of Appeals did not have jurisdiction over appeal from district court's sua sponte order withdrawing reference to bankruptcy court; (2) issuance of writ of mandamus was warranted; (3) district court's sua sponte withdrawal of reference from bankruptcy court was not warranted; and (4) district court abused its discretion by imposing injunction.

Vacated and remanded.

1. Bankruptcy ⇌ 3768

Court of Appeals did not have jurisdiction over appeal from district court's sua sponte order withdrawing reference to bankruptcy court, since it was interlocutory and unreviewable. 28 U.S.C.A. § 1291.

2. Mandamus ⇨47

Issuance of writ of mandamus on behalf of creditor to review district court's sua sponte order withdrawing reference to bankruptcy court was warranted, since Court of Appeals did not have jurisdiction over interlocutory appeals from orders withdrawing the reference, creditor was suffering continuing damage and prejudice from order, district court failed to articulate any cause for its withdrawal of reference, order manifested persistent disregard of federal rules, and order raised issues of law of first impression. 28 U.S.C.A. §§ 157(d), 1291.

3. Mandamus ⇨4(1), 26

The Court of Appeals applies the following five factor test to determine whether the exercise of mandamus jurisdiction is proper: (1) the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires; (2) the petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) the district court's order is clearly erroneous as a matter of law; (4) the district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules; (5) the district court's order raises new and important problems, or issues of law of first impression.

4. Bankruptcy ⇨2103

District court's sua sponte withdrawal of reference from bankruptcy court was not warranted, since court failed to articulate any cause for its withdrawal of reference, court's withdrawal of reference was inefficient allocation of judicial resources, and court's action negatively impacted bankruptcy administration by needlessly disrupting bankruptcy court's seamless processing of the case. 28 U.S.C.A. § 157(d).

5. Bankruptcy ⇨2393, 2443

The automatic stay is self-executing, effective upon the filing of the bankruptcy petition; because the stay is automatic and self-executing, only upon the filing of a bankruptcy petition, no authority exists for reinstating an automatic stay that has been lifted. 11 U.S.C.A. §§ 105, 362(a).

6. Bankruptcy ⇨2103, 2367

District court abused its discretion by withdrawing reference to bankruptcy court without cause and imposing injunction without giving creditor fair and precisely drawn notice of what injunction actually prohibited. Bankr.Code, 11 U.S.C.A. § 105(a); Fed.Rules Civ.Proc.Rule 65(a)(1), 28 U.S.C.A.

7. Bankruptcy ⇨3784

An order regarding preliminary injunctive relief is subject to limited review, and will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or clearly erroneous findings of fact. 28 U.S.C.A. § 1292(a)(1).

Herbert Katz, Kelly Lytton & Vann LLP, Los Angeles, CA, for the creditors-appellants.

Andrew E. Smyth, Los Angeles, CA, for the debtor-appellee.

Appeal from the United States District Court for the Central District of California; Manuel L. Real, District Judge, Presiding. D.C. No. CV-00-1185-R.

Before THOMAS and RAWLINSON,
Circuit Judges, and ARMSTRONG,*
District Judge.

*The Honorable Sandra Brown Armstrong,
United States District Judge for the Northern

District of California, sitting by designation.

OPINION

RAWLINSON, Circuit Judge.

Creditors' Appellants Alan ("Alan") and Elizabeth ("Elizabeth") Canter, and the Canter Family Trust ("Canter Trust") appeal the district court's *sua sponte* withdrawal of reference, and its order denying their motion to vacate the stay of the municipal court's judgment in an unlawful detainer action against Debtor/Appellee Deborah M. Canter ("Deborah").

Because the district court erred when it *sua sponte* withdrew the reference to the bankruptcy court without showing cause, and improperly enjoined the enforcement of the municipal court judgment, we vacate the withdrawal of reference and stay order, and remand the matter to the bankruptcy court.

BACKGROUND

On September 11, 1991, Alan and Elizabeth Canter purchased 446 S. Highland Avenue, Los Angeles, California ("446 S. Highland") as an investment. Alan and Elizabeth's son, Gary Canter ("Gary"), and Gary's wife Deborah resided in Alan and Elizabeth's house from September 25, 1991, until February 24, 1999, when Gary and Deborah separated. Since purchasing the property in 1991, Alan and Elizabeth have been the only persons with legal or equitable title to the property. They transferred title to the Canter Family Trust in 1997.

In Gary and Deborah's divorce proceedings, neither was found to have any ownership interest in the property. When Deborah filed for bankruptcy once in 1992 and twice in 1996, she never claimed an interest in the property, although she listed the property as her residence in both 1996 proceedings. In Deborah's 1999 bankruptcy, she listed the property under schedule A as property in which she had an interest, but did not claim an exemption for it.

When Gary and Deborah separated, Gary moved out of his parents' house. Although Gary consistently paid rent to his father during his residency, Alan has not received a rent payment since shortly after Gary moved out. On August 13, 1999, Alan filed an unlawful detainer action against Deborah, seeking her eviction and \$5,000 past due rent. The matter was set for trial on October 26, 1999, but the proceedings were stayed when Deborah filed her Chapter 13 bankruptcy petition twenty-four minutes before trial was to begin. On January 26, 2000, the bankruptcy court lifted the stay at the Canter Trust's request, thereby allowing pursuit of the unlawful detainer action. Alan and Deborah subsequently signed a stipulated judgment providing that Deborah vacate the premises. The municipal court entered a judgment pursuant to the stipulation on February 7, 2000, and ordered that Alan recover possession of the realty from Deborah.

On February 17, 2000, the district court withdrew the reference to the bankruptcy court, and on February 29, 2000, stayed enforcement of the municipal court's judgment. The district court twice denied the Canter Trust's motion to lift the stay. When the Canter Trust inquired why the stay was reinstated, the district court's only explanation was, "because I said it." The district court also denied the Canter Trust's motion to vacate the stay of the judgment. Alan, Elizabeth, and the Canter Trust filed a timely appeal of the district court's *sua sponte* withdrawal of reference and subsequent denial of the motions to lift the automatic stay or vacate the order staying enforcement of the municipal court judgment.

DISCUSSION

A. Jurisdiction

As a threshold matter, we must determine whether we have jurisdiction over

this appeal. *Webb v. Ada County*, 285 F.3d 829, 835 (9th Cir.2002). We have previously held that “we do not have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court.” *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802, 806 (9th Cir.1985); *Abney v. Kissel Co. (In re Kissel Co.)*, 105 F.3d 1324, 1325 (9th Cir.1997). Although we have not addressed jurisdiction over appeals from a *sua sponte* order withdrawing reference, the Third Circuit has defined such an order as “interlocutory and unreviewable under § 1291.” *In re Pruitt; Landmark Sav. Ass’n (In re Pruitt)*, 910 F.2d 1160, 1166 (3d Cir.1990). In its ruling, the Third Circuit reasoned that the *sua sponte* withdrawal “merely determine[d] the forum in which a final decision on the merits will be reached.” *Id.*

[1] We see no logical basis for distinguishing between withdrawal of reference at the request of a party and *sua sponte* withdrawal of reference. Accordingly, we follow the holding of the Third Circuit and conclude that a *sua sponte* order withdrawing reference to the bankruptcy court is interlocutory and unreviewable under 28 U.S.C. § 1291.

[2] However, *In re Kemble*, 776 F.2d at 806 n. 5, presciently noted the availability of a writ of mandamus to review the otherwise unreviewable order withdrawing reference to the bankruptcy judge. The Third Circuit expressly applied this notion to review a *sua sponte* withdrawal of reference. *In re Pruitt*, 910 F.2d at 1167. We are persuaded that appellate review of the district court’s *sua sponte* withdrawal of reference is consistent with “the traditional use of the writ . . . to confine an inferior court to a lawful exercise of its prescribed jurisdiction. . . .” *Id.* (citation, internal quotation marks and alterations omitted). Accordingly, we grant Appellants’ alternative request to treat their appeal as a petition

for a writ of mandamus, over which we have jurisdiction. *See id.*

B. Appropriateness of Mandamus Relief

[3] We apply the following five-factor test to determine whether the exercise of mandamus jurisdiction is proper:

- (1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. . . .
- (3) The district court’s order is clearly erroneous as a matter of law.
- (4) The district court’s order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
- (5) The district court’s order raises new and important problems, or issues of law of first impression.

DeGeorge v. United States Dist. Ct. for the Cent. Dist. of Cal., 219 F.3d 930, 934 (9th Cir.2000) (quoting *Bauman v. United States Dist. Ct.*, 557 F.2d 650, 654–55 (9th Cir.1977)). We have acknowledged that the application of these factors is “by no means precise,” *United States v. Amlani*, 169 F.3d 1189, 1194 (9th Cir.1999), and the “factors should be weighed together based on the facts of the individual case.” *SG Cowen Sec. Corp. v. United States Dist. Ct. for the N. Dist. of Cal.*, 189 F.3d 909, 913 (9th Cir.1999).

Application of the *Bauman* factors in this case favors granting the writ. Appellants have no other adequate means of obtaining the relief desired. They may not directly appeal the withdrawal of reference because “we do not have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court.” *In re Kemble*, 776

F.2d at 806; *see In re Kissel Co.*, 105 F.3d at 1325. Appellants therefore satisfy the first *Bauman* factor. *See SG Cowen*, 189 F.3d at 914.

Appellants "will be damaged [and] prejudiced in a way not correctable on appeal." *DeGeorge*, 219 F.3d at 934. This factor is "closely related to the preceding one." *Id.* at 935. Because the first two factors are closely related, and our case law precludes Appellants' direct appeal of the *sua sponte* withdrawal, the damage and prejudice Appellants have suffered thus far cannot be corrected on direct appeal. *See id.* The withdrawal occurred over two years ago, and Appellants sit in limbo despite two attempts to lift the stay on the enforcement of the unlawful detainer order. With the enforcement of the judgment stayed, Deborah continues to reside in the property at 446 S. Highland without making any rental payments, and Appellants are denied beneficial use of the property. Because Appellants' ability to bring a direct appeal is actually limited, and the type of damage and prejudice are relevant in determining mandamus relief, the second *Bauman* factor weighs in favor of Appellants. *See id.*

[4] The district court clearly erred in withdrawing the reference. The Bankruptcy Code provides that the district court may withdraw the reference of a bankruptcy case on its own motion for cause shown. 28 U.S.C. § 157(d) (Supp. V 1987). However, the district court failed to articulate any cause for its withdrawal of reference in this case.

We have considered the following factors in determining whether cause exists under § 157(d): "the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors." *Security Farms v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers*, 124 F.3d 999, 1008 (9th Cir.1997) (citing *In re Orion*

Pictures Corp., 4 F.3d 1095, 1101 (2d Cir. 1993)).

The district court's withdrawal of reference in this case was an inefficient allocation of judicial resources, especially because the bankruptcy court was more familiar with the facts and issues of the case, and had already lifted the stay to allow the unlawful detainer proceedings to continue.

Rather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings. The district court's action also negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case. The district court's withdrawal of reference effectively "derailed the [bankruptcy] process provided by statute." *Powelson v. More (In re Powelson)*, 878 F.2d 976, 982 (7th Cir.1989).

The district court's withdrawal also resulted in great delay and costs to the Appellants, implicating another "cause" factor. *See Security Farms*, 124 F.3d at 1008. Deborah has occupied the property rent-free for almost three years, resulting in a \$35,000 loss of rental income. Finally, the district court's action encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations.

Consideration of the factors we have previously applied to determine good cause for withdrawal all weigh against the district court's action, and support the conclusion that the district court clearly erred. This conclusion in turn weighs in favor of granting the writ.

Although the district court's *sua sponte* withdrawal does not appear to be an "often-repeated error," it nevertheless "manifests a persistent disregard of the federal rules" in this case. *DeGeorge*, 219 F.3d at 934. Despite repeated requests to reconsider its

ill-advised *sua sponte* withdrawal, the district court perpetuated its excursion outside the confines of its lawful jurisdiction. The fourth *Bauman* factor favors granting the writ.

Finally, the district court's *sua sponte* withdrawal raises "issues of law of first impression." *Id.* In this case we are called upon to apply, for the first time in this circuit, a writ of mandamus to support appellate review of an otherwise interlocutory, unappealable order. Accordingly, this fifth and final factor supports granting the writ. In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus.

C. District Court's Stay Order

[5, 6] In staying enforcement of the municipal court judgment, the district court was acting pursuant to its powers under 11 U.S.C. § 105(a).¹ Section 105(a) authorizes the district court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11]." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506 (9th Cir. 2002). Section 105(a) "contemplates injunctive relief in precisely those instances where parties are pursuing actions pending in other courts that threaten the integrity of a bankrupt's estate." *In re Baptist Med. Ctr. of N.Y.*, 80 B.R. 637, 641 (Bankr. E.D.N.Y.1987) (citations and internal quotation marks omitted).

[7] We may hear appeals from interlocutory orders of the district court which grant, continue, modify, refuse, or dissolve

1. The district court could not have been activating an automatic stay. The automatic stay is "self-executing, effective upon the filing of the bankruptcy petition." *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir.2000); see 11 U.S.C. § 362(a). Because the stay under § 362 is "automatic" and "self-executing" only upon the filing of a bankruptcy petition, no authori-

ty exists for "reinstating" an automatic stay that has been lifted. We have expressly recognized that "the bankruptcy automatic stay is differentiated from a bankruptcy court-ordered injunction, which issues under 11 U.S.C. § 105." *Andreiu v. Reno*, 223 F.3d 1111, 1121 n. 4 (9th Cir.2000).

injunctions. 28 U.S.C. § 1292(a)(1). An order "regarding preliminary injunctive relief is subject to limited review," and "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or clearly erroneous findings of fact." *United States v. Gila Valley Irrigation Dist.*, 31 F.3d 1428, 1442 (9th Cir.1994).

Federal Rule of Civil Procedure 65(a)(1) authorizes the issuance of an injunction upon notice to the adverse party. Although the district court had the power under § 105 to issue an injunction against enforcement of the municipal court judgment, it abused its discretion when it withdrew the reference to bankruptcy court without cause, and imposed an injunction without regard to the requirements of Rule 65(a)(1). "[O]ne basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits." *Union Pac. R.R. Co. v. Mower*, 219 F.3d 1069, 1077 (9th Cir.2000) (citations and internal quotation marks omitted); see also *Weitzman v. Stein*, 897 F.2d 653, 657 (2d Cir.1990) (acknowledging that notice requirements of Rule 65(a) are applicable to district court's *sua sponte* injunction).

CONCLUSION

We have jurisdiction to review the district court's *sua sponte* withdrawal of reference based on our construction of this appeal as a petition for a writ of mandamus. The district court's reference was

ty exists for "reinstating" an automatic stay that has been lifted. We have expressly recognized that "the bankruptcy automatic stay is differentiated from a bankruptcy court-ordered injunction, which issues under 11 U.S.C. § 105." *Andreiu v. Reno*, 223 F.3d 1111, 1121 n. 4 (9th Cir.2000).

withdrawn without the requisite showing of cause, and application of the *Bauman* factors favors issuance of a writ of mandamus. See *In re Pruitt*, 910 F.2d at 1168-69. Also, the district court abused its discretion when it issued an injunction pursuant to § 105(a), because it failed to provide notice as required under Rule 65(a)(1). See *Mower*, 219 F.3d at 1077. Accordingly, we VACATE the order withdrawing reference of this case to the bankruptcy court and the accompanying order staying the enforcement of the municipal court judgment. We REMAND this matter to the bankruptcy court for further proceedings consistent with this opinion.² Appellants are awarded costs of appeal.

VACATED AND REMANDED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

David Francis MARCUCCI,
Defendant-Appellant.

United States of America,
Plaintiff-Appellee,

v.

Christopher Leyva-Garcia,
Defendant-Appellant.

2. In light of our rulings on the district court's abuse of discretion in withdrawing reference to the bankruptcy court and imposing an injunction, we need not address Appellants' argument that the district court erred in refus-

United States of America,
Plaintiff-Appellee,

v.

David Gamboa-Aristegui, Defendant-
Appellant.

Nos. 01-50468, 01-50524, 01-50547.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted April 5, 2002.

Filed Aug. 16, 2002.

In three unrelated cases, defendants pled guilty or were convicted of various offenses in the United States District Court for the Southern District of California, Judith N. Keep, Chief Judge, Thomas J. Whelan, J., and Barry T. Moskowitz, J., and defendants appealed. The Court of Appeals held that: (1) as a matter of first impression, the Fifth Amendment grand jury clause did not require that grand jury charge specifically tell grand jurors that they could refuse to indict even if they found probable cause; (2) statutes governing offense of importation of marijuana are not facially unconstitutional under *Apprendi*; (3) *Apprendi* did not require a showing of mens rea as to drug type and quantity on charges of importation of marijuana; and (4) prosecutor's closing argument in bank robbery prosecution was not improper.

Affirmed.

Michael Daly Hawkins, Circuit Judge,
filed dissenting opinion.

ing to lift the stay. We also need not address the question of whether the district court was required to provide notice and a hearing before withdrawing reference *sua sponte*.

**MATERIALS FORWARDED BY JUDGE CARTER ARE NOT INCLUDED AS THEY
HAVE BEEN PREVIOUSLY MARKED AS AN EXHIBIT**

EXHIBIT 22

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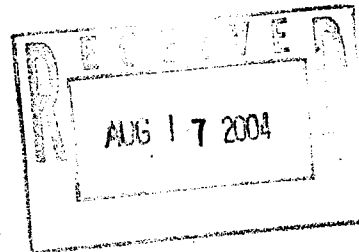
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August 13, 2004



Honorable Mary M. Schroeder
Chief Judge
United States Court of Appeals
For the Ninth Circuit
95 Seventh Street
P.O. Box 193939
San Francisco, California 94119-3939

Re: In re Complaint of Judicial Misconduct (No. 03-89037)

Dear Judge Schroeder:

On behalf of the Honorable Manuel L. Real, enclosed please find a Brief In Response To the Council's Order, and a set of exhibits in support thereof.

Respectfully,

A handwritten signature in cursive script that reads "Donald C. Smaltz". The signature is written in dark ink and is positioned above the printed name.

Donald C. Smaltz

Enclosures: Original and 4 copies

8/13/04

No. 03-89037

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

IN RE JUDGE MANUEL L. REAL, *Respondent*

**RESPONDENT'S BRIEF IN RESPONSE TO THE COUNCIL'S
ORDER**

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INTRODUCTION

On behalf of the Honorable Manuel L. Real ("Respondent"), we respectfully request that you dismiss this matter. The complaint that initiated the proceeding, considered in light of a complete factual record, does not meet the requirements for discipline set forth in 28 U.S.C. Sections 351-364 and in the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (hereafter "Judicial Misconduct Rules").

We recognize that you have previously dismissed the proceeding and that the Judicial Council for the Ninth Circuit Court of Appeals, by a 6 to 4 vote, reversed that dismissal. The Council remanded the matter to you for "further proceedings consistent with our order." (Judicial Council Order, Dec. 18, 2003, at 6.) For the reasons set forth below, dismissal of the complaint is again the appropriate action.

Your original decision addressed the specific allegations set forth in the letter of complaint, which alleged that Respondent "acted inappropriately to benefit an attractive female..." As we demonstrate herein, there is *no evidence whatsoever* to support that allegation. Consequently, you should find that the factual allegations of misconduct are not "reasonably in dispute" within the meaning of 28 U.S.C. Section 352(a).

Moreover, the Council expanded its review beyond those allegations. In doing so, the Council exceeded the scope of its authorized functions, which are circumscribed by 28 U.S.C. Section 352 and Rules 6 and 8 of the Judicial Misconduct Rules.

We submit that the Council improperly considered facts outside of the record before Your Honor and in effect appointed itself as an inquisitor in

this proceeding. As the face of its Order indicates, it attempted to gather "evidence" and then relied upon that "evidence" to reverse your decision. There was in fact no documentary support for the "evidence" referenced on the face of the Order, but only appellate *ipse dixit*, as Respondent learned when he submitted a request for discovery of any such documentation. He was told that none existed.

The Council had no authority to engage in these actions. Under the relevant statutes and rules, the Council's appointed role was to function as an appellate tribunal. As such, it was to limit its review to the record of proceedings before the Chief Judge. It was not authorized to embark upon an *ad hoc* investigation and then base its decision on results from that investigation.

Moreover, the results of the Council's inquiry were both materially incomplete and, on important points, simply wrong. As a result, when the Council held that "the Chief Judge erred in dismissing the complaint as frivolous or unsubstantiated" because "it is plainly neither" (Judicial Council Order, at 6), the Council reached its conclusion on an incomplete set of facts.

To correct the record, we enclose a number of exhibits that were not before the Judicial Council. These include relevant docket sheets and declarations, as well as letters from the Honorable David O. Carter and Respondent. These exhibits demonstrate that there was a legitimate basis for Respondent's exercise of jurisdiction over the bankruptcy case in question. The pre-sentence report concerning Ms. Deborah Canter, a defendant in a criminal case before Respondent, had been unlawfully utilized against her in that bankruptcy action. It was subsequent to acquiring this information that Respondent assumed jurisdiction over the bankruptcy case and later presided

over a contempt motion filed in Ms. Canter's criminal case concerning the unlawful filings in both the bankruptcy and state court proceedings. The Council considered none of these materials when it issued its Order in December 2003, and the materials demonstrate that Respondent did not commit judicial misconduct in this matter.

The response set forth below is organized as follows: Initially, we summarize the Factual and Procedural Background of the proceeding. Thereafter, in the Argument section, we first address the specific allegations of misconduct in the two letters submitted to the Court by the complainant. The response then addresses those additional issues, not expressly included in the complaint, which were improperly raised in the Judicial Council's Order. Finally, the last part of the response requests dismissal of the complaint. It also requests that, based upon a previous breach of the confidentiality required by the Judicial Council Rules, the Court (1) deny the release of any further information to complainant about this matter until after it is concluded, and (2) should take appropriate steps to maintain the confidentiality of the proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Complaint of Misconduct

Stephen Yagman, Esq., initiated this proceeding by letter, dated February 7, 2003, addressed to you in your capacity as Chief Judge of the Court of Appeals. Exhibit 1, attached hereto (hereinafter "Yagman Complaint.") The letter's allegation of misconduct generally concerns the district court and bankruptcy proceedings that led to the decision captioned *In re Canter*, 299 F.3d 1150 (9th Cir. 2002).

Most of the Yagman Complaint purports to summarize the background that led to this decision. Thereafter, the complaint sets forth additional “facts” about Respondent’s alleged conduct based solely upon what the complaint terms “a little district court docket research.” The complaint states:

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. *He put her on probation, not to the United States Probation Dept., but rather to himself, personally.*

Yagman Complaint, 1 (emphasis in original).

At the end of the complaint, Mr. Yagman sets forth his specific allegation of misconduct and request for investigation:

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately *to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred*, then it would constitute extreme judicial misconduct.

Id. at 3 (emphasis added). The request for relief in the Yagman Complaint directly corresponds to this accusation and precisely informs the Court of the inquiry that complainant seeks:

It is requested that this matter be appropriately investigated *to determine*, among other things, *the actual relationship between Deborah Canter and Judge Real.*

Id. (emphasis added).

B. The Chief Judge's Order and Memorandum

By Order and Memorandum dated July 14, 2003, Your Honor dismissed the complaint, noting that the complaint's allegations centered on an alleged inappropriate relationship. Your Order first observed that complainant was an attorney who "intimates that the [Respondent] judge acted for his own salacious interests by placing an 'attractive female' criminal defendant on probation" to himself. Order, at 1. The Order then states that complainant "adds that the judge's actions" in the bankruptcy matter "further support the allegation of improper conduct." *Id.* at 1-2.

You ruled that "[u]pon inquiry the allegations of inappropriate conduct were not substantiated." *Id.* at 2. The complainant "failed to include any objectively verifiable proof...supporting his allegations of misconduct," and "[c]onclusory charges that are unsupported, as here, will be dismissed." *Id.*

C. The Appeal to the Judicial Council

Mr. Yagman appealed the Chief Judge's Order to the Judicial Council. Exh. 2, Letter from Stephen A. Yagman to Ms. Cathy Catterson, filed August 7, 2003 (hereinafter "Yagman Appeal"). Much of this appeal letter is devoted to vitriolic accusations about how the matter had been handled. Then, however, the letter reiterates that Mr. Yagman was appealing on the same ground that he raised in the original complaint: an alleged improper relationship between Respondent and Ms. Deborah Canter. The Yagman Appeal summarizes the alleged judicial impropriety:

(8) there is a serious question as to whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress and did some special favors for her,

perhaps in exchange for something that someone might consider to be of value...¹

Yagman Appeal, Exh. 2, at 1.

D. The Judicial Council's Order

By Order dated December 18, 2003, the Judicial Council reversed your decision by a 6-4 vote. The Council Order cites various individual items of evidence, including (1) a response that it requested from Respondent and (2) other evidence produced "[i]n response to an inquiry from our council." Judicial Council Order, at 3. Your Honor did not have these items of evidence before you when you made your decision. Moreover, the Council afforded Respondent no opportunity either to brief the legal issues, including the scope of its review, or to appear orally before it.

The Judicial Council Order reasons:

The district judge's explanation confirms what complainant alleges and the evidence suggests: The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, *and entered an order in that case based upon*

¹ In attacking the Chief Judge's Order, the letter also asserts that (1) the "stated purposes of 28 U.S.C. 372(c) seem to have been ignored," (2) this statute "is undermined by the way in which the complaint was addressed," and (3) "section 372(c) has to mean something, and can't mean nothing." Yagman Appeal, 1. At the time Mr. Yagman wrote this letter, however, Congress had repealed 28 U.S.C. § 372(c). See Pub. L. 107-273, Div.C, title I, § 11-43(a)(1)(B), 116 Stat. 1855. At the same time, Congress adopted 28 U.S.C. §§ 351-364, the now-relevant provisions.

information he obtained ex parte from an individual who benefited directly from that order.

Id. at 4-5 (emphasis added). The Council then went on to ascribe a single motive to Respondent's action: "The judge here withdrew the reference and assigned the case to himself *for the very purpose of granting the debtor relief* from her imminent eviction." *Id.* at 5 (emphasis added).

The Council's Order concludes that "the Chief Judge erred in dismissing the complaint as frivolous or unsubstantiated; it is plainly neither." *Id.* at 6. The Council vacated Your Honor's Order and remanded the matter for further proceedings.

ARGUMENT

I. THE FOUNDATIONAL ALLEGATION OF THE COMPLAINT--THAT AN "IMPROPER RELATIONSHIP" EXISTED BETWEEN RESPONDENT AND A CRIMINAL DEFENDANT-- IS DEMONSTRABLY FALSE

The Yagman Complaint is premised solely on allegations of an improper relationship. The foundational allegation is that Respondent "put her [Ms. Canter] on probation, not to the United States Probation Dept., but rather to himself, personally." Yagman Complaint, Exh. 1, at 1 (emphasis in original). It further alleges that Respondent "acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself." *Id.* Finally, the Yagman Complaint identifies this "inappropriate relationship" as forming the basis for the allegation of misconduct: "[I]f this occurred, then it would constitute extreme judicial misconduct." *Id.* (Emphasis added)

Complainant repeated the same allegation in his appeal letter to the Judicial Council. The appeal alleges:

[T]here is a serious question as to whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress and did some special favors for her, perhaps in exchange for something that someone might consider to be of value.

Yagman Appeal, Exh. 2, at 1.

This foundational premise of the Yagman Complaint is demonstrably false. No “inappropriate relationship” existed at any time.

A. Respondent Never Placed The Criminal Defendant in Question on Personal Probation to Himself.

Contrary to the allegation in the complaint, Respondent did not place Ms. Canter on probation “to himself.” Rather, Ms. Canter was placed on probation to the United States Probation Department, as is the normal practice for all convicted defendants who are granted probation.

Your Honor can judicially notice this fact from Exhibit 3, which is the “Judgment and Probation/Commitment Order,” dated April 16, 1999, in *United States of America v. Maristina Canter* (CR 98-576-R). The Order places Ms. Canter on probation to the United States Probation Office; she is not, as the Yagman Complaint alleges, placed on probation “personally” to Judge Real. *Id.* at 1 (requiring defendant to “comply with the rules and regulations of the U.S. Probation Office and General Order 318.”)

A provision of the order does require Ms. Canter to appear before Respondent during her probation. *Id.* (defendant “shall report before the Court in person every 120 days as directed by the Probation Officer.”) But this part of the order plainly does not mean that Ms. Canter was, as the complainant alleges, placed on probation “personally” to Judge Real.

Rather, it simply requires defendant, as directed by her U.S. Probation Officer, to appear before the Court with her probation officer.

This condition has been included by Respondent in hundreds of judgments since 1976 in an effort to assist probationers in becoming productive and law-abiding citizens. Over the last 28 years more than 400 defendants have successfully completed this program. Declaration of Loyette Fisher, Exh. 4, at 1. Unquestionably, a district judge has ample authority to require criminal defendants on probation, accompanied by their probation officers, to report to his courtroom personally. *See* 18 U.S.C. § 3563(b)(12) & (22).

Most importantly, as explained by Ms. Fisher, Respondent never sees defendants alone. She escorts all defendants in this program to see Respondent, and each defendant is *accompanied by their United States Probation Officer*. *Id.* Ms. Canter's situation was no different. During 1999-2002, her assigned probation officer in *United States v Canter* was Mr. Randall Limbach. In his declaration, which is attached as Exhibit 5, Mr. Limbach states:

3. Even prior to Ms. Canter's case having been assigned to me, I was familiar with Judge Real's successful "120 Day Program" of periodically meeting with probationers to encourage their rehabilitation and participation in community service programs. In my opinion it is a valuable program that is helpful to probationers...

4. Judge Real's meetings with probationers generally lasted approximately fifteen (15) minutes and the Probation Officer was present at the meetings. Ms. Canter's case was treated no differently.

Limbach Dec., Exh. 5, at 1.

In sum, the foundational allegation in the Yagman Complaint—that Defendant placed Ms. Canter on “probation to himself” and that this evidenced an improper relationship between Respondent and Ms. Canter—is wrong.

B. Respondent Never Received a Letter from the Defendant Asking for His Help

The Judicial Council Order accords critical significance to an alleged incident not found in the Yagman Complaint and, therefore, not considered by Your Honor. The Council framed the incident as follows:

In response to an inquiry from our council, the debtor’s bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor “a day or two before...[the district judge] withdrew the reference,” and the next time they saw each other, the debtor told her “the letter had ‘worked.’”

Judicial Council Order, at 3. The Order concludes that this information should be investigated further. *Id.*²

² A reading of the Judicial Council’s order indicates that the Council’s inquiry could well have included conversations by someone with (1) the lawyer representing Ms. Canter, (2) a secretary in that office, and (3) the debtor, as the order seemingly recites. Respondent requested from the Judicial Council the complete records upon which the Council reached its decision. We have received no written or other material documenting these inquiries by the Council. Letter from Your Honor to Don C. Smaltz (July

The simple fact is that Respondent never received such a letter. Attached as Exhibit 6 is a letter from Respondent to his Counsel, in which he states, "I have never received any letter or other document from Ms. Canter or anyone acting on her behalf concerning her eviction, other than pleadings filed in the bankruptcy case, which are a matter of public record. (*Id.* at par. 1.).

Nor is there any such letter in the Chamber files. As explained in the Declaration of Respondent's Administrative Assistant, Loyette Fisher (Exhibit 4), one of her duties is to maintain a file of all correspondence received by Respondent. This correspondence file includes all letters from defendants on probation. Ms. Fisher has undertaken a diligent and thorough search of the file where such a letter would be located. There is no letter, and she has no recollection of seeing any such letter. Fisher Dec., Exh. 4, at 2.

C. During the Relevant time Period, Respondent Saw the Defendant for Only Two 15-Minute Meetings Held in the Presence of Her Probation Officer

The relevant time period during which any "inappropriate relationship" could have existed was the time between (1) April 13, 1999, the date that Ms. Canter was sentenced in open court, after she pleaded guilty, and (2) July 2001, when Respondent transferred the Canter bankruptcy case out of his Court. During this period she met with Respondent only two times: On August 23, 1999 and January 24, 2000. Thereafter, Respondent did not meet with her and her probation officer until

26, 2004), at 2 ("The Council has advised me that it has no discovery materials.")

after he had transferred the bankruptcy case out of his Court in July 2001. During both of these meetings, her probation officer accompanied her. Limbach Dec., Exh. 5, at 1-2.³

Additionally, Exhibit 6, the letter from Respondent to his Counsel, confirms this fact. Respondent states that he never met with Ms. Canter at any time except in the presence of the probation officer assigned to her case or in court proceedings with counsel. Letter from Hon. Manuel L. Real, Exh. 6, at 1.

These two meetings were the entire extent of the contact between Ms. Canter and Respondent during the relevant time period.

The reason why no further "120 Day" meetings took place was because of Respondent's concern about an appearance of impropriety once Respondent had assumed jurisdiction of the bankruptcy case. After that time, he no longer met with Ms. Canter and her probation officer for the remainder of the period in which the bankruptcy case was on his docket. As Mr. Limbach states:

I recall having been subsequently advised by Judge Real's staff that a previously scheduled 120-day meeting on April 24, 2000 would not take place in that Judge Real had taken jurisdiction over Canter's

³ Other than open court appearances prior to Ms. Canter's probation, Respondent had two other "120 Day" meetings with Ms. Canter. However, these took place after the relevant time period (i.e. after Respondent had transferred her bankruptcy case to another judge). On both of these occasions, Ms. Canter was--as she was in the first two meetings--accompanied by a probation officer.

bankruptcy case and there was a need to avoid even a perception of a conflict.

Limbach Dec., Exh. 5, at 2.

D. Conclusion: No “Inappropriate” Relationship Existed

The Yagman Complaint requested that this Court investigate whether Respondent “acted inappropriately” because of a relationship between Respondent and Ms. Canter. Yagman Complaint, Exh. 1, at 3. He requested that Your Honor determine “the actual relationship between Deborah Canter and Judge Real.” *Id.* However, the alleged inappropriate relationship never existed. The only relationship between Respondent and Ms. Canter was that of sentencing judge and defendant.

In light of the new facts presented herein, the issue of an “inappropriate relationship” is not “reasonably in dispute” within the meaning of 28 U.S.C. Section 352(a). Accordingly, this Court should again dismiss the proceeding.

II. THE REMAINING ALLEGATIONS IDENTIFIED IN THE JUDICIAL COUNCIL ORDER ARE ALSO MERITLESS

This part of the response addresses the remaining allegations identified in the Judicial Council Order. These allegations, like those set forth in the Yagman Complaint, are also meritless.

Initially, however, Respondent objects to the procedures used by the Council. Respondent was not given the opportunity to brief the Council on these procedures. (He only had the opportunity to respond to three specific questions directed to him, which he answered in the context of the allegations of a “salacious relationship” set forth by complainant.)

Accordingly, this letter constitutes the first opportunity for Respondent to address those procedures used by the Council.

Respondent objects to those procedures on two grounds: (1) the Council improperly broadened the allegations that were set forth in the Yagman Complaint and later reiterated in the Yagman Appeal, and (2) the Council used procedures not authorized by the Judicial Misconduct Rules. These actions severely prejudiced Respondent.

A. The Procedures Used by the Council Exceeded the Scope of the Council's Authority Under the Ninth Circuit's Judicial Misconduct Rules

First, as demonstrated above, the foundational allegation of both the Yagman Complaint and the Yagman Appeal was an alleged "improper relationship" between Respondent and Ms. Canter. However, instead of focusing exclusively on that factual allegation, the Council Order altered the basis of the alleged misconduct. It found that Respondent acted on *ex parte* information in withdrawing the reference of the bankruptcy case filed by Ms. Canter:

The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information he obtained *ex parte* from an individual who benefited directly from that order.

Council Order at 4-5. Under this allegation, it would not matter whether the information was obtained through an "improper relationship" as alleged in the Yagman Complaint. Instead, the point would be that, regardless of its source, the Court used *ex parte* information.

Respondent submits that he did not receive any information *ex parte*. Aside from that fact, however, by deciding the appeal on this ground, the Council's decision exceeded the scope of its authority.

The Chief Judge may dismiss a complaint by written order if he or she finds that the complaint is "lacking sufficient evidence to raise an inference that misconduct has occurred..." 28 U.S.C. §352(b)(1). After such a dismissal, the complainant may appeal to the Council. *Id.* § 352(c). In hearing such an appeal, however, the Council acts as an appellate body reviewing the sufficiency of the complainant's allegations.

Judicial Misconduct Rule 6 is explicit on this point: "New allegations or evidence not included within the complaint for which review is sought will not be considered by the judicial council." Judicial Misconduct Rule 6(e). The rules assign any expansion of the allegations to an entirely different body. *See* Judicial Misconduct Rule 10 (if a "special committee" appointed by the Chief Judge "in the course of the investigation...develops reason to believe that the judge may have engaged in misconduct that is beyond the scope of the complaint," the special committee may "with written notice to the judge, expand the scope of the investigation...")

Here, the Judicial Council did not limit its inquiry to the allegation that Respondent had (1) developed an inappropriate relationship with Ms. Canter and placed her on "personal probation" to himself, and then (2) acted to benefit her. Instead, the Council reversed on a separate ground: that Respondent obtained *ex parte* information which motivated his actions. Not only was this ground not properly considered by the Council, Respondent has received no evidence that supports these assertions by the Council.

Second, in rendering its Order, the Council also improperly compiled and considered information outside the record that was before the Chief

Judge. Furthermore, the Council's Order indicates that it was based on this extra-record information.

As shown above, the Judicial Misconduct Rules establish that the Council performs an appellate function in reviewing a dismissal by the Chief Judge. This conclusion is confirmed by the provisions of the rules designating the materials that the Council is to receive on an appeal. Under Rule 7 of the Judicial Misconduct Rules, the members of the Judicial Council receive various documents from the record of proceedings before the Chief Judge.

Rule 8 also reflects this conception of review of the record. It directs that, upon request, the clerk will make available to any member of the judicial council or the complaining judge "any document from the files that was not sent to the council members pursuant to Rule 7(a)."

In this case the Council reviewed an order of the Chief Judge dismissing a complaint of judicial misconduct. The pertinent question in this review, as confirmed by the Yagman Appeal, was whether the Chief Judge erred in deciding that the Yagman Complaint failed to set forth sufficient facts to merit further proceedings. The Council, however, undertook its own prosecutorial inquiry into the facts.

Other than as revealed on the face of the Council's Order, Respondent has no knowledge of that inquiry. The Council has provided no documents recording the scope or findings of this inquiry. At the least, however, the Council's inquiry consisted of directing questions to at least one and probably more participants in the bankruptcy proceeding resulting in *In re Canter, supra*. The Council Order quotes that attorney's "response to an

inquiry from our council...” Judicial Council Order, at 3. The Council also sent a letter to Respondent asking for further information.⁴

These inquiries and responses were plainly outside the record of the Chief Judge’s actions. As such, the Council’s extra-record inquiries were inconsistent the appellate role assigned to the Council by the Judicial Misconduct Rules. The Rules do not authorize the Counsel (1) to appoint itself as a prosecutor, (2) to direct *ex parte* inquiries to possible witnesses, and then (3) to use the results of those inquiries, which are not provided to the accused judge, to reach conclusions about whether the Chief Judge erred in dismissing the complaint.

Respondent recognizes that these actions were taken by the Judicial Council, not by Your Honor. However, because Respondent learned of the extent of the Council’s actions only after it issued its Order, we now formally object to that procedure.

After receiving the Judicial Council’s Order, counsel for Respondent immediately wrote to the Court and asked for the complete record of materials relied upon by the Council. That record has now been transmitted to counsel, but it contains no documents concerning the “inquiry” that the Council made. Nor does it contain any notes or other materials recording or relating to the inquiry. As a result, Respondent is left to respond to statements in the Order (e.g., an allegation that Respondent received a letter

⁴ In the spirit of courtesy, Respondent replied to this letter. He noted, however, that he was replying only “[b]ecause the Judicial Council has requested it,” and he declared that the Chief Judge’s Order should be affirmed on the basis set forth in it.

from Ms. Canter) without benefit of any of the factual foundation that led to the Council's Order.

B. Because a "Legitimate Basis" Exists for Respondent's Orders in the Underlying Bankruptcy Case, the Complaint Should be Dismissed.

The Council's Order rests substantially on conclusions about the motivations of Respondent in withdrawing the reference of the bankruptcy case entitled *In Re Canter, supra*. See, e.g., Judicial Council Order, at 5 ("The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction.") That statement is erroneous, as we demonstrate below. However, Your Honor should not be led into the quagmire of inquiring into judicial "motivations."

The Council Order expressly recognizes that the exercise of judicial power "can amount to misconduct" only "in the absence of any *arguably legitimate basis*." *Id.* at 6 (emphasis added). Here, there was in fact a legitimate basis for Respondent's action: to protect the integrity of the judicial process where a pre-sentencing report on Ms. Canter had been illegally filed in bankruptcy and state court proceedings.

Pre-sentencing reports are confidential documents under the rules of the Central District of California. U.S. Dist. Ct., C.D. Cal. Criminal Rule 10.8. They contain sensitive, highly personal information about individual defendants. For example, the data includes defendant's physical condition, and mental and emotional health. It also includes information regarding any substance abuse as well as personal and family information.

As explained in the Declaration of Probation Officer Limbach, attached as Exhibit 5, on January 24, 2000, he and Ms. Canter reported to

Respondent's Chambers. During that meeting Ms. Canter informed Judge Real that lawyers were using her pre-sentence report against her in her Bankruptcy case. Mr. Limbach states:

During the course of this meeting, Ms. Canter advised Judge Real that the confidential probation report from her criminal case had been used against her by counsel for her creditors in a bankruptcy case that she had filed in the District Court. I observed Ms. Canter provide Judge Real with a copy of the bankruptcy case cover sheet. Judge Real advise[d] her to confer with her criminal attorney, Guy Iverson, concerning her complaint that confidential information from her criminal case had been improperly disclosed in the Bankruptcy proceeding.

Limbach Dec., Exh. 5, at 2. Mr. Limbach declares that Respondent "inquired of me if Ms. Canter had provided this same information to me and I informed Judge Real that she had." *Id.* He then states: "Judge Real stated that he would look into the possibility that improper use of confidential probation materials had been used in the bankruptcy case." *Id.*

Ms. Canter's allegations about misuse of her pre-sentence report were correct. Her pre-sentence report had been illegally filed in both her bankruptcy action and in her state court divorce proceeding, and her defense counsel later initiated contempt proceedings against the offending lawyers. *See* Exh. 7 (Declaration of Guy C. Iverson, attached to *Ex Parte* Application for Order To Show Cause); and Exh. 8 (Request for Judicial Notice Pursuant to Federal Rule of Evidence 201 in *In re Deborah M. Canter*, (Case No. SACV 01-688 DOC) (requesting judicial notice of "[t]he Criminal Judgment and Probation Report in *United States v. Maristina Canter*, Case No. 98-576-R) (emphasis added).)

Respondent, then, faced a situation in which a confidential, sensitive report prepared in a criminal case which he supervised had been wrongfully filed and misused in the bankruptcy action entitled *In Re Canter*. In light of this information, he withdrew the reference and took jurisdiction over that bankruptcy proceeding.

The Judicial Council's Order recognized that a withdrawal would be misconduct only if it lacked "any arguable basis." *See* Council Order, at 6 ("Exercise of judicial power in the absence of any arguably legitimate basis can amount to misconduct." (Emphasis added).) The illegal filing of the pre-sentence report—omitted entirely from the Council's Order—provides the type of "arguably legitimate basis" for withdrawal of the bankruptcy case. Unquestionably, a District Judge can withdraw the reference to a bankruptcy proceeding where (1) a probation report in a case supervised by that judge had been illegally misused in the bankruptcy proceeding, and (2) that misuse had compromised the privacy of a person serving her probationary sentence.

Later developments support the conclusion that the violation raised serious concerns. After the transfer an order to show cause for violation of the local rules was filed by Ms. Canter's criminal counsel, Deputy Federal Public Defender Guy C. Iversen. *See* Docket Entry Nos. 41-46 for Case No. 98-CR-576-ALL, *USA v. Canter*. The matter was thereafter resolved with the withdrawal of the filing in the state court action.

Because Respondent's decision to take jurisdiction over the bankruptcy case was taken on an "arguably legitimate basis," it cannot constitute misconduct. Accordingly, the complaint should be dismissed.

C. Respondent's Actions in the Bankruptcy Case Preclude Any Finding That He Was Solely "Motivated" to "Benefit" Ms. Canter

After noting that a "judge may not assign a case in order to affect its outcome" (Judicial Council Order, at 5), the Judicial Council Order concluded that "[t]he judge here withdrew the reference and assigned the case to himself *for the very purpose of granting the debtor relief from her imminent eviction.*" *Id.* (emphasis added). The Order thus indicates that Respondent was solely motivated to prevent Ms. Canter's eviction.

This conclusion, however, is completely contradicted by other actions taken by Respondent. The Judicial Council was apparently unaware of these actions, which Your Honor may judicially notice and which plainly did not further Ms. Canter's interests. They belie any conclusion that Respondent was solely motivated to benefit her.

First, the Court can take judicial notice that, after Respondent recalled the reference in the bankruptcy case, he subsequently denied an important motion brought by the debtor Ms. Canter – the person Mr. Yagman alleges was in a "salacious" relationship with Respondent. This motion sought a stay of the "State Court Determination of Property Issues." One of the property interests identified in the motion was "the real estate at 446 South Highland Avenue, Los Angeles, California 90036." *See Order Denying Stay, Feb. 22, 2001, appended hereto as Exh. 9, at 2.* The Court denied the motion on the basis that "[t]his Court cannot interfere with state courts jurisdiction over marital property." *Id.*

If Respondent were acting to "benefit" Ms. Canter, he would hardly have entered an order so contrary to her interests. By denying the order, the Court left the state court free to determine that Ms. Canter had no interest in

the Highland Avenue house where she was living. Accordingly, the order rebuts the allegation that Respondent was motivated solely to aid Ms. Canter. If Respondent had this motive, he surely would have granted that application for a stay.

Significantly, it does not appear that the Judicial Council was aware of this action taken by Respondent when the Council issued its Order. In response to Respondent's request for the record upon which the Council acted, Respondent was sent a docket sheet for this proceeding. From this material, it is clear that the Council had, on its own initiative, researched the docket in the bankruptcy proceeding.

However, the Council apparently did not have before it the complete docket entries of all proceedings related to the bankruptcy action. In particular, the entries in Docket No. CV-01-00139R, the District Court adversary proceeding, were not included in the Judicial Council's record of materials provided to Respondent. *See* Exh. 10 (Civil Docket for Case #:2:01-cv-00139-R).

That omission was unfortunate. Docket entry Number 11 states: ORDER by Judge Manuel L. Real that the app for or staying state crt determination of property issues is DENIED, this ct cannot interfere with State Crts jurisdiction over marital property. (ab) (Entered: 02/22/2001).

Second, Respondent *voluntarily* transferred Ms. Canter's bankruptcy case to another district judge. *See* Letter from U.S. District Judge David O. Carter to Your Honor, dated January 24, 2004, appended hereto as Exhibit 11.

As Judge Carter explains, Respondent sought the transfer so that another judge could independently look at the matter. Judge Carter states:

In May 2001, Judge Real spoke to me and said that he wanted another judge of the District Court to review a case that he had withdrawn from the Bankruptcy Court. He asked if I would accept an Intra-District Transfer of the case and “*take another look at it.*”

Letter from Hon. David O. Carter, Exh. 11, at 1.

Respondent took this action, which ceded all his authority over the bankruptcy action, well before the Ninth Circuit issued its ruling entitled *In re Canter, supra*. Furthermore, Judge Carter subsequently granted a motion by defendants to re-transfer the entire case to the Bankruptcy Court. *Id.* at 2. Finally, the Bankruptcy Court thereafter granted a motion to abandon the bankrupt estate’s interest in the Highland Property. *Id.*

Thus, as a consequence of Respondent’s voluntary transfer of the case, the entire matter became moot *eight months before argument in the Ninth Circuit in In Re Canter*. Counsel for the parties in that case, however, apparently never informed the Ninth Circuit of these subsequent developments, and the panel issued what Judge Carter described as an “advisory opinion.” *Id.* at 2

This action by Respondent -- the voluntary transfer of the bankruptcy case to another judge-- is plainly inconsistent with any conclusion that Respondent acted solely to benefit Ms. Canter. Indeed, the action had just the opposite effect: it ensured that Respondent could *not* act to benefit her. Moreover, as Judge Carter attests, Respondent took this action voluntarily so that a new judge could “take another look” at the case—hardly the action of a judge solely motivated to “benefit” Ms. Canter.

To summarize: A complainant can easily make allegations about the motives for judicial action in virtually any case handled by a judge.⁵ Here, however, the *record* belies any conclusion that Respondent acted solely to benefit Ms. Canter. The facts presented here are incontestable and may be judicially noticed. They will not allow Your Honor to conclude that Respondent acted to assign the case to himself “in order to affect its outcome,” as the Judicial Council framed the question (Order, Exh. 4, at 5).

D. Respondent Did Not Enter An Order Based Upon *Ex Parte* Information

A second critical conclusion of the Judicial Council Order was:

The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information that he obtained *ex parte* from an individual who benefited directly from that order.

Order, Exh. 5, at 1. Respondent has not previously been afforded the opportunity to reply to this accusation or to otherwise present points and authorities on it. Respondent submits that this conclusion--that Respondent improperly used *ex parte* information--cannot be sustained for several reasons.

⁵ Indeed, the complainant in this proceeding, Mr. Yagman, has filed yet another complaint with Your Honor concerning an entirely unrelated case in which he is not attorney of record. Complaint No. 04-89030, filed March 19, 2004.

First, the Council cites a letter supposedly given to Respondent containing an appeal from Ms. Canter for him to act. Council Order, at 3. However, as we showed above, Respondent received no such letter.

Second, he did meet with Ms. Canter and her probation officer in a regularly scheduled meeting. And at this meeting, he learned that Ms. Canter's pre-sentence report had been illegally disclosed. However, receipt of information during a normally scheduled meeting with a defendant and her probation officer can hardly be deemed receipt of "*ex parte* information."

Third, Respondent's actions with regard to the bankruptcy case cannot constitute action based upon *ex parte* information. His action taking jurisdiction over the bankruptcy case, in and of itself, had no effect on the parties. He did enter an order staying enforcement of the municipal court's judgment, and thereafter, he denied motions to lift the stay. But these denials of the motions were not taken *ex parte*. The actions were taken after briefing by the parties, and they were subject to appellate review.

Finally, Respondent stated in his letter to the Council that he acted on the belief that the dispute over the possession of the property should be "finalized" in the divorce proceeding. But if Respondent were wrong about that question, it was an error of law. Misconduct proceedings are not the proper vehicle for addressing errors of law; instead, those matters must be taken up with appellate courts. Commentary on Judicial Misconduct Rule 4 ("Absent other evidence of a problem, the 'wrongness' of a judicial determination is not grounds for misconduct proceedings.")

Indeed, appellate review was sought here, and the result was the opinion *In re Canter* in which the Court concluded that Respondent should not have taken jurisdiction over the bankruptcy case. But by that time—as a

result of Respondents' voluntary transfer of the case—the entire matter had become moot.

In short, Respondent did not act on *ex parte* information as a means of benefiting Ms. Canter.

III. REQUEST FOR RELIEF

A. This Court Should Dismiss the Complaint Pursuant to 28 U.S.C. 352

As the Judicial Council's Order expressly recognizes, "the Chief Judge must make an initial determination whether it [the alleged conduct] amounts to misconduct." Judicial Council Order, at 2. The Council then remanded for further proceedings. *Id.* at 6.

In making this determination the Chief Judge may, pursuant to 28 U.S.C. Section 352(a), "conduct a limited inquiry" to determine "whether the facts stated in the *complaint* are either plainly untrue or are incapable of being established through investigation." Under the statute, the Court's power is limited only by the prohibition against making "findings of fact about any matter that is *reasonably* in dispute." (emphasis added) *Id.*

Based upon the information submitted, the facts in the complaint are not reasonably in dispute. Respondent has provided independent evidence that Respondent did not, as the Yagman Complaint alleges, place Ms. Canter "on probation, not to the United States Probation Dept., but rather to himself, personally." Yagman Complaint, Exh. 1, at 1 (emphasis omitted). The terms of the Judgment and Order, attached as Exhibit 3, are conclusive on that point.

Nor did Respondent “get salaciously cozy with an attractive female defendant in distress” and do “some special favors for her.” Yagman Appeal, Exh. 2, at 1. The evidence establishes that Ms. Canter was treated precisely in the same way as over 400 other criminal defendants. The United States Probation Officer and the Administrative Assistant to the Judge both have testified that nothing “irregular” occurred.

There is *no evidence* of an alleged “inappropriate relationship.” Nor is there any prospect that this fact is even in dispute, much less “reasonably” in dispute as required by 28 U.S.C. Section 352. Accordingly, Respondent respectfully requests that this Court dismiss the complaint pursuant to that statute. The Court’s limited inquiry “demonstrates that the allegations in the complaint lack any factual foundation” and “are conclusively rebutted by objective evidence.”

Furthermore, as explained above, Respondent does not believe that any allegations other than those in the complaint are properly before the Chief Judge. Nonetheless, Respondent also respectfully requests that the Court conclude that a “legitimate basis” existed for Respondent’s orders in the bankruptcy proceeding. That basis arises from the unlawful use of Ms. Canter’s pre-sentence report in two separate legal proceedings, including the bankruptcy proceeding.

Viewed in their entirety, Respondent’s actions cannot reasonably support a conclusion that Respondent was acting solely to benefit Ms. Canter personally when he withdrew the reference. As a matter of law, Your Honor cannot reach such a conclusion when Respondent took two subsequent actions—denying her application for a stay and transferring the bankruptcy case to another district judge—that flatly contradict this conclusion.

Accordingly, even if these allegations were properly before Your Honor, they have no merit. The Court should dismiss the complaint in its entirety.

B. The Court Should Ensure that the Confidential Nature of this Proceeding Is Maintained

The judicial misconduct legislation, 28 U.S.C. Section 352, declares that any response by “the judge whose conduct is complained of” “shall not be made available to the complainant unless authorized by the judge filing the response.” Respondent has not previously and does *not* now so authorize.

Furthermore, Respondent respectfully requests that the Court should consider other steps to ensure that further publicizing of this matter does not occur. In particular, it should issue an order that, until the conclusion of the present case, the Complainant should receive no further information about this matter.

After the Judicial Council issued its Order, it was immediately leaked to the press. Both the Los Angeles Daily Journal and the Los Angeles Times published lengthy articles on the Council’s Order. The headline of the Los Angeles Times article asserts that the Council already has concluded that impropriety occurred. Henry Weinstein, “Judge May Face Sanctions; Federal Jurist Improperly Took Over Bankruptcy Case,” L.A. Times, Jan. 18, 2004 B1. *See also* L.A. Daily Journal, “Council Orders New Probe of Jurist’s Actions,” Jan. 20, 2004.

The leaks to the press constituted a complete breach of the confidentiality guaranteed by the Council’s Rules. Those Rules could not be more specific: All matters relating to these proceedings are confidential.

Rule 16(a). That confidentiality is preserved until the end of the proceedings; opinions are to be released “when final action on the complaint has been taken and is no longer subject to review.” Rule 17(a).

Despite these rules, the complainant was quoted in both articles commenting on the merits of the proceeding. *See* “Judge May Face Sanctions” (“Real violated the most important ethic of a judge,’ Yagman said in a recent interview, adding that the judge had acted ‘according to his own good pleasure,’ rather than ‘according to the laws.’); “Council Orders New Probe” (“He’s a judicial cannibal. He eats anybody who comes into his courtroom, whether he’s hungry or not”).

Moreover, Mr. Yagman’s appeal letter on its face also reveals an apparent breach of the Misconduct Rules. In that letter, Mr. Yagman stated that:

(7) it would appear to a reasonable layperson (in fact, *it did appear so to three intelligent laypersons who were shown the order of dismissal*) that the complaint was blown off and rejected based on illusory technicalities...”

Exh. 3, at 1 (emphasis added). Other than Respondent and Your Honor, only the complainant received a copy of the Chief Judge’s Order.

In contrast, Respondent has not commented to anyone about the matter, as required by the Council’s Rules.

In Respondent’s view, the Judicial Council’s Order resulted in an inaccurate and unfair characterization of Respondent’s actions in the press--a characterization accompanied by vitriolic commentary by the complainant. He has been severely prejudiced by this action.

Accordingly, Respondent submits that this Court should refrain from issuing copies of any interim orders or documents to the complainant until it

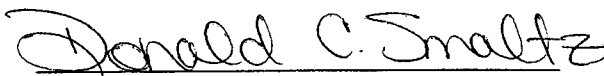
completes its action. At that time, the Court can consider, in light of the rules, which documents are appropriately released to the public.

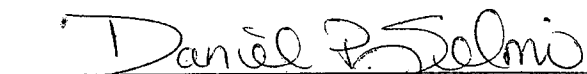
CONCLUSION

For the above reasons, Respondent respectfully requests that the Court dismiss the complaint in this matter.

Respectfully submitted

Dated: August 13, 2004.


Donald C. Smaltz


Daniel P. Selmi

No. 03-89037

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

IN RE JUDGE MANUEL L. REAL, *Respondent*

EXHIBITS IN SUPPORT OF
RESPONDENT'S BRIEF IN RESPONSE TO THE COUNCIL'S ORDER

Donald C. Smaltz
SPIEGEL LIAO & KAGAY, LLP
3323 Crownview Drive
Rancho Palos Verdes, California 90275
(310) 514-3444

Daniel P. Selmi
c/o 919 S. Albany St.
Los Angeles California 90015
(213) 736-1098

Attorneys for Respondent

INDEX OF EXHIBITS

- Exhibit 1: Letter from Stephen Yagman to the Chief Judge of the Court of Appeals dated February 7, 2003 (Yagman Complaint).
- Exhibit 2: Letter from Stephen A. Yagman to Ms. Cathy Catterson, filed August 7, 2003 (Yagman Appeal).
- Exhibit 3: Judgment and Probation/Commitment Order dated April 16, 1999, in *United States of America v. Maristina Canter* (CR 98-576-R).
- Exhibit 4: Declaration of Loyette Lynn Fisher dated August 6, 2004.
- Exhibit 5: Declaration of Randall Limbach dated August 5, 2004.
- Exhibit 6: Letter from Respondent to his Counsel dated August 10, 2004.
- Exhibit 7: Declaration of Guy C. Iverson, attached to *Ex Parte* Application for Order To Show Cause filed March 28, 2000, in Criminal Case No. 98-576-R.
- Exhibit 8: Request for Judicial Notice Pursuant to Federal Rule of Evidence 201 in *In re Deborah M. Canter*, (Case No. SACV 01-688 DOC) (requesting judicial notice of "[t]he Criminal Judgment and Probation Report in *United States v. Maristina Canter*, Case No. 98-576-R, filed February 24, 2000).
- Exhibit 9: Order Denying Stay dated February 22, 2001 in Civil Case No. CV00-01185-R.
- Exhibit 10: Civil Docket for Case #:2:01-cv-00139-R.
- Exhibit 11: Letter from U.S. District Judge David O. Carter to Honorable Mary M. Schroeder dated January 24, 2004.

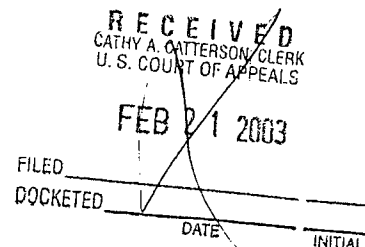
LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

STEPHEN YAGMAN

February 7, 2003

Honorable Mary M. Schroeder
Chief Judge
230 North First Avenue
Phoenix, AZ 85025



Re: Complaint against U.S. Dist. Judge Manuel L. Real

Dear Judge Schroeder:

This letter is written to make a complaint against the above-named Judge pursuant to 28 U.S.C. § 372(c), based on the following.

In re Deborah M. Canter: Canter v. Canter, 2002 DJDAR 9407 (9th Cir. August 15, 2002), the owners of Los Angeles' Canter's Delicatessen were stuck for two years, to the tune of \$35,000 they never will be able to recoup, until the Ninth Circuit wrested the case away from U.S. Dist. Judge Manuel L. Real, who had hijacked the case from the U.S. Bankruptcy Court in Los Angeles.

Elizabeth and Alan Canter, the owners of Canter's Deli bought a house as an investment in 1991, and rented it out to their son, Gary Canter, who, from 1991 to 1999, lived there with his wife, comely Deborah M. Canter, aka D. Maristina Canter, until their separation. Gary Canter always paid rent to his parents on the house.

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. *He put her on probation*, not to the United States Probation Dept., but rather to *himself, personally*. The Ninth Circuit disposition omits fact from its opinion probably because this fact was not in the record of this case, but my curiosity in the opinion that led to a little district court docket research revealed this fact.

Deborah Canter stayed on in the Canter house. The Canters filed an unlawful detainer action against her in state court, but the proceedings were stayed twenty-four minutes before the unlawful detainer trial was to have begun, when Deborah Canter filed a Chapter 13 bankruptcy proceeding.

Three months later, on January 26, 2000, the bankruptcy court lifted the stay and allowed the Canter parents to pursue their unlawful detainer action.

On February 7, 2000, Deborah signed a stipulated judgment providing that she would vacate the premises, and judgment was entered.

Judge Real, on February 17, 2000, withdrew the matter from bankruptcy court, and on February 29, 2000 Judge Real stayed enforcement of the state

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STEPHEN YAGMAN

court unlawful detainer judgment, which required Deborah Canter to vacate the premises. She remained on personal probation to Judge Real.

Twice the Canter parents asked Judge Real to lift the stay, and twice Judge Real refused.

When the Canter parents asked Judge Real why the stay was reinstated, his response was "because I said it."

Under then-current federal law Judge Real's refusal to lift the stay was an unappealable interlocutory order. Then this court rendered its disposition.

In *In re Canter*, the Ninth Circuit re-stated the old rule of *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1997), that five conditions governed eligibility for mandamus: (1) no other adequate means of relief, such a direct appeal; (2) damage not correctable on appeal; (3) a clearly erroneous order; (4) an oft-repeated error or manifestation of a persistent disregard of federal rules; and (5) new and important problems, or issues of law of first impression. In a rarity, the Circuit found all five factors to be present.

Citing *In re Kemble*, 776 F.2d 802, 806 (9th Cir. 1985), the court restated that it does not "have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court." Thus, no direct appeal was available.

The court found the Canters would be damaged and prejudiced in a way not correctable on appeal, citing *DeGeorge v. U.S. Dist. Ct.*, 219 F.3d 930, 934 (9th Cir. 2000). It held the Canters "sit in limbo . . . [and] Deborah [bankrupt and on probation to Judge Real] continues to reside in the property . . . without any rental payments"

The court held that "[t]he district court's [action] was an inefficient allocation of judicial resources, . . . [r]ather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings[,] negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case[,] [and] derailed the [bankruptcy] process provided by statute." Moreover, the court said that "[t]he district court's [action] also resulted in great delay and costs to Appellants[] . . . [and] encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations."

The court found the final two *Bauman* factors met because Judge Real's action "manifests a persistent disregard of the federal court rules," and because the case raised an issue of first impression. The court commented on the phenomenon: "In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus[,] which is what was done.

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STEPHEN YAGMAN

Rather than send the case back to Judge Real, perhaps in light of its knowledge of *Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), cert. denied, 484 U.S. 963 (1987), a case remanded by the Ninth Circuit to Judge Real in which he simply refused to turn over the files to a new judge, the court itself remanded the case directly to the bankruptcy court.

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Thank you.

Very truly yours,



STEPHEN YAGMAN

c: Hon. Alex Kozinski

Daw

**OFFICE OF THE CLERK
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT**

MEMORANDUM

August 7, 2003

File

To: Members of the Ninth Circuit Judicial Council:
Circuit Judges B Fletcher, Kozinski, Tashima, Thomas and W
Fletcher, District Judges Patel, Huff, Bryan, Ezra and Shanstrom

From: Cathy A. Gatterson, Clerk of Court

Re: Petition for Review of Complaint of Judicial Misconduct
No. 03-89037

Pursuant to Chapter III of the Rules of the Judicial Council Governing
Complaints of Judicial Misconduct or Disability enclosed is a petition for review
of Chief Judge Schroeder's order of dismissal in the above complaint.

A copy of the file in this matter is also enclosed. Please return your
completed ballot within 20 days. You may keep the file materials in your office or
destroy them. If I may provide you with any further assistance please let me
know.

CAC/gb

Encls.

cc: Complainant

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's Office

[Faint, illegible text at the bottom of the page]

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD

723 OCEAN FRONT WALK
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(310) 452-3200

STEPHEN YAGMAN

July 21, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals for the
Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

FILED

AUG -7 2003

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

Re: Complaint against Judge Manuel L. Real, 03-89037

Dear Ms. Catterson:

This letter is written to petition the judicial council for review of Chief Judge Schroeder's July 14, 2003 order and memorandum dismissing the above-referenced complaint of judicial misconduct.

The grounds for the petition are these: (1) it would appear to a reasonable person knowledgeable of the pertinent facts that the complaint was processed in a way that seems intended to result in its dismissal, and not diligently or thoroughly, or with a view toward getting to the truth; (2) it appears there was no real investigation at all; (3) there is a serious issue of judicial misconduct that appears, so far, to have been whitewashed; (4) any novice prosecutor would have done more to investigate the complaint; (5) the stated purposes of 28 U.S.C. 372(c) seem to have been ignored; (6) 28 U.S.C. 372(c) is undermined by the way in which the complaint was addressed, and is rendered a mere façade, that creates an illusion that there actually is a remedy for federal judicial misconduct; (7) it would appear to a reasonable layperson (in fact, it did so appear to three intelligent laypersons who were shown the order of dismissal) that the complaint was blown-off and rejected based on illusory technicalities that only a lawyer or a judge could make up; (8) there is a serious question as to whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress and did some special favors for her, perhaps in exchange for something that someone might consider to be of value; (9) section 372(c) has to mean something, and can't mean nothing; (10) that this court reversed the withdrawal of the bankruptcy matter from bankruptcy court to the district judge surely can't be the end of the matter, given that this court did not have all the facts before it and couldn't, at least in the appeal to it, do anything else. Indeed, this court surely remanded the case directly to the bankruptcy court because it feared that if it remanded it to the district judge, with instructions to transfer the case back to the bankruptcy court, he simply would not, as he has not before, *see, e.g., Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), *cert. denied sub nom. Real v. Yagman*, 484 U.S. 963 (1987), do what he was told to do; (11) dumping the complaint as this court did will foster disrespect for the Ninth Circuit, the federal court system, and section 372(c).

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STEPHEN YAGMAN

Complainant could not submit any more "objectively verifiable proof" than he had, and asserting he should have done this is misplaced. This court had and has the power to obtain any proof it wants to get in order to do a real investigation. If the standard applied here were applied in federal criminal investigations, the number of federal criminal charges surely would be halved.

Complainant no longer has any copies of the original complaint and requests that the court make 10 copies for itself; but, if it declines to do so, it is requested that one copy be provided to complainant, who then will make 10 copies and provide them back to the court.

Very truly yours,



STEPHEN YAGMAN

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

CR 98-576-R

Defendant MARISTINA CANTER Soc Security # 548-94-0669

T/N: DEBORAH MARISTINA ROMANO

Residence: 446 So. Highland Avenue Mailing: SAME
Los Angeles, CA 90036

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person, on: APRIL 13, 1999
Month / Day / Year

COUNSEL:

WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked if defendant desired to have counsel appointed by the Court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL Guy Iversen, Deputy Federal Public Defender

PLEA:

GUILTY, and the Court being satisfied that there is a factual basis for the plea.

NOLO CONTENDERE NOT GUILTY

FINDING:

There being a finding of GUILTY, defendant has been convicted as charged of the offense(s) of:

False statements in violation of Title 18 United States Code Section 1001 as charged in counts 1, 9, and 14; Loan fraud in violation of Title 18 United States Code Section 1014 as charged in count 5 of the indictment.

JUDGMENT AND PROBATION/COMMITMENT ORDER:

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Imposition of sentence is suspended, and

IT IS FURTHER ADJUDGED that defendant is placed on probation for a term of five (5) years under the following terms and conditions: the defendant 1) shall comply with the rules and regulations of the U.S. Probation Office and General Order 318; 2) shall perform two thousand (2000) hours of community service, as directed by the Probation Officer; 3) shall report before the Court in person every 120 days as directed by the Probation Officer; 4) shall refrain from any unlawful use of a controlled substance, and shall submit to 1 drug test within 15 days of placement on probation and at least 2 periodic drug tests

-- GO TO PAGE TWO --

WA
Deputy Clerk

JUDGMENT AND PROBATION/COMMITMENT ORDER

thereafter as directed by the Probation Officer; 5) shall as directed provide to the Probation Officer an accurate financial statement with supporting documentation as to all sources and amounts of income and all expenses of the defendant, and in addition shall provide federal and state income tax returns as requested by the Probation Officer; 6) shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification without the prior written approval of the Probation Officer and further shall not use for any purpose or in any manner any name other than her true legal name.

IT IS FURTHER ORDERED that all fines are waived including the costs of imprisonment of supervision as defendant is unable to pay.

IT IS FURTHER ORDERED that defendant pay a special assessment of \$200.00.

IT IS FURTHER ORDERED that the bond of the defendant is exonerated.

IT IS FURTHER ORDERED that any remaining counts are hereby dismissed as to this defendant.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. the Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

Signed by: District Judge _____

MANUEL L. REAL

It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherrri R. Carter, Clerk of Court

Dated/Filed April 16, 1999
Month / Day / Year

By William Horrell
William Horrell, Deputy Clerk

DECLARATION OF LOYETTE LYNN FISHER

I, LOYETTE LYNN FISHER, declare as follows:

1. I have been employed either as a Courtroom Deputy Clerk or Administrative Assistant to Judge Manuel L. Real for the last twenty-four years. Part of my responsibilities as Judge Real's Administrative Assistant is to receive correspondence and mail delivered to Judge Real's Chambers and to appropriately file these documents.

2. I have personal knowledge of the facts set forth in this declaration, and, if called upon to testify, I could and would competently testify thereto.

3. In 1976, Judge Real instituted his "120 Day Program" for defendants who were sentenced to probation. The program was designed to help probationers become productive and law abiding citizens. The program is administered through the Probation Office. I receive a list of probationers that are scheduled for the 120 day program each month. The probation officer submits a report that details how the probationer is doing in their performance of community service, work, restitution and any problems with the probationer. I call the names of the probationers in the courtroom and escort them with their probation officer into Judge Real's chambers for the meeting. During the meeting Judge Real counsels the probationer with respect to problems they may have encountered, monitors the probationer's progress and lends encouragement to complete the program. More than four hundred probationers have successfully completed Judge Real's 120 Day Program. It is my belief that this program has been of great value to the probationers and to the community in general.

4. On or about December 22, 2003, I reviewed an order from the Judicial Council involving the case of *United States v. Deborah Canter*. I carefully reviewed the file concerning Ms. Canter, which I maintain as

Judge Real's Administrative Assistant. After conducting a diligent search of the file, I found no letter or other written communication from Deborah Canter to Judge Real. Nor do I recall ever having received or seen any letter from Ms. Canter to Judge Real during the time I have been employed as Judge Real's Administrative Assistant.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

DATED: August 6, 2004


LOYETTE LYNN FISHER

DECLARATION OF RANDALL LIMBACH

I, RANDALL LIMBACH, declare as follows:

1. I am a United States Probation Officer and have been so employed since 1998. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify, I would and could competently testify thereto.
2. On about April 15, 1999, the case of *United States v. Deborah Canter* was assigned to me, in my capacity as a Probation Officer. Ms. Canter had been sentenced upon her conviction of federal criminal violations to five years probation and 2,000 hours of community service by U.S. District Judge Manuel L. Real.
3. Even prior to Ms. Canter's case having been assigned to me, I was familiar with Judge Real's successful "120 Day Program" of periodically meeting with probationers to encourage their rehabilitation and participation in community service programs. In my opinion it is a valuable program that is helpful to probationers.

After Ms. Canter's case was assigned to me, and Judge Real placed her on probation, I assisted in coordinating meetings amongst Ms. Canter, Judge Real and me in Judge Real's Chambers.
4. Judge Real's meetings with probationers generally lasted approximately fifteen (15) minutes and the Probation Officer was present at the meetings. Ms. Canter's case was treated no differently.
5. On April 20, 1999, Ms. Canter and I had our first meeting, and I made arrangements for her to comply with her community service obligations as a volunteer with AIDS Project LA.
6. On August 23, 1999, Ms. Canter and I met with Judge Real for her first 120-day meeting during which Judge Real explained the purpose and goals of the program to her. I was present for the entire meeting.

7. On January 24, 2000, Ms. Canter and I met with Judge Real for her second "120-Day" meeting. During the course of this meeting, Ms. Canter advised Judge Real that the confidential probation report from her criminal case had been used against her by counsel for her creditors in a bankruptcy case that she had filed in the District Court. I observed Ms. Canter provide Judge Real with a copy of the bankruptcy case cover sheet. Judge Real advised her to confer with her criminal attorney, Guy Iverson, concerning her complaint that confidential information from her criminal case had been improperly disclosed in the Bankruptcy proceeding.

At this meeting, Judge Real inquired of me if Ms. Canter had provided this same information to me and I informed Judge Real that she had. Judge Real stated that he would look into the possibility that improper use of confidential probation materials had been used in the bankruptcy case. I was present for the entire meeting on January 24, 2000.

8. I have reviewed my file in the *Canter* case and my notes show that on February 3, 2000, I met with Ms. Canter in connection with her probation status and she informed me that she had followed Judge Real's instruction to advise her attorney, Guy Iverson, of her bankruptcy case complaint.


9. On April 3, 2000, I once again met with Ms. Canter and she informed me that it was her understanding, based upon information she had received from Mr. Iverson, that Judge Real had assumed jurisdiction over her bankruptcy case.

10. I recall having been subsequently advised by Judge Real's staff that a previously scheduled 120-day meeting on April 24, 2000 would not take place in that Judge Real had taken jurisdiction over Ms. Canter's bankruptcy case and there was a need to avoid even a perception of a conflict.

11. In June of 2002, I was transferred to the Inglewood Division of the U.S. Probation Office and no longer have supervision of Ms. Canter's case.

I declare under penalty of perjury pursuant to the laws of the United States
that the foregoing is true and correct.

DATED: August 5, 2004



RANDALL LIMBACH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

312 NORTH SPRING STREET

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
ANUEL L. REAL
JUDGE

TELEPHONE:
894-5267

August 10, 2004

Don Smaltz, Esq.
Spiegel, Liao & Kagay
3323 Crownview Drive
Rancho Palos Verdes, California 90275

Dear Don:

You've asked me to respond in writing to the following questions with the understanding that my response would be included in a brief you will be filing on my behalf with Chief Judge Schroeder.

1. Did I ever receive any letter, or written communication of any sort from Ms. Maristina Canter or anyone acting for her concerning my intervening on her behalf to prevent her eviction?

The answer is NO. I have never received any letter or other document from Ms. Canter or any one acting on her behalf concerning her eviction other than pleadings filed in the bankruptcy proceeding which are a matter of public record.

2. Did I ever meet alone with Ms. Maristina Canter?

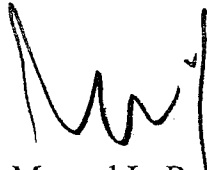
The answer is NO. I have never met alone with Ms. Canter at any time. The only time I ever met her was either in the presence of the probation officer assigned to her case, and in open court when she was present with her counsel.

Don Smaltz, Esq.
August 10, 2004
Page 2

3. Is it my recollection that the events regarding a January 24, 2000, chambers meeting with Ms. Canter and her probation officer as recited at paragraph 7 of Probation Officer Limbach's declaration dated August 5, 2004, are accurate?

The answer is YES. I believe the events he states there are accurate, and they accord with my memory.

Cordially,

A handwritten signature in black ink, appearing to read 'M. Real', written in a cursive style.

Manuel L. Real
United States District Judge

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1 MARIA E. STRATTON (No. 090986)
Federal Public Defender
2 GUY C. IVERSEN (No. 150883)
Deputy Federal Public Defender
3 Suite 1503, United States Courthouse
312 North Spring Street
4 Los Angeles, California 90012-4758
Telephone (213) 894-2235
5 Facsimile (213) 894-0081

6 Attorneys for Defendant
MARISTINA CANTER

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
2000 MAR 28 PM 2:56

FILED

12 UNITED STATES OF AMERICA,) NO. CR 98-576-R
13)
13 Plaintiff,) EX PARTE APPLICATION FOR
14) ORDER TO SHOW CAUSE AND FOR
14 v.) HEARING ON ORDER RE:VIOLATION
15) OF LOCAL RULE 10.8;
15 MARISTINA CANTER,) DECLARATION OF COUNSEL;
16) (PROPOSED) ORDER
16 Defendant.)
17)

18 Defendant, MARISTINA CANTER, hereby applies to this Honorable
19 Court for issuance of an Order to Show Cause and hearing on Order
20 regarding violations of United States Central District Court Local
21 Criminal Rule 10.8, mandating that all presentence reports are
22 confidential records of the court, by attorneys Lauren Nemiroff and
23 Mark E. Brenner.

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This application is based on the attached declaration of
counsel, all files and records in this case, and such further
information as may be provided to the court with respect to this
application.

Respectfully submitted,

MARIA E. STRATTON
Federal Public Defender

DATED: March 27, 2000

By 
GUY C. IVERSEN
Deputy Federal Public Defender

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DECLARATION OF GUY C. IVERSEN

I, GUY C. IVERSEN, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California appointed to represent MARISTINA CANTER in the above-entitled criminal action. In that action, a presentence report was prepared and filed under seal with this court as required by Local Criminal Rule 10.8. Local Rule 10.8 is attached as exhibit A.

2. Ms. CANTER is currently involved in three separate civil actions. She has a dissolution of marriage proceeding filed in Los Angeles Superior Court case #BD295236. Her husband Gary Canter is represented in that action by Lauren Nemiroff of Blumberg, Canter, Cohen, and Nemiroff. Ms. CANTER also has a Chapter 13 bankruptcy petition pending before this court, LA99-49126-R. In that action, Gary Canter is represented by Wesley H. Avery of Sulmeyer, Kupetz, Baumann, and Rothman. Gary Canter's father Alan Canter, and the Canter Family Trust, are represented in the bankruptcy proceeding by Mark E. Brenner. There is also an unlawful detainer action filed against her by Alan Canter, Los Angeles Municipal Court case #99U18116. In that proceeding Alan Canter is represented by Robert Brodney.

3. Ms. CANTER has provided me with copies of various pleadings filed against her in the bankruptcy proceedings. From my review of those pleadings it appears that Lauren Nemiroff and

1 Mark E. Brenner have filed Ms. CANTER's presentence report in
2 the instant criminal case, as an exhibit. Specifically, the
3 presentence report appears to have been filed as an exhibit by
4 Lauren Nemiroff in the "Notice of Motion and Motion to Compel
5 Respondent to Attend a Further Deposition and Answer Questions",
6 and by Mark E. Brenner in "Objection to Confirmation of Chapter
7 13 Plan". This appears to be a prima facie violation of Local
8 Criminal Rule 10.8, promulgated by the United States District
9 Judges of the Central District and issued as an order of the
10 court. As such, I am seeking with this application, an Order to
11 Show Cause, and hearing on the Order, regarding this purported
12 contempt of court by Lauren Nemiroff and Mark E. Brenner. At
13 that hearing Ms. CANTER will seek whatever relief the court
14 deems appropriate, including but not limited to, the withdrawal
15 of all presentence report exhibits currently filed in either the
16 bankruptcy or divorce proceeding as well as the return to her
17 possession of all copies of that presentence report known to
18 exist and within the possession of the litigants and their
19 clients.


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4. On March 23, 2000, I spoke with Assistant United States Attorney Ted Moreton who indicated he takes no position with respect to this request. I also spoke with Mr. Brenner and Ms. Nemiroff on March 27, 2000, and informed them of this application.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

March 27, 2000


GUY C. IVERSEN
Deputy Federal Public Defender

Crim Rule 10

U.S. DISTRICT COURT—CENTRAL DISTRICT

after appeal unless the judgment of conviction shall specifically provide to the contrary.

10.4 [Deleted]

10.5 (32.1-10.5) **Supervised Release and Probation—Arrest of Violator—Duty of Marshal.** As soon as practicable after taking into custody any person charged with a violation of supervised release or probation, the Marshal shall give written notice to the United States Attorney, the Probation Officer and the Clerk of the date of such arrest and the place of confinement of the alleged probation violator.

10.6 [Deleted]

10.7 (32.1-10.7) **Supervised Release and Probation Violation—Notice to Attorney for Defendant.** The Clerk shall promptly inform any attorney of record for an alleged supervised release or probation violator of the arrest of the violator and the place of confinement. If no attorney of record appears or the attorney of record cannot be found, the notice shall be given to the Federal Public Defender.

10.8 (32-10.8) **Supervised Release and Probation Records.** Pre-sentence investigation and reports, supervised release or probation supervision records, and reports of studies and recommendation pursuant to 18 U.S.C. Sec. 4208(b), 4252, 5010(e) or 5034, are confidential records of this Court.

10.8.1 [Deleted]

10.8.2 [Deleted]

Eff. April 1, 1998.

RULE 11. [DELETED]**RULE 12. [DELETED]****RULE 13. (57-13) ORDERS AND JUDGMENTS**

The date and at least two lines of the text of the order or judgment and signature line shall appear on the page that provides for the signature of the judge or magistrate judge.

Eff. April 1, 1998.

RULE 14. (57-14) SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES

14.1 (57-14.1) **Policy.** It is the policy of the Court to facilitate the parties' efforts to dispose of complex criminal cases without trial. It is also the policy of the Court that the judge assigned to preside over a complex criminal case (the trial judge) may ask if parties desire a settlement conference but shall not participate in facilitating settlement. Participation in settlement conferences under this rule shall be completely voluntary.

14.1.1 (57-14.1.1) **Definition.** A "complex case" is a criminal case in which the government estimates that the presentation of evidence in its case-in-chief will require more than sixteen (16) days.

14.1.2 (57-14.1.2) **Assignment of Settlement Judge.** A settlement judge from the Criminal Settlement Panel shall be randomly assigned to any complex case upon the filing of a request and the approval of the trial judge.

14.1.3 (57-14.1.3) **Role of Settlement Judge.** The role of the settlement judge shall be limited to facilitating a voluntary settlement between parties in criminal cases. The settlement judge shall not preside over any aspect of the case other than facilitation of a voluntary settlement according to this Rule. All matters related to the case other than settlement shall be handled by the trial judge assigned to preside over that case.

14.2 (57-14.2) **Request for Conference.** A settlement conference can be requested only by the attorney for the government and the attorney for the defendant acting jointly. (This rule does not require that all defendants in a multi-defendant case join in the request.)

14.2.1 (57-14.2.1) **Time of Request.** A settlement conference may be requested at any time up to the settlement conference cut-off date established by the trial judge. If no cut-off date is established, a settlement conference request may be made at any time up to twenty-one (21) days before the date scheduled for the commencement of trial, unless a later request is permitted by the trial judge.

14.2.2 (57-14.2.2) **Form of Request.** The request for a settlement conference shall be in writing and shall be signed by both the attorney for the government and the attorney for the defendant, and the defendant personally. It shall list the dates on which counsel are available for the conference and shall be filed in the case.

14.2.3 (57-14.2.3) **Response to Request.** Upon a timely request for a settlement conference, the trial judge may, at his or her discretion, refer the matter for assignment to a settlement judge in accordance with Local Rule 14.1.2.

14.2.4 (57-14.2.4) **Withdrawal of Request.** A request for a settlement conference may unilaterally be withdrawn any time. A withdrawal shall be in writing, shall be signed by the attorney and shall be filed in the case.

14.3 (57-14.3) **Presiding Officer.** The settlement conference shall be presided over by the settlement judge who was randomly assigned to the case in accordance with Local Rule 14.1.2. If the settlement judge assigned becomes unavailable or otherwise cannot hear the settlement conference, the case shall be returned to the Clerk for the random assignment to another settlement judge.

FILED

99 DEC 30 PM 2:11

U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BY AS DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
FEB 24 2000
CV 00-01185
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

1 Mark E. Brenner, Cal Bar No. 106962
Attorney at Law
2 7009 Owensmouth, No. 201
Canoga Park, CA 91303
3 Telephone: 818.313.9966
4 Attorney for Creditor Alan Canter and
Canter Family Trust

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

9 In re
10 Deborah M. Canter

CASE NO. ~~LA99-19126-AA~~
SACV 01-688 DOC
(Chapter 13)

REQUEST FOR JUDICIAL NOTICE
PURSUANT TO FEDERAL RULE OF
EVIDENCE 201

[Filed Concurrently with The
Canter Family Trust's Motion
for Relief from the
Automatic Stay]

Date: 1/26/2000
Time: 2:30 p.m.
Crtm: 1375

19 TO THE HONORABLE ALAN AHART, THE CHAPTER 13 TRUSTEE, EDWINA
20 DOWELL, THE DEBTOR, AND ALL PARTIES OF INTEREST:

21 Pursuant to Federal Rule of Evidence, 201 (b), (c) and (d), the
22 moving party requests mandatory and discretionary judicial notice of
23 the following:

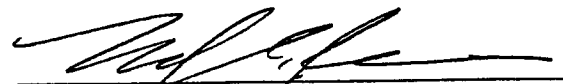
- 24 1. California Civil Code, Sections 1624 and 1946. Attached as
Exhibit A;
- 25 2. Schedule J of the debtor in the instant case. Exhibit B;
- 26 3. The petitions and schedules of the prior bankruptcy cases filed
27 by the debtor: case numbers 92-38435 (ch. 7), 96-10153 (ch. 13),
28

Handwritten initials/signature

- 1 96-16058 (ch. 13), and 97-35894 (ch. 13). At the time of the
2 filing of this motion copies were not available. True and correct
3 copies will be obtained from the court archives and submitted
4 under separate cover as Exhibits C, D, and E respectively.
- 5 4. The Criminal Judgment and probation report in United States v.
6 Maristina Canter, Case No. 98-576-R . Exhibit F.
- 7 5. Documents filed with the county recorder of Los Angeles County as
8 follows.
- 9 a. Grant Deed of 9/11/91 Exhibit G
10 to Alan and Elizabeth
11 Canter on property
12 located at 446 S.
13 Highland, Los Angeles
- 14 b. Deed of Reconveyance Exhibit H
15 to Alan and Elizabeth
16 Canter of July 23,
17 1992 for 446 S.
18 Highland, Los Angeles
- 19 c. Quitclaim deed from Exhibit I
20 Alan and Elizabeth
21 Canter of September
22 22, 1997 to the Canter
23 Family Trust
- 24 6. Unlawful detainer complaint in Canter v. Canter, Municipal Court
25 case No. 99U18116. Exhibit J.
- 26 7. Verified Transcript of debtor's 341a hearing held on December 10,
27 1999. Exhibit K.
- 28 8. Interrogatories to and Debtor's Answers to Interrogatories,
Exhibit L.

Dated: December 29, 1999

Respectfully submitted



Mark E. Brenner, Esq.
Attorney for Creditors Alan Canter and the
Canter Family Trust

REQUEST FOR JUDICIAL NOTICE -EXHIBIT A-CALIFORNIA CIVIL CODE
SECTIONS 1624 AND 1946

CALIFORNIA CIVIL CODE, SECTION 1624
(Emphasis is Added)

1624. (a) **The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:** (1) An agreement that by its terms is not to be performed within a year from the making thereof. (2) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794. (3) **An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged....**

CALIFORNIA CIVIL CODE, SECTION 1946

1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed to the other party. In addition, the lessee may give such notice by sending a copy by certified or registered mail addressed to the agent of the lessor to whom the lessee has paid the rent for the month prior to the date of such notice or by delivering a copy to the agent personally.

REQUEST FOR JUDICIAL NOTICE- EXHIBIT B- DEBTOR'S SCHEDULE J

In re Deborah M. Canter	Debtor.	Case No.: LA99-49126AA	(If known)
-----------------------------------	---------	----------------------------------	------------

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home) \$ 0.00

Are real estate taxes included? Yes X No _____

Is property insurance included? Yes X No _____

Utilities:

Electricity and heating fuel	\$ <u>300.00</u>
Water and sewer	\$ <u>100.00</u>
Telephone	\$ <u>0.00</u>
Other _____	\$ <u>120.00</u>

Home Maintenance (Repairs and Upkeep) \$ 500.00

Food \$ 50.00

Clothing \$ 50.00

Laundry and dry cleaning \$ 50.00

Medical and dental expenses \$ 100.00

Transportation (not including car payments) \$ 0.00

Recreation, clubs and entertainment, newspapers, magazines, etc. \$ 0.00

Charitable contributions \$ 0.00

Insurance (not deducted from wages or included in home mortgage payments): \$ 0.00

Homeowner's or renter's \$ 0.00

Life \$ 0.00

Health \$ 0.00

Auto \$ 0.00

Other _____ \$ 0.00

Taxes (not deducted from wages or included in home mortgage payments) \$ 0.00

(Specify) _____ \$ 0.00

Installment payments (In chapter 12 and 13 cases, do not list payments to be included in the \$ 0.00

Auto \$ 0.00

Other _____ \$ 0.00

Other _____ \$ 0.00

Alimony, maintenance, and support paid to others \$ 0.00

Payments for support of additional dependents not living at your home \$ 0.00

Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ 0.00

Other _____ \$ 0.00

\$ 1,270.00

TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]
Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income \$ 2,520.00

B. Total projected monthly expenses \$ 1,270.00

C. Excess income (A minus B) \$ 1,250.00

D. Total amount to be paid into plan each MONTHLY \$ 677.00
(interval)

EX. D-PRESENTENCE REPORT

JUDGMENT AND PROBATION/COMMITMENT ORDER

thereafter as directed by the Probation Officer; 5) shall as directed provide to the Probation Officer an accurate financial statement with supporting documentation as to all sources and amounts of income and all expenses of the defendant, and in addition shall provide federal and state income tax returns as requested by the Probation Officer; 6) shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification without the prior written approval of the Probation Officer and further shall not use for any purpose or in any manner any name other than her true legal name.

IT IS FURTHER ORDERED that all fines are waived including the costs of imprisonment of supervision as defendant is unable to pay.

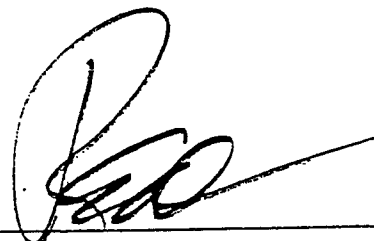
IT IS FURTHER ORDERED that defendant pay a special assessment of \$200.00.

IT IS FURTHER ORDERED that the bond of the defendant is exonerated.

IT IS FURTHER ORDERED that any remaining counts are hereby dismissed as to this defendant.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. the Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

Signed by: District Judge



MANUEL L. REAL

It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk of Court

Dated/Filed April 16, 1999
Month / Day / Year

By William Horrell
William Horrell, Deputy Clerk

REQUEST FOR JUDICIAL NOTICE- EXHIBIT F- JUDGMENT AND PROBATION
IN CRIMINAL CASE

UNITED STATES DISTRICT COURT
LOS ANGELES, CALIFORNIA
PRESENTENCE REPORT

COURT NAME: CANTER, Maristina		T/N: Deborah Maristina Romano			DICTATION DATE October 27, 1998	
		AKA(s): CANTER, Deborah ROMERO, Deborah ROMEN, Deborah			SCHED. SENT. DATE December 14, 1998	
ADDRESS 446 S. Highland Aveune Los Angeles, CA 90036 (323) 935-2520			LEGAL ADDRESS Same		DOCKET NO. 98-00576	
					CITIZENSHIP United States	
AGE 43	RACE White	SEX Female	BIRTH DATE 2-27-55	BIRTH PLACE Los Angeles, CA		EDUCATION 12 years
MARITAL STATUS Married		DEPENDENTS 1 (Daughter)		SOCIAL SECURITY NO. 548-94-0669		
FBI NO. Not received	U.S. MARSHAL NO. 13650-112		OTHER IDENTIFYING NOS.: CA DL: N2384700 CII: None			
OFFENSE						
18 USC 1001: False Statements (Counts 1, 9 & 14 of 14-Count Indictment), Class D Felonies; 18 USC 1014: Loan Fraud (Count 5), Class B Felony						
PENALTY						
5 years pursuant to 18 USC 1001 [\$250,000 maximum fine pursuant to 18 USC 3571(b)(3) as to Counts 1, 9, & 14]; 30 years and/or \$1 million fine pursuant to 18 USC 1014 as to Count 5						
CUSTODIAL STATUS Released 6-16-98 on \$50,000 Appearance Bond with affidavit of surety, no justification, and PSA supervision.					DATE OF ARREST June 16, 1998	
PLEA Guilty, 8-24-98 (Counts 1, 5, 9 & 14)			VERDICT			
DETAINERS/CHARGES PENDING						
None						
OTHER DEFENDANTS						
None						
DATE OF NOTIFICATION August 25, 1998		DEFENSE COUNSEL: Guy Iverson (Federal Defender) 312 North Spring Street, Suite 1503 Los Angeles, CA 90012 (213) 894-2235				
SENTENCING JUDGE HONORABLE MANUEL L. REAL			DATE PARTIES NOTIFIED November 3, 1998		PROBATION OFFICER USPO KELLER, Ext. 6024 SUSPO BARNES, Ext. 5576	
			DISCLOSURE DATE 08 1993			

Prob. 2
(Rev. 05/20/90)

**FOR CONFIDENTIALITY REASONS--ONLY PAGE ONE OF THE PRE-SENTENCE
REPORT IS ATTACHED**

REQUEST FOR JUDICIAL NOTICE- EXHIBIT G- GRANT DEED 9/11/91

91 1512838

RECORDING REQUESTED BY

Sullivan

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

SEP 25 1991 AT 8 A.M.

Recorder's Office

FEE
\$5
C

Name: Alan and Elizabeth Carter
Address: 446 S. Highland Ave
City: Los Angeles, CA 90036

SPACE ABOVE THIS LINE FOR DOCUMENTARY TAX

DOCUMENTARY TRANSFER TAX IS

NOT A PUBLIC RECORD

Computed on full value of property
or computed on full value less liens and encum-
brances remaining at time of sale.

WILSHIRE ESCROW COMPANY

W. Sullivan
Signature of Officer or Agent Authorizing Use of Seal

Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
CHARLES W. RUSH AND MAUREN RUSH, HUSBAND AND WIFE, AS
JOINT TENANTS do hereby

GRANT TO ALAN CARTER AND ELIZABETH CARTER, HUSBAND AND WIFE, AS COMMUNITY
PROPERTY.

the real property in the CITY OF LOS ANGELES County of LOS ANGELES
State of California, described as:

LOT 19 OF TRACT NO. 4388, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF
LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49
PAGE 53 AND 54 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Dated: SEPTEMBER 11, 1991

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }
I, *Ray M. Burt*, a Notary Public
do hereby certify that the foregoing
instrument was duly executed and
acknowledged before me on the date
and at the place therein expressed.

Charles W. Rush
CHARLES W. RUSH
Maureen Rush
MAUREN RUSH

My commission expires on the _____ day of _____, 19____.
I am duly qualified to perform the duties of a Notary Public in and for the State of California, and I am duly sworn to perform the same.

Notary Public: *Ray M. Burt*
Name (Print or Print)



(This area for official record use)

REAL TAX REFUNDING AS SHOWN ABOVE... 1215192

REQUEST FOR JUDICIAL NOTICE- EXHIBIT H- Deed of Reconveyance

7/23/92

#4559
RECORDING REQUESTED BY:

Diane Ganley
Southland Title
ORD #140303-3
300 East Magnolia Blvd #600
Burbank, CA 91502

AND WHEN RECORDED MAIL TO:

Alan Canter
Elizabeth Canter
446 S. Highland Ave
Los Angeles, Cal. 90036
Loan No. 665875-0

92 1340763

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA
JUL 23 1992 AT 8 A.M.
Recorder's Office

FEB 15

DEED OF RECONVEYANCE

Whereas, the indebtedness secured by that certain Deed of Trust executed by
ALAN CANTER and ELIZABETH CANTER, husband and wife as Community Property.

to U.F. Service Corporation, A California corporation
as Trustee(s), dated September 19th, 19 91, and recorded on September 25th,
19 91, in the Office of the County Recorder of the County of Los Angeles,
State of California, Series Number 91-1512839, in Book _____, of
Official Records, at Page _____, has been paid, the Trustee of Record,
U. F. Service Corporation, a California Corporation

pursuant to the written request of the beneficiary, does hereby grant and reconvey,
without warranty express or implied as to the title, possession or encumbrance, to the
person or persons legally entitled thereto, all the right, title and interest derived
by the undersigned, pursuant to said Deed of Trust, in and to the real property
described therein, to which reference is made for a description of the same.

In Witness Whereof, the undersigned, as such Trustee, has executed this Deed
of Reconveyance this 12th day of June, 19 92.

U.F. Service Corporation, a California Corporation
TRUSTEE

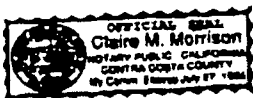
By *Rena Tipton*
RENA TIPTON-ASST. VICE PRESIDENT

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On June 12th, 1992, before me, CLAIRE M. MORRISON, a Notary Public
in and for said State, personally appeared RENA TIPTON, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the
ASST. Vice President of the corporation that executed the within
instrument, known to me to be the person who executed the within instrument on behalf
of the corporation therein named, and acknowledged to me that such corporation
executed the within instrument pursuant to its by-laws or a resolution of its board of
directors.

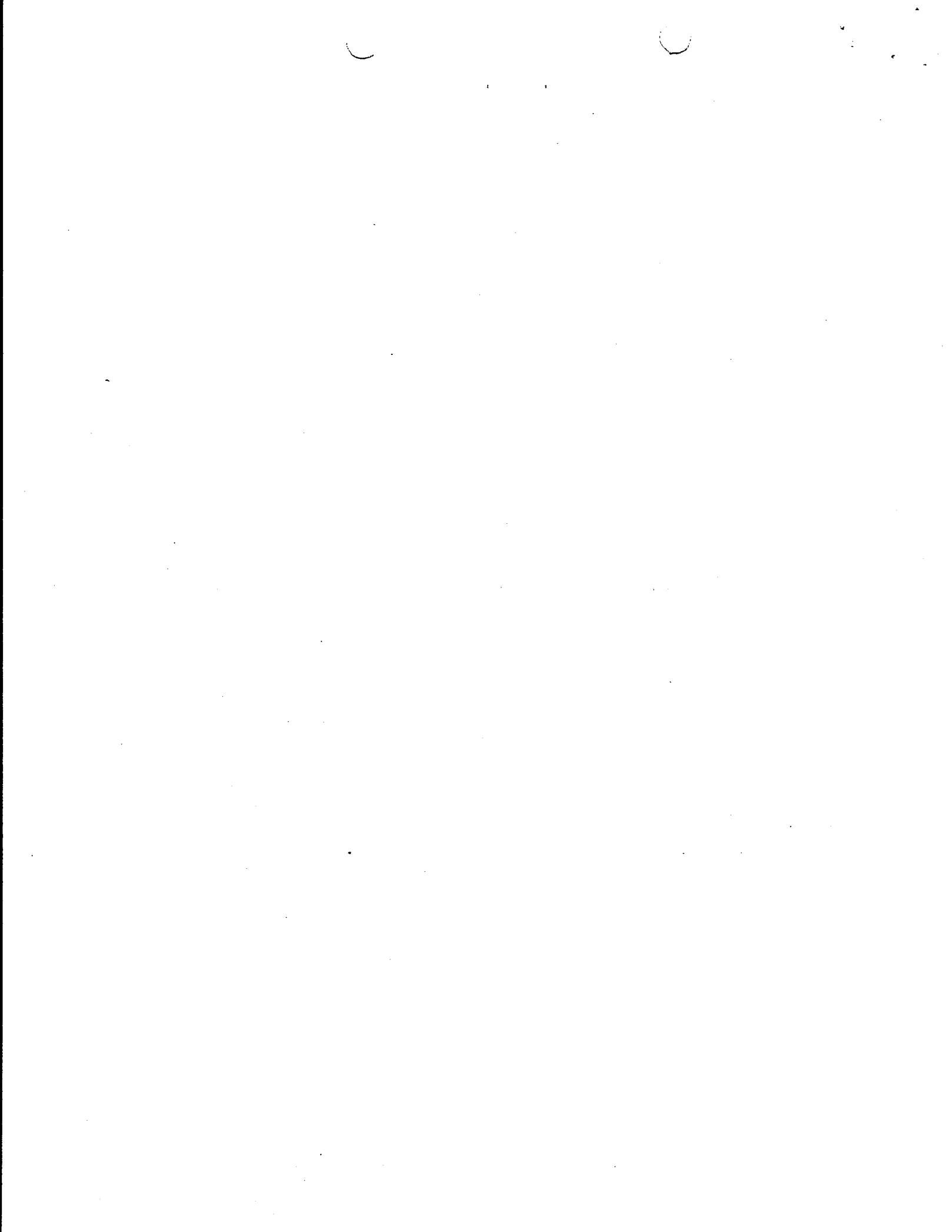
WITNESS My Hand and Official Seal.

Claire M. Morrison
Notary's Signature



140303-3

REQUEST FOR JUDICIAL NOTICE- EXHIBIT I- Quitclaim Deed 9/22/97



SUMMONS (CITACION JUDICIAL)

UNLAWFUL DETAINER—EVICTION
(PROCESO DE DESAHUCIO—EVICCIÓN)

NOTICE TO DEFENDANT: (Aviso a acusado)

DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CANTER

YOU ARE BEING SUED BY PLAINTIFF: (A Ud. le está demandando)

ALAN S. CANTER

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 5 DAYS after this summons is served on you to file a typewritten response at this court. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays.)

Después de que le entreguen esta citación judicial usted tiene un plazo de 5 DIAS para presentar una respuesta escrita a máquina en esta corte. (Para calcular los cinco días, cuente el sábado y el domingo, pero no cuenta ningún otro día festivo observado por la corte.)

A letter or phone call will not protect you. Your typewritten response must be in proper legal form if you want the court to hear your case.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

If you do not file your response on time, you may lose the case; you may be evicted; and your wages, money, and property may be taken without further warning from the court.

Si usted no presenta su respuesta a tiempo, puede perder el caso, le pueden obligar a desalojar su casa, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencias de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)
LOS ANGELES MUNICIPAL COURT - LOS ANGELES JUDICIAL DISTRICT
110 N. GRAND AVENUE
LOS ANGELES, CALIFORNIA 90012

CASE NUMBER: (Número del caso)

99U18116

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
ROBERT M. BRODNEY (SBN 110275)
1249 SOUTH DIAMOND BAR BLVD. #44
DIAMOND BAR, CALIFORNIA 91763 909.861.6601

(Must be answered in all cases) An unlawful detainer assistant (B&P §§400-415) did not did, for compensation, give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name: _____ b. Telephone No.: _____
- c. Street address, city, and ZIP code: _____
- d. County of registration: _____ e. Registration No.: _____

Expires on (date):
CYNTHIA FLURES

DATE (Fecha):
Aug 13 1999

By _____ Clerk (Actuario)
Deputy (Delegado)

SEAL

- NOTICE TO THE PERSON SERVED: You are served
- 1. as an individual defendant.
 - 2. as the person sued under the fictitious name of (specify): _____
 - 3. on behalf of (specify): _____
 - under: C.C.P. §416.10 (corporation) C.C.P. §416.60 (minor)
 - C.C.P. §416.20 (defunct corporation) C.C.P. §416.70 (conservatee)
 - C.C.P. §416.40 (association or partnership) C.C.P. §416.90 (individual)
 - other: _____
 - 4. by personal delivery on (date): _____

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): ROBERT M. BRODNEY (110275) 1249 S. DIAMOND BAR BLVD. PMB 44 DIAMOND BAR, CA 91765		TELEPHONE NO.: (909) 861-6604	FOR COURT USE ONLY
ATTORNEY FOR (Name): PLAINTIFF ALAN S. CANTER		<p style="text-align: center;">DUPLICATE ORIGINAL FILED</p> <p style="text-align: center;">LOS ANGELES MUNICIPAL COURT</p> <p style="text-align: center;">AUG 13 1999</p> <p style="text-align: center;">LOS ANGELES JUDICIAL DIST. FREDERICK K. OHLRICH, CLERK</p> <p style="text-align: center;">By CYNTHIA FLORES Deputy</p>	
NAME OF COURT: LOS ANGELES MUNICIPAL COURT			
STREET ADDRESS: 110 N. GRAND AVENUE			
CITY AND ZIP CODE: LOS ANGELES, CA 90012			
MAILING ADDRESS:			
BRANCH COURT: LOS ANGELES JUDICIAL DISTRICT			
PLAINTIFF: ALAN S. CANTER			
DEFENDANT: DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CANTER			
<input checked="" type="checkbox"/> DOES 1 TO 10 INCLUSIVE			
COMPLAINT - Unlawful Detainer*		CASE NUMBER:	

1. a. Plaintiff is (1) an individual over the age of 18 years (4) a partnership
 (2) a public agency (5) a corporation
 (3) other (specify):
- b. Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name (specify):
2. Defendants named above are in possession of the premises located at (street address, apt. No., city and county):
 446 S. HIGHLAND AVENUE, LOS ANGELES, CA 90036
3. Plaintiff's interest in the premises is as owner other (specify):
4. The true names and capacities of defendants sued as Does are unknown to plaintiff.
5. a. On or about (date): 9-01-1991 defendants (names): DEBORAH MARISTINA ROMAN aka MARISTINA CANTER aka DEBBIE CANTER
 (1) agreed to rent the premises for a month-to-month tenancy other tenancy (specify):
 (2) agreed to pay rent of \$1000.00 payable monthly other (specify frequency):
 The rent is due on the first of the month other day (specify):
- b. This written oral agreement was made with
 (1) plaintiff (3) plaintiff's predecessor in interest
 (2) plaintiff's agent (4) other (specify):
- c. The defendants not named in item 5a are
 (1) subtenants (2) assignees (3) other (specify):
- d. The agreement was later changed as follows (specify):
- e. A copy of the written agreement is attached and labeled Exhibit 1.
6. a. Defendants (names): DEBORAH MARISTINA ROMANO aka MARSITINA CANTER aka DEBBIE CANTER were served the following notice on the same date and in the same manner:
 (1) 3-day notice to pay rent or quit (4) 3-day notice to quit
 (2) 3-day notice to perform covenants or quit (5) 30-day notice to quit
 (3) other (specify):
- b. (1) On (date): 8/13/1999, the period stated in the notice expired at the end of the day.
 (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. The notice included an election of forfeiture.
- e. A copy of the notice is attached and labeled Exhibit 2.
- f. One or more defendants was served (1) with a different notice, or (2) on a different date, or (3) in a different manner, as stated in attachment 6f. (Check item 7c and attach a statement providing the information required by items 6a-e and 7 for each defendant.)

*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).
 (Continued on reverse)

PLAINTIFF (Name): ALAN S. CANTER	CASE NUMBER:
----------------------------------	--------------

DEFENDANT (Name): DEBORAH MARISTINA ROMANO aka MARISTINA CANTER aka DEBBIE CA

7. a. The notice in item 6a was served on the defendants named in item 6a as follows:
- (1) by personally handing a copy to defendant on (date):
 - (2) by leaving a copy with (name or description): _____, a person of suitable age and discretion, on (date): _____ at defendant's residence business AND mailing a copy to defendant at defendant's place of residence on (date): _____ because defendant cannot be found at defendant's residence or usual place of business.
 - (3) by posting a copy on the premises on (date): 8/9/1999 (and giving a copy to a person found residing at the premises) AND mailing a copy to defendant at the premises on (date): 8/9/1999
 - (a) because defendant's residence and usual place of business cannot be ascertained OR
 - (b) because no person of suitable age or discretion can be found there.
 - (4) (not for 3-day notice; see Civil Code section 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date): _____
 - (5) (not for residential tenancies; see Civil Code section 1953 before using) in the manner specified in a written commercial lease between the parties.
- b. (Name): _____ was served on behalf of all defendants who signed a joint written rental agreement.
- c. Information about service of notice on the defendants named in item 6f is stated in attachment 7c.
8. Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
9. At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$ 5000.00
10. The fair rental value of the premises is \$33.33 per day.
11. Defendants' continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$500 in attachment 11.)
12. A written agreement between the parties provides for attorney fees.
13. Defendants' tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): _____

- Plaintiff has met all applicable requirements of the ordinances.
14. Other allegations are stated in attachment 14.
15. Plaintiff remits to the jurisdictional limit, if any, of the court.

16. PLAINTIFF REQUESTS
- a. possession of the premises.
 - b. costs incurred in this proceeding.
 - c. past due rent of \$ 5000.00
 - d. reasonable attorney fees.
 - e. forfeiture of the agreement.
 - f. damages at the rate stated in item 10 from (date): 8/1/1999 for each day defendants remain in possession through entry of judgment.
 - g. statutory damages up to \$600 for the conduct alleged in item 11.
 - h. other (specify): _____

17. Number of pages attached (specify): _____
- UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 8400-8415)
18. (must be answered in all cases) An unlawful detainer assistant did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):
- a. Assistant's name: _____
 - b. Telephone No.: _____
 - c. Street address, city, and ZIP: _____
 - d. County of registration: _____
 - e. Registration No.: _____
 - f. Expires on (date): _____

ROBERT M. BRODNEY (110275) _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

ALAN S. CANTER _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

09/09 PAGE 03/09 R M BRODNEY 13236607580 11/17/1999 04:29

REQUEST FOR JUDICIAL NOTICE- EXHIBIT K- Verified Transcript of
341(a) Hearing

341(a) hearing

SP = Sheila M. Pistone, Esq.

DC = Deborah Canter (debtor)

HME = Howard M. Ehrenberg, Esq.

HS = Andrew Smyth, Esq.

MB = Mark Brenner, Esq.

RB = Robert Brodney

TAPE 1:

SP: We're on the record with calendar number 14, case number 99-49126, may I have the appearance of debtor's counsel, please?

AS: Andrew Smyth for Deborah Canter.

SP: And the appearance of the creditors, starting over here, please?

HME: My name's Howard Ehrenberg. It's E-H-R-E-N-B-E-R-G of Sulmeyer, Kupetz, Baumann & Rothman on behalf of Gary Canter.

SP: And what type of debt is owed to your clients?

HME: Well, my client is the ex-husband of the debtor and is a party in interest relative to the debtor's claims of a community property in interest in certain assets.

SP: Will they be filing a claim in the case? The ex-husband?

HME: No. The ex-husband will be filing a motion to dismiss on the basis that this is a bad faith filing.

SP: Okay. And Mr. Brenner?

MB: Good morning. Mark Brenner for the Canter Family Trust, the owner of the real property that is listed on Schedule A.

SP: Okay. And sir?

RB: Robert Brodney, Law Office of Robert Brodney for Ellen S. Canter who is the manager of the property and _____ trust and also I'm listened as a creditor.

SP: Okay.

AS: I might mention sort of as an aside where I'm at is that my client has a Superior Court order giving her control of the property and apparently...

SP: Okay, Mr. Smith, wait up, I haven't even sworn the debtor in

yet, so hold off, please. Ms. Canter, would you please raise your right hand?

DC: Yes.

SP: Do you solemnly -- okay, why don't you put your -- do you solemnly swear or affirm to tell the whole truth in your testimony here today?

DC: Yes, I do.

SP: And would you please say your name?

DC: Deborah Marcina Canter. C-A-N-T-E-R.

SP: Okay, Ms. Canter, we're recording your testimony today. The microphone is on the table. Please speak up loudly enough for us to pick up your voice. Please give verbal responses. If you don't understand a question, just ask me to repeat it and I'll be happy to do so. We're going to ask you to come closer to the table so we can be sure that the microphone will pick up your voice. So don't forget you're under oath and we're recording your testimony. Okay, let's see, we're going to return to the debtor the receipt for the plan payment; Mr. Smyth will file an amended plan, is that right?

AS: Yes.

SP: Today or yester -- today.

AS: I had her take it down as I was hired very recently. It may still have to be amended based on the comments of the bank.

SP: You actually prepared the amendment though, right? Why did you amend the plan?

AS: Well, because she stated -- I didn't file the original plan and she stated she didn't have the income to pay the unsecured the percent the original plan had proposed. But again --

SP: So you don't have enough money for the plan payment or generally she can't pay?

AS: Previous. Well. No, she didn't have enough for the plan payment of the previous plan, but she had enough for this plan. I would like to comment about what was said about the real property. You told me not to.

SP: Well, let me examine the debtor. If those issues don't arise at that point, then we can go ahead and let you speak them. The creditors will have their opportunity to state their objections. Ms. Canter, I'm going to ask you to come in closer to the table. You're welcome to put your purse on the table. I just want to be sure the microphone can pick up your voice. O.k? I'm returning to you your receipt for the plan payment that you made today.

DC: o.k., thank you.

SP: Do you have an interest in any real estate?

DC: Yes, I do.

SP: What is that interest?

DC: What do you mean, what is the interest?

SP: Well, you said yes you do have an interest, so what did you mean by that when you answered yes to my question?

DC: I have an interest in the real estate of the real property that's located at 446 S. Highland Avenue in Los Angeles.

SP: And what is your interest?

CD: My interest should be a 50% owner of that property.

SP: Do you live there?

DC: Yes, I do.

SP: and there's a mortgage on that property?

DC: Yes, there is.

SP: Are you on the loan to that property?

DC: No, I'm not.

SP: And who's on the loan?

DC: I believe my father-in-law is. Allan Canter.

SP: And do you pay rent or any money to live there?

DC: At this time I have not since I filed -- since my husband filed for divorce, since we've entered into divorce court.

SP: And when was that filed, the divorce?

DC: February of 1999.

SP: And is it final?

DC: No, it's not.

SP: And what, in what stage is that divorce?

DC: I'm not certain. We're in limbo somewhere.

AS: I think it's California, right on the paper here, right down on Hill Street.

SP: Okay, great, but, um, are there unresolved issues as to property settlement or -- ?

DC: There are many unresolved issues.

AS: Well, can I explain that? That's --

SP: Yeah.

AS: Okay. I'm doing this from what my client tells me. From what she told me, she has a very good claim for a community property interest based on, let's say, unpaid income to her husband who worked essentially without pay for Canter's Family Restaurant and I believe under certain cases that would give her a claim of community property interest for that unpaid labor. She tells me that it's not being asserted in the divorce which is where it probably should be asserted, to be asserted --

SP: Can you hold on? I get the gist of what you're saying. Because this isn't the place to make arguments. You need to make that to the court. I get what you're saying --

AS: I want to say one last thing about why its here. It can be brought up under Rule 506 or 502 here. A judge may prefer a divorce court to do it. So it may be brought up here in an adversary, it might be brought up in the divorce court.

SP: Oh, you think you're going to get the family law issues settled in the bankruptcy court?

AS: Well, it's not necessarily a family law issue. I'm not sure if it were -- there are cases is to say under that rule a judge can determine the extent of a person's interest. I assume, they, they've done it, but I assume they'd send it back to the divorce court, so that's --

DC: But I'm not, I'm not in divorce court with my father-in-law, you see, and...

AS: Well, that's it, that's a point, it's something to be resolved in another court, not divorce court, Superior Court or (inaudible _____.)

SP: Mr. Smith, on what basis is this property property of the estate?

AS: I thought I just explained that she --

SP: That was the explanation?

AS: She has a husband who worked for no money. He should have been compensated by Mr. Canter, the father who owns it. That established a community property interest in the property. There's case law supports such an argument. That's what --

SP: So the husband was working and not getting compensated, so he has a claim for income, and by virtue of that, her community property in his income, she's living in this property.

AS: And that income, the father-in-law used to pay the mortgage in his son's behalf rather than reimburse labor, he paid the mortgage in his son's behalf, so that payment was income to the husband and created a community property interest. And that's the argument. My client made a good point that this is not the husband who's on the title, this can be brought up in this court.

SP: Who is on title?

DC: Allen Canter.

AS: Who's the father-in-law.

SP: And your husband is not at all on the title.

DC: No. Not to my knowledge.

SP: Okay, and why have you brought the bankruptcy?

DC: Because I can't afford to pay my bills. My husband has misrepresented to the divorce court the amount of income he earns as well as to the IRS and this has gone on and on and on and so I'm pretty much destitute.

SP: What particular bills are you having a problem repaying?

DC: I can't even, I can't even pay my utility bills?

SP: Are there any tax debts, lawsuit judgments?

DC: Not to my knowledge.

SP: How about car payments?

DC: No.

SP: Your car is --

DC: No car payments.

SP: O.k., Um, I take it you're living separately from your spouse?

DC: Yes, I am.

SP: And have you ever filed for bankruptcy before?

DC: Yes, I have.

SP: And what happened with that case? That was filed in 1996, right?

DC: There was one in '96 that I couldn't get a confirmed payment plan for agreed and there was also one in '91 or 1992 I believe.

SP: What chapter bankruptcy was that? Was that a seven or a thirteen?

DC: I believe that was a seven.

SP: And what happened with that case?

DC: I believe it went through and it was --

SP: Discharged, meaning your debts were forgiven?

DC: Yes, I believe so.

SP: Okay. Counsel, those two cases were disclosed on the, what should be a 1015 statement.

AS: Your assistant said that one was, 9610.

SP: No, that means we filed that case but it's not disclosed.

AS: Oh.

SP: So you're going to have to amend that to include the prior bankruptcies. Um, when you signed the petition, the statement that you had prior, you had never filed for bankruptcy before, why did you not list the prior two cases that you just referenced here?

DC: Only because I didn't know how exactly how to complete the paperwork and I did it myself and I didn't know what I was doing. And at the time I didn't have funds to obtain an attorney. So I needed to get it done in a timely basis. And I didn't know where to list it. But I told the lady at the window when I filed that I did have two other bankruptcies, and she saw it on the computer I guess.

SP: And are you a member of a credit union?

DC: No, I'm not.

SP: Are there any garnishments being taken out of your bank accounts or paychecks?

DC: No.

SP: Have you told your attorney everything you owe?

DC: Yes, I have.

SP: Have you told your attorney everything that you own?

DC: Yes, I have.

SP: Have you read the bankruptcy documents filed in your case?

DC: Some of them.

SP: Some of them? Which ones have you not read?

DC: I don't know exactly what's in there. I'm not certain.

SP: Okay. I need you to look at these document on the left side, tell me if you've read all of those and

DC: This side?

SP: uh huh

AS: _____ service list.

DC: I also have large divorce attorney bills that I can't pay.

SP: Okay, just keep concentrating and looking at those and after you've read them, we'll go on.

...(inaudible talk while DC is reading, papers shuffling)

DC: Yes, I've read all these documents.

SP: Okay. And did you understand them?

DC: I understand what I'm reading I don't understand the law. I mean.

SP: But you said --

DC: -- what rights, what everything means.

SP: Did you list everything that you owe?

DC: Yes. I believe so.

SP: Did you list everything that you own?

DC: Yes, I believe so.

SP: When you give me the qualification that you believe so makes me think that perhaps there's something you haven't listed. Is there something in your mind that maybe you didn't list? You are under oath and it is important that you disclose everything.

DC: No. Other than holdings that my husband may have that I'm unaware of that would be considered community property that I know nothing about.

SP: And how many vehicles do you have?

DC: I don't have.

SP: And what means of transportation do you use?

DC: My brother's car.

SP: Does he charge for the use of that car?

DC: No, he doesn't.

SP: And who pays insurance on the vehicle?

DC: Uh, I'm not sure.

SP: You don't pay?

DC: No, I don't.

SP: Would you have any dependents?

DC: Yes, I do.

SP: How many?

DC: One.

SP: And is that your daughter Jennifer?

DC: Yes.

SP: Does she live with you?

DC: Yes, she does. Fifty percent of the time.

SP: And do you receive spousal support or child support?

DC: Yes, I do.

SP: How much?

DC: Four hundred and I believe it's \$410 a month.

SP: And what's the \$410 for is that for your child or for you or both?

DC: For Jennifer, for my child it's 410 and for myself I believe it's \$600 for spousal support. The total monthly is --

SP: And is that pursuant to an order?

DC: I'm sorry, it's a \$1020, yes, there's a court order.

SP: And is your husband current on those payments?

DC: Yes, he is.

SP: So counsel we need a copy of the court order for that and we need a proof of income payment.

AS: Proof of income that she's actually getting them? Is that what you mean?

SP: Yes, a copy of the order and I need a pay stub. And Ms. Canter, when you have a discussion with your attorney, either it must be loud enough for the recorder to pick it up or just wait until afterwards because then we don't know if it's testimony that just got garbled, okay?

DC: Okay. Sorry.

SP: So, counsel, we need a pay stub and we need a copy of the order. Is there any other source of income for you besides your work at Roman's Restoration and the support of \$1020 dollars that you've referenced.

DC: No, there isn't. And as far as Roman Restoration goes, I've worked for there for two months only and don't know that I can continue. It's my brother's business, because of illness.

SP: Hold on, Mr. Smith, just a moment. Because of your illness you may not be able to continue?

DC: Yes, and because of the distance and my brother let me do some work for him in order to temporarily help me out because of my financial situation and the divorce court.

SP: What's your illness?

DC: I have a neck injury.

SP: What is the specifically the neck injury that you have?

DC: I don't have a medical term, the medical diagnosis for it.

SP: Well, what happened?

DC: I was involved in a slip and fall accident.

SP: Where?

DC: Downtown Los Angeles.

SP: When?

DC: I believe it was January of 1996 or 1997. It would have been January 10th, but I don't remember if it was '96 or '97.

SP: And was there any lawsuit as a result of that slip and fall?

DC: No, there wasn't.

SP: Where did you exactly slip and fall?

DC: In a parking lot. I don't have the exact address, but it was close by here somewhere.

SP: And did you ever seek medical treatment for this?

DC: I've seeked been to several different doctors.

SP: And what is the diagnosis?

DC: Well, supposedly the doctors told me that the curve in my neck is going in the opposite direction that it's supposed to be going in and it's cutting off the circulation to the brain stem and it causes me dizziness and if I'm doing any type of paperwork or book work or anything that causes me to keep my head down

SP: Why wasn't a lawsuit filed as a result of this accident?

DC: I spoke to the person's insurance or manager of the parking lot or property at one particular point. I went to the hospital, I went to see Century City Emergency, I was given medication and treatment and a cervical collar and then I had several other different doctors look at me and treat me during the course of the --

SP: So did you ever seek legal --

DC: No, I didn't file a suit --

SP: Did you didn't get any settlement from an insurance company or any settlement in any way?

DC: No, I didn't. The statute of limitations passed and I never pursued it.

SP: Okay, now what did you do before you were working at Roman's Restoration?

DC: I haven't worked in the last nine years. Or ten years.

SP: And are you seeking, are you getting medical treatment now for your neck injury?

DC: I haven't seen the doctor in probably three weeks or a month.

SP: Okay, well, when you saw the doctor that time, what did you see him for or her?

DC: He gave me a treatment, he gave me a chiropractic alignment and --

SP: So you're seeing a chiropractor?

DC: Yes, a chiropractor.

SP: And how, on what basis, what regularity do you see a

chiropractor?

DC: It depends on the severity of the pain that I'm in. So it could be anywhere from three to four -- it could be like three times a week and then again it can be three times a month. It depends.

SP: And what causes the need to go to the doctor on a -- more frequently?

DC: Depending on the pain level that I'm in.

SP: And what would cause the pain level to change?

DC: I don't know what causes it to change, but a lot of times movement or tension, stress...

SP: Okay, and who pays for the medical treatments?

DC: I have medical insurance.

SP: And you don't have to supplement that with co-payments or any other they pay for the chiropractic treatment?

DC: Yes.

SP: Okay. And how long have you been living at 446 S. Highland Avenue?

DC: Since escrow closed.

AS: How long is that?

DC: That would be since 1991. September of 1991.

SP: And why do you have a different mailing address?

DC: Because my husband was taking and tearing up my mail.

SP: And how many bedrooms is this house?

DC: Four bedrooms.

SP: And when did your husband last live there with you?

DC: February, um, I don't remember an exact date, I want to say around February 23rd or 24th of 1999.

SP: Is there a pool at this house?

DC: Yes, there is.

SP: Okay, because the electricity seems somewhat high.

DC: Yeah, it is. But I don't heat the pool, I don't keep it --

SP: So what's causing this amount of the --

DC: It's a large house. It's approximately a 4,000 square foot house.

SP: And how about, let's see, telephone is \$100 a month?

DC: Yes, approximately.

SP: Counsel have you reviewed these schedules?

AS: Yes.

SP: And so there's not going to be any major amendments because you've substituted in you're going to leave them as they are?

AS: Yes.

SP: Other than the plan?

AS: Um, your assistant said that it seemed like we could go higher and we might.

SP: Okay. But otherwise the Schedule J that I'm working with and all the other schedules of debts and assets will be pretty much --

AS: I think so, I do have that other question that I wanted to get to.

SP: What other question?

AS: Well, when we're -- you wanted a pay stub, you wanted a copy of the order, did you want proof that the payments were being made?

SP: No, just the order.

AS: o.k.

SP: The food might be a little high, but over all the budget appears to be reasonable for a single person with a daughter 50% of the time. Who pays for the daughter's school expenses, if any, private school expenses, anything like that?

DC: My father-in-law pays for that also. I pay for her clothing and other necessities.

SP: Do you expect that to continue?

DC: I believe so, yes.

SP: Have you filed your 1998 income taxes?

DC: I don't know. I didn't file separately. My husband and I had been filing jointly, but, basically the 1998 taxes is what

prompted the divorce because my husband has, is not filing the accurate amount of money on his income tax and my attorney advised me not to sign an income tax return with him ever ever again in the future and because I refused to do so, he flung me into a wall and pinned me down and so there was a -- it resulted in me having to file a police report because he had a loaded gun also in the house and he is violent and has a history of cocaine abuse --

SP: Okay.

DC: So, excuse me, but so because I filed --

SP: Okay, so -- hold on, hold on.

DC: Okay, okay, I'm sorry.

SP: Okay, because that's fine and that's relevant in your family law and perhaps in some way it would become relevant here, I don't know. At this point though I just need to know about the taxes. So we're going to keep focused and just talk about your bankruptcy issues.

AS: We're going to file a state claim _____ and we're going to file her individual at IRS Special procedures.

SP: So, yes, we do have a claim from the IRS showing unfiled taxes for 1998. For the record please file those taxes and provide the trustee with a copy.

DC: Okay.

SP: Do you believe that you owe any income taxes for any years?

DC: Pardon me?

SP: Do you believe that you owe any income taxes for any years?

DC: I don't believe I do.

SP: Okay, counsel, we need schedule F amended with all of the account numbers.

DC: I made for 1999? I don't know how that's going to work yet so I'll get advice on that.

SP: Excuse me.

DC: I may owe taxes for 1999.

SP: Okay. Are you a party to any lawsuits other than the divorce proceeding?

DC: Uh, no, I'm not.

SP: Counsel, we'd like a copy of the income and expense

declarations and the assets and debts, documents filed in the divorce proceeding. And you really need to give us all the information here as to this, the divorce proceeding, these lawsuits and the statement of affairs. And I do see something here about an eviction lawsuit, is that something that's pending as well?

DC: Yes.

SP: Okay.

DC: I forgot about that I'm sorry being that I'm here on the same matter.

SP: So, counsel, we need the case numbers for those, okay?

AS: For the unlawful detainer thing?

SP: Both.

AS: And the --

SP: Divorce.

???: If I may interrupt those case numbers are in my objection.

AS: I don't know if I've got a copy.

???: I never knew you were on the case until ten minutes ago. I'll send you a copy.

AS: o.k, but we'll put it in the schedules _____

SP: Okay, so, Mr. Smith, do you know at what stage the divorce proceeding is in? Is there going to be a trial as to the issues? What's going on there?

AS: I just know that my client told me that the property rights aren't resolved and that her current attorney is not claiming the community property interest in the divorce which she's upset about, so somebody else could probably correct me. I assume it's not resolved in divorce.

SP: That I figured out.

AS: TRO's _____

SP: _____ more specificity.

AS: Well, in other words, the property issues aren't -- _____ issues are not resolving.

HME: I think the debtor is utilizing chapter 13 in an effort to _____ the divorce proceedings going forward, and it will be require a motion for a relief from stay and maybe the debtor

will stipulate to that before we contemplate filing a motion to dismiss this case. But some way or another to get back into divorce court, this bankruptcy has stayed that proceeding.

AS: Well, first of all 362, I think 11 says that there's no stay whatsoever. 11 U.S.C. 362 there is no stay at all on divorce by this bankruptcy. That's why we don't hear divorces in here, but of course we will stipulate, that seems to be the rule, there's no stay on divorce proceedings. Per 362 1994.

SP: Okay. Now, Ms. Canter, you do list here that you have a \$2-million interest in Canter's Deli?

DC: Yes. Community property.

SP: And how did you, how did you value that?

DC: My husband told me he was a 20% silent owner after a deposition that I had in the divorce matter. And I don't know that the \$2-million dollars is an accurate amount. It could be less, it could be more. Because I don't have --

SP: Was this a statement he made in a deposition? Is that what you said?

DC: No, he made it to me after a deposition and I claimed that I had an interest in Canter's Deli, too.

SP: Do you know of any appraisals or any thing, any valuations done of that business?

DC: No, but I have a set of records that my husband was keeping in a locked closet that my divorce attorney and I took out of the closet that he was keeping there for approximately 14 to 15 years now with the daily or weekly take on Canter's restaurant.

SP: Okay, now this valuation as to the alimony and child support, you come up with \$500,000, and how do you get to that valuation?

DC: It's just a guesstimate.

SP: And this is for currently coming due of future payments, right, not for any back due payments?

DC: No, not back due. But then it could be back due because he's misrepresented to the court, and I have not yet done discovery on him because of my financial situation.

SP: And what about any interest in life insurance that your husband might have?

DC: My husband has, I know of, I believe, two life insurance policies on me and possibly one on my daughter, and I've asked

several times, but I don't know, he won't show me a copy of it and I don't have access to anything.

SP: Do you know is he claiming as community property any interest in any life insurance?

AS: Well, that's a divorce issue.

SP: Well if its _____ it should be listed in Schedule B.

DC: I don't know if it's term or whole life. I'm not certain, I have no idea.

AS: She would obviously be claiming a community property interest in all assets acquired after marriage. So...

SP: Okay, so then we also need to put those in the Schedule B.

AS: Right, we might say unknown. She doesn't know yet..

SP: Yeah, there is a problem. I understand that. How long were you married to Mr. Canter?

DC: I guess I'm still married, so 14 years.

SP: And the sports memorabilia, how did you come up with the valuation of \$15,000?

DC: That's also approximately. It probably is more because my husband always kept a running tape on his autographed baseballs and bats and baseball card collection. He kept it in a notebook, catalogued. Ran a tape on it.

SP: And you have had access to that tape?

DC: Yes, right, I've seen it throughout the years?

SP: O.k. you have no jewelry?

DC: Other than what I'm wearing.

SP: Your wedding ring?

DC: No, he took them back.

SP: When did he take them back?

DC: He took it back about a year and a half ago, I think.

AS: We can still claim it as an asset if you claim that you own it.

DC: oh

AS: Do you still own it?

DC: Well, I claim that I mean, it was given to me, I should own it, but he claims he doesn't know where it is, and he took it back from me, I didn't deserve it, and it's about a \$15,000 ring, so I mean, I don't know.

AS: Well, I think we should list it then as an asset.

SP: No furs or anything like that?

DC: I do have a fur coat.

SP: Okay, that should be listed.

DC: _____ coat.

SP: And how much is that worth approximately?

DC: I don't know. Maybe, it's a used coat, \$500, it's like.

SP: What kind of coat specifically, the kind of fur?

DC: Mink.

SP: How much did you purchase it for?

DC: Nine years old. Um, I don't remember. My husband bought it for me as a gift, so I don't remember how much it cost at the time.

SP: Okay, and how about 401K, any interest in any either your own pensions or anything like that, or in your husband's?

DC: I don't have any of my own, what my husband has I don't know.

SP: Counsel, are there any claims in the --

AS: I don't know.

SP: Well, if there are, you need to find that out. Who is the divorce attorney? For Mrs. Canter?

AS: Who's your divorce attorney?

DC: Lawrence Slavett for the time being

SP: and how do you spell that last name.

DC: S-L-A-V-E-double T.

SP: And how are you compensating her?

AS: Him. It's Lawrence.

SP: Lauren?

DC: Lawrence.

SP: Lawrence? Oh, I'm sorry. I thought you said Lauren. I'm sorry. And how are you compensating Mr. Slavett?

DC: I paid him the retainer, but all his fees are due as you see, and I can't afford to pay him.

SP: Okay. And I assume you are seeking the husband to be paying those in the divorce?

AS: Probably

SP: So at this time you're not having to make any payments this person is, this attorney is not requiring you to make any payments?

DC: He does require it, and he's not doing what he's supposed to do, but you know, everyone likes to be compensated for the work that they do, so it's understandable. I can't afford to pay him.

SP: And what was the retainer that you paid?

DC: He's -- I gave him a \$2500 retainer.

SP: And when did you do that?

DC: And my husband gave him \$2500, also ordered by the court.

SP: okay

DC: I gave it to him in February and March, and my husband could have given it in March or April. I don't remember.

SP: okay, have you transferred any other property to anybody in the last twelve years?

DC: No.

SP: And how about; do you have any savings bonds or any other investments, CDs, or anything?

DC: My husband has savings bonds in my daughter's name.

SP: Do you claim any interest in those?

DC: Well, I would imagine so, yes.

SP: Okay, counsel, so we need to review Schedule B and list everything.

DC: I don't know what amount they are, I don't have access to them

AS: How old is your daughter?

DC: My daughter is eight

AS: okay

SP: Okay, currently there's an issue as to whether or not this would be under chapter 7 liquidation analysis sufficient at 7.8, but you have the issues as to the, her ability to access those assets. I'm just going to change the tape and then the creditors can do their questions.

TAPE 2:

SP: We're back on the record with calendar number 14, case number 99-49126. Okay, counsel if you want to do you have any questions for the debtor?

HME: Yes, I do. My first question is what is your social security number?

DC: It's, um, 548-94-0669, and there's an additional one --

HME: You have a second one?

DC: Yes.

AS: Both of them are on --

DC: They're both listed.

AS: The second one is --

SP: You don't know off the top of your head?

DC: No.

AS: You want to --

DC: 620-56-5201.

HME: Will you explain to me please why you have two social security numbers?

DC: Yes, I can. Because Security Pacific Bank back in probably 1990 or 1991 gave, misappropriated funds and mailed my bank statements and all my banking information to a different client, a different customer with a similar name with a different address, and the person was accessing my bank to the tune of probably \$40-45,000 dollars which then I had to collect separately in small claims court. So I was given a different number because somebody else was using my social security number.

HME: So which is the number you use currently?

DC: I'm using -- because I don't have Bank of Am -- Security Pacific Bank anymore, I use the original number.

SP: What do you mean by original number, the one you were --

DC: The the the 548 number.

HME: That's the one you were given when you were a child?

DC: Yes.

HME: And the 660 number you obtained because of this fraudulent activity you're describing.

DC: Yes.

HME: And you don't use it anymore.

DC: No, because I no longer have that bank or doing any banking with that number.

HME: You said earlier that you have received some compensation for work that you were performing for a business in Nevada. Which social security number were you utilizing for the payment that you were receiving in that business?

DC: I haven't as of yet, and I will use the 548 number.

HME: 548 number

DC: Well, my brother paid me as an independent contractor. I do only -- I don't work a 40 hour week. I've done the books for him that take, took me anywhere from a day and a half to two days in order to complete, so he'll give me whatever form he has to give me at the end of the year and then I'll file it with IRS.

HME: Have you ever declared income under the 660 social security number?

DC: No.

HME: Have you sought to terminate that number given that _____ purpose in having it?

DC: I have in the past spoken to an attorney about what I should do and how I should do it because I have a concern.

HME: Whom do you believe are the owners of Canter's Delicatessen?

DC: Um, Allen Canter, Gary Canter, possibly Mark Canter may have an interest and/or Jacqueline Canter, a silent interest. Terry Bloomgarten and Harold Price.

HME: And what do you believe the percentage interest of each of those people.

DC: I'm not certain. I know my father-in-law owns at least 50 percent plus the property. As to how it's divided with the

other people, I'm not certain.

HME: I just want to confirm, you're claiming an ownership interest in the business?

DC: In my husband's percentage.

HME: And what percentage do you believe he owns?

DC: Twenty. He told me twenty.

SP: And that twenty is what the 2 million that you listed in Schedule B.

DC: Minimum \$2-million.

HME: And the basis of your claim is the oral statement that you state that Gary made to you?

DC: Oral statement that Gary made to me and my father-in-law has made to me on occasion that Gary is an owner as well.

HME: So it's the oral statements of Allen Canter and Gary Canter.

DC: And Gary Canter over the last 14 years before I would say, I want to say, August or September, I wasn't aware of the percentage until Gary was so angry at me after the deposition that he blurted out to me that he was only 20 percent owner and I wasn't going to get it.

HME: Have you ever seen any writings regarding this alleged ownership interest?

DC: No, other than the numbers that Gary keeps, the log that Gary kept that has 14 years of the weekly take on Canter's and told me that he was going to be sure he-- Gary has a problem with his cousin Terry and he doesn't trust her. Or Harold Price. And this is going on for years in the family, that they don't -- so.

HME: Just answer my question.

DC: I am answering your question.

SP: Counsel, there's just time for about three more questions because we have to give everybody an opportunity and then if you need a 2004 you can do that.

HME: Well, I suppose, but I guess then what I'd like you to know --

SP: I didn't say you couldn't ask any more questions, but it is limited _____.

HME: Has your name ever been on the title to the house?

DC: Not to -- uh well, when we purchased the house, the offer was made in my name and in my husband's name, and we gave our own

personal check for the deposit, I would say, not the down payment, for the deposit and at some point in escrow our name was changed and Allen Canter substituted his in.

SP: And that was in 1991?

DC: 1991, yes.

HME: Did you ever make any mortgage payments on this house?

DC: My husband did, during the course that we were married.

HME: Mortgage payments?

DC: Yes, I believe so.

HME: Not rent to Allen Canter or the family trust?

DC: I was told by Gary that he was helping his father, his father was paying half, and he was -- or his father was paying a portion and he was paying a portion.

HME: Did you ever make a property tax payment on this house?

DC: Um, my husband could have. To my knowledge, I'm not certain.

HME: Is it true that you've been convicted of five counts of felony fraud and false statement?

DC: I believe it was four counts. I made an agreement.

HME: Four counts of false statement and one count of fraud?

DC: I'm not exactly sure, certain of how the paperwork went.

HME: And you are still under probation?

DC: Yes, I am.

HME: And how much money did you obtain from the SBA that relates to that criminal activity?

AS: Well, hold on. What years are we talking about?

HME: There's only one --

AS: Well, I don't know. What year?

???: 1999.

AS: 1999. Okay, then I won't object. I don't want to her to back to '83.

SP: Now this opened up a whole new area so I'm not restricting counsel now to the three questions I said earlier because this is relevant, so go ahead and continue.

HME: How much money did you obtain from the SBA that was admitted to in the criminal action?

DC: \$25,000 dollars.

HME: And how much money did you obtain from Royal Thrift & Loan?

DC: I believe that was \$25,000 dollars also.

HME: And do you still have any of that money?

DC: No, I don't.

HME: What did you do with that money?

DC: It went right back into the property that it was borrowed for.

HME: To the other house on Highland.

DC: To the 308 S. Highland Avenue property.

HME: It went into it in what way?

DC: Improvements. Repairs because of earthquake damage.

SP: Counsel, I think you need to disclose if this criminal proceeding -- when, when, when were you convicted?

DC: Um, 19 -- April of 1999.

AS: Is there any questions on the forms about criminal proceedings?

SP: I think that statement four is broad enough to include that.

AS: I'm not sure.

???: I've attached a copy of the sentence order and a copy of the probation order to my objection.

DC: The sentencing was supposed to be under seal by the federal, by the federal judge, and I was told yesterday by my attorney that he wants to know how these attorneys are obtaining access to a federally sealed file.

SP: Okay.

AS: Let me ask, where did you say that this was? Statement of affairs number twelve?

SP: I think it's four. I'm just going to go off the record.

SP: Okay, go ahead, counsel.

HME: I have no further questions at this time.

SP: And the objections to the case are?

HME: My objections to the case are that the debtor is making completely false allegations to the ownership of the community property of the house, to the community property in the business, to the sports memorabilia. I believe that the debtor is making false statements under oath now regarding her employment. I don't believe that she has the wherewithal to be a chapter 13 debtor, and I will by the end of next week be filing a motion in the bankruptcy court to have this case dismissed as a bad faith filing and then if that is successful, I will be making a referral to the United States Attorney's office that the debtor be criminally prosecuted for making these false statements.

AS: _____ this will cut this short. My position is there is no stay in the _____

SP: There's no what?

AS: There is no stay to the divorce and if you want a stipulation. To be sure we will stipulate that there is no stay and the divorce can go ahead, but that brings up another question. My client states that she is being threatened with criminal prosecution just for the very fact of filing a 13. This happened on the city streets, some lady, who was it, screaming and yelling?

DC: My mother-in-law, Allen Canter's wife

AS: Because she filed a 13..

SP: Okay, well, you know I don't have any...

AS: But thats the, I think

SP: ..ability to do anything about that.

AS: ...it seems to be a violation of the automatic stay to do that

SP: Well, perhaps it is, but, counsel, you know what the _____ are, I am limited in what I have the authority to do.

DC: I called the trustee's office and they told me to present this to you when I came to the meeting because I just don't know what to do with these people anymore. They seem to feel that I don't have civil rights or whatnot, and I really --

SP: I'm not a judge.

DC: I understand.

SP: Okay, let me just ask you this. Do you have to pay restitution for any of these issues as to the fraud?

DC: No, I don't.

SP: There was no restitution required? Okay, can you just explain what were the activities that led to the convictions?

DC: Yes, I will. I purchased the property at 308 S. Highland Avenue in 1993. It would have been September. In January of 1994 came the big earthquake that we had and I sustained approximately \$200,000 of damage to the property that I had just gotten into. Um, I went to the real estate broker that represented me in purchasing the property, at the time referred me to a mortgage broker to get a refinance on the house to get to do the improvements and repairs and whatnot that the earthquake had caused. And that mortgage broker sent me a blank package in which to sign and told me that it was very complicated and he would fill it out with me over the telephone, so he needed my signature, we Fed-Exed it back to him, then he completed it himself, and at one point he misrepresented my income on those documents and at some point, like my attorney in the federal case explained to me, if I had knowledge at some point whether it was late in the situation or not, I still signed the docs, the loan docs, so at some point I knew, I had, I had knowledge that something wasn't right and I didn't do anything about it, so I had to admit to some guilt in the matter. And originally I was indicted on 14 counts which were then reduced to four, I believe.

SP: Okay, and do you have any debts in regards to, your, to repay your criminal attorney for representation?

DC: No, I went with a public defender.

SP: Okay, Mr. Brenner, do you have questions for the debtor or objections you'd like to state?

MB: Yes, I do. I have some questions. Um, Ms. Canter, I represent the Canter Family Trust.

DC: Okay

MB: Are you aware of that entity?

DC: Yes, I just became aware of it maybe a month or two ago.

MB: Okay. As part of your probation in the federal loan fraud case, you were ordered to provide your probation officer with accurate financial statements with supporting documentation as to all sources and amount of income and all expenses. Have you done that?

DC: Yes, I believe so.

MB: So your probation officer has this information?

DC: Yes. I believe so.

question prior about what would give me the right to be in the house. The Superior Court document gives me the right to be in the house.

MB: You stated that you're an independent contractor working for Ramirez Restoration?

RC: Roman. Roman's Auto Restoration.

MB: Roman's Auto Restoration. They do not withhold from your, your, the payment that is made to you for your services, is that correct?

DC: I don't know what he's done or how he's done it. And I'm saying he, my brother.

MB: On your Schedule I you list \$1500 dollar a month payment.

DC: Yes. And I also included that I worked there for one month prior to filing, so it's only been two months that I have done this.

MB: You received \$1500 dollars a month for two months?

DC: Yes, I have.

MB: Have they withheld anything from that \$1500 dollars a month?

DC: I received \$1500 clear. How he did his end, I don't know.

SP: You need, you need to find that out, what's going on with that, counsel and if there's no taxes being taken out of that, you'll need to put an itemization in for income taxes on her Schedule J. Anything else, counsel?

MB: Yes, I do. I have a couple more written down a lot of them have already been answered

SP: okay

MB: by the examination. Your, your father and brother own that business, is that correct?

DC: My brother does.

MB: Your brother does. On Schedule J you list that you are not making any payments on a mortgage or rent, is that correct?

DC: At the present time I'm not.

MB: But you do list on your Schedule J that insurance and taxes are being paid on the property. From what source are they being paid?

DC: I believe from Allen Canter and Gary Canter.

SP: Are they included in the mortgage payments or do you know if those property taxes and property insurance expenses are separate from the mortgage payments?

DC: I'm not certain.

MB: On your Schedule B you list a 1985 Mercedes Benz.

DC: Yes.

MB: Do you have insurance for that?

DC: I did. I don't know if my husband has discontinued it as of yet. He took the car February 24th, um...

SP: So you don't actually have possession of it?

DC: I don't have possession of that vehicle.

SP: Is the title in your name or your husband's?

DC: I believe it's in my husband's name.

SP: Did you have a premarital agreement?

DC: No.

MB: Do you pay anything for medical insurance?

DC: No, I don't.

MB: Who pays that?

DC: My husband does out of his paycheck, I believe.

SP: And has the court made an order that he's required to continue to do so or anything like that?

DC: No, they haven't, as of yet.

MB: Did you or did you not file a chapter 13 bankruptcy in '97 on July 7, 1997?

DC: I possibly could have.

MB: Do you recall if that was dismissed 20 days later?

DC: It could have been dismissed 20 days later.

MB: Did you or did you not file a chapter 13 in 1996?

DC: I could have.

MB: Do you recall when it was filed? Does February 27th sound like a possible date?

DC: It could be.

MB: Did you also file a chapter 13 in 1996 in January?

DC: I don't recall.

MB: And you told us about your chapter 7 in 1992, is that correct?

DC: '91 or '92, I don't remember.

MB: Was this like four prior filings?

SP: Yeah and counsel, you're going to have to provide a declaration as to why she didn't disclose all these. We got the explanation when I raised, I think it was, two and now there's actually more than that, so it's difficult to believe that the debtor didn't know that she had any prior bankruptcies.

DC: I never claimed that I didn't know that I had any prior bankruptcies. When I typed this, the paperwork myself, I didn't know where to put them or how to list them. And that's why I obtained an attorney because I knew I would need legal advice because I didn't know what I was doing.

AS: We'll provide a declaration explaining.

MB: Yeah, I just a couple more. On any of these prior bankruptcies, did you list the 446 S. Highland property as property of the estate?

DC: I don't recall.

MB: On any of these prior bankruptcies did you use anything other than your social security number that you received since you've been a child?

DC: I probably included both. I don't recall.

MB: Did you ever include anything other than your social security number that you have since birth?

AS: I think she said she probably did both. She's not sure.

MB: You're also known as Maristina Canter?

DC: Deborah Maristina Canter, yes.

MB: Okay, and Deborah Maristina Romano, is that correct?

DC: That's my maiden name. Yes.

MB: Okay, but you've used that, is that correct?

DC: Not since I've been married. I used Deborah Maristina Romano before I was married.

MB: In fact isn't that the name that's on the criminal judgment?

DC: Maristina? Canter.

MB: Deborah Maristina Romano.

DC: No, it's Canter, to my knowledge.

SP: Okay, Mr. Brenner, we just have time for a couple more.

MB: I've only got a couple more.

DC: Can I ask him a question?

AS: There's no reason too or need to

DC: There is a reason to.

AS: It doesn't help anything to ask the lawyer questions. I don't think we should ask him questions.

DC: I need to,

MB: well let's go outside

DC: I need to, I need for him to disclose here where he got a sealed record from federal court. The judge would like to know and my federal attorney would like to know as well as the probation officer.

AS: He doesn't have to answer if he doesn't want to.

SP: There are other forums for your counsel to address that. It sounds relevant, it should be addressed, but this isn't the proper place for it necessarily, okay? If he doesn't

MB: I have one last question.

SP: That's okay. We'll give it counsel time and then that's it.

???: Okay, when did you acquire interest in the 446 property?

DC: When we purchased it in 1991.

???: Have you ever listed that 446 property on any loan document or loan application?

DC: I'm not certain.

???: Were you present when the escrow documents, the final escrow documents were actually signed?

DC: I don't believe I was.

???: Were you --

DC: I don't recall. It was 1991.

???: Were you ever present when the purchase sale, when the final purchase sale agreement was signed.

DC: I don't recall.

???: Did you ever contribute any funds to the purchase of that property?

DC: I believe my husband did.

???: I'm asking if you did. Did you bring money into the property?

AS: Well, her husband's funds are her money, too or your money too.

???: Okay, are you aware of any property your husband put in?

DC: Um.

???: to purchase that property?

DC: I'm not certain. I don't remember.

???: Is there any writing that you know of indicating that your husband put in or you put in any funds for the purchase of that property?

DC: Well, as far as writing, I'm not certain, but back in -- my husband did originally give a check and then somehow it was replaced in escrow. We gave our check.

???: Is that the check during the strike at Canter's that was originally, Canter's Delicatessen, are you familiar with the strike that occurred down there?

DC: Of course I am.

???: Okay, and you recall that there was originally a check placed into there just because of the strike and Mr. Canter --

DC: The strike has nothing to do with the property.

???: Are you obligated to pay any other loans or any loans on that property?

DC: No. Not to my knowledge.

???: Did you sign any loan documents for First Nationwide Mortgage Company for the loan on that property?

DC: No, I did not.

???: Do you know what the loan for First Nationwide Mortgage Company is for?

DC: I believe it's for the mortgage on that 446 property?

???: Is it a first?

DC: I believe so.

???: But you don't know.

DC: I'm not certain.

???: Is your name on any deed or any other conveyance regarding this property?

DC: Not to my knowledge.

???: Did you list the 446 property as an asset on any -- that was asked, I'm sorry. I withdraw that. On any prior bankruptcy, was that asked?

???: Yes.

???: Have you ever paid any property taxes on the 446 property?

DC: I'm not certain. If my husband paid it on my behalf.

???: He did, you know that?

DC: I'm not certain.

???: Okay. Have you ever made a mortgage payment on that property?

DC: My husband I believe did.

???: Okay. Do you know to whom that mortgage payment was made?

DC: I believe to Allen Canter.

???: And did, was that made by way of a writing or check, do you know?

DC: I believe he was making checks and/or cash.

SP: Anything more, counsel?

AS: Payments in lieu of wages is also our assertion.

???: Just a couple more. Do you pay any homeowners insurance on your property, the 446 property?

DC: No, my husband was I believe.

???: How about fire?

DC: I believe my husband was.

???: Liability?

DC: My husband was I believe.

???: You recall when you went to court on the unlawful detainer the first time for trial, you remember that?

DC: Yes.

???: That was on October 19th, is that correct?

DC: Yes.

???: And you asked for a continuance of that trial date, do you recall that?

DC: Yes, I did.

???: And that then trial date went to October 26th at 8:30 a.m., do you recall that?

DC: I don't recall the date, but we did get a continuance and then we came back another day.

???: And this bankruptcy -- now at the time you asked for that continuance, had you planned to file bankruptcy on that date?

DC: No.

???: And when we returned to court on the 26th or thereabout, you filed bankruptcy about 24 minutes before we returned to court that morning, is that correct?

DC: Possibly.

???: When you obtained financing for the 308 property, did you list the 446 property as an asset?

DC: I don't recall.

???: When you purchased the 308 property, was Gary Canter's name on any of the deeds or paperwork for the purchase of that property?

DC: I don't believe so.

SP: Okay, counsel, we just have time for two more questions and then you can state your objections on the record if you'd like.

???: I'm just about done. I am just about at the end.

DC: He signed a quitclaim deed.

???: I've got three more. I'm trying to decide.

SP: Well go ahead with your three.

???: Are you paying rent on the 446 property?

DC: Not at this time.

???: Have you ever paid rent on the 446 property?

DC: My husband could be. I'm not certain.

???: I'm asking if you ever, if you personally, have you ever paid any rent --

DC: I haven't worked since we've lived in the house, other than the last two months, and my husband was paying a part of the mortgage payment to his father. On my behalf being that I was his wife in a community property state.

???: Since February of 1999, have you ever made a rent payment on that property?

DC: No, I have not.

???: Thank you. I have nothing further.

SP: Okay.

???: I have one last question.

SP: Okay.

???: Are the wages that you're being paid from the business in Nevada being paid in cash or by check?

DC: My husband, or my brother paid me cash.

???: Could I ask -- I promise

DC: um hum, Yes.

RB: Why am I listed as a creditor, Robert Brodney?

DC: I don't why you're listed as a creditor. Possibly because I made an error. It could be an error. Being that I --

AS: For service perhaps.

DC: Could be. Yeah, I'm not certain.

???: He's listed in Schedule F.

SP: Well lets figure that out and whether that's appropriate, okay?

DC: I have an attorney now.

SP: Two questions. Are you claiming that your husband is liable for any of the debts that you've listed in this bankruptcy as the fact that they're community debts as well?

DC: Yes, if, if there is rent that is due on the property, my husband should --

SP: And the credit cards or anything else you've listed as pretty much as unsecured debts. Are these community debts. Meaning, did they arise during the time you that you were married and before you separated?

DC: Some of them.

SP: And do you know if in the divorce you are seeking your husband to compensate you for or to absorb the cost of some of these debts.

DC: I don't know what I'm doing in the divorce

SP: Okay, so you would want to look at that and find out. And are you going to be asking for an increase on the support payments beyond the approximately \$1000 dollars that you receive?

DC: Oh, absolutely.

SP: Do you have a particular figure that you're asking for?

DC: I don't know that, as of yet.

SP: You'll have to inform the trustee's office if you did get an increase, okay?

DC: Yes, I will.

SP: We're going to go ahead and set this for a confirmation hearing. It was a long one, but at least we didn't have to come back for a continued examination. The hearing date as set by the court previously is February 24th in the year 2000 at 9:00.

???: We're keeping the same date?

SP: Yes.

???: 10:00?

SP: At 9:00, February 24th at 9:00. Mr. Smith, any amended or new documents are due at least two weeks before the hearing date. If we don't have them by then, we will ask that the case be dismissed, and you must comply with that. Mrs. Canter, please make sure your counsel meets those deadlines. You must be current on your plan payments. If you're not current, we'll ask that your case be dismissed. I'm not requiring that the debtor attend that hearing, but follow the advice of your

counsel as to whether or not you should attend in any event.
Okay? That's it. February 24th

DC: Let me ask you a question. What do I do regarding restraining
Mr. Canter's --

SP: I can't give you any legal advice, Mr. Smith, or counsel,
divorce counsel can help you.

DC: Thank you.

CERTIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

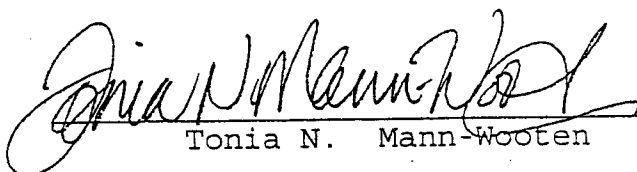
I, Tonia N. Mann-Wooten, do hereby certify:

That the foregoing transcript was recorded on audiocassette by the Office of Chapter 13 Trustee Edwina Dowell on December 10, 1999 and subsequently heard by me on or about the 27th day of December 1999;

That the foregoing transcript was transcribed into typewriting by me and contains a true and correct transcription of what I heard on the audiocassette.

I further certify that I am not related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of December, 1999.


Tonia N. Mann-Wooten

REQUEST FOR JUDICIAL NOTICE -EXHIBIT L--ANSWERS TO
INTERROGATORIES

1 Respondent reserves all rights to refer to, to conduct discovery with reference to, or to offer
2 into evidence at the time of trial, any and all such witnesses, facts and evidence developed during the
3 course of the discovery proceedings, notwithstanding evidence or reference to witnesses, facts and
4 evidence in these responses.

5 In addition, Respondent assumes no obligation to voluntarily supplement or amend these
6 responses to reflect witnesses, facts or evidence discovered following services of these responses.

7 Finally, as some of these responses may have been ascertained by Respondent's attorneys,
8 investigators or agents, Respondent may not have personal knowledge of the information from which
9 these responses were derived.

10 1. Deborah Marie Canter, 446 S. Highland Avenue, Los Angeles, California; Social Security
11 number 548-94-0669. I am not currently employed. same as above. Deborah Maristina Romano from
12 1955-1985. Canter from 1985 to the present.

13 2. Yes. Assets in regards to our house located at 446 South Highland Avenue, Los Angeles,
14 California, which was purchased or I should say closed escrow in September 1991. My husband and
15 myself were looking for a house for approximately two or three years and made several offers before
16 deciding on the one I live in now. My husband told me many times that his father was holding his
17 money for him and had it invested and was giving it to us as a gift because of tax purposes. My
18 father-in-law, Alan Canter, assured me of this. We would make the offers in Gary's or our names and
19 once the offer was accepted it was switched to Alan Canter's name. I believe the real estate agent
20 said it was an assignee. Most of the furnishings in the house were sold to Gary outside of escrow with
21 cash for approximately \$2,800.00 that Gary paid to Charles Bush directly in front of me. Gary
22 constantly told me after we became engaged approximately around April 1984 and up until
23 approximately 1998 that everything he owned and inclusive of his portions of his private not on paper
24 percentage of Canter's Deli that his father held aside for him was to be considered equally mine. He
25 constantly told me and showed me a lot of cash and holdings in Alan Canter's name. Gary kept a
26 weekly dollar take because of this (of Canter's Deli in Fairfax) in his closet. These figures go back
27 to 1984. Regarding debts, my husband always paid all the bills and expenses and told me he would
28 always take care of Jenifer and myself. He was always very generous. We never had to worry about

1 paying for anything. Regarding support, since before we were married Gary told me he would take
2 care of me "beautifully" and he did. For the first four years of our marriage I contributed \$1,000.00
3 a month towards our savings. In approximately 1990, Gary asked me to stay home and stop working
4 so we could start a family. He told me and assured me that he would always support me and any
5 children we had. We never ever had money issues.

6 3. No. None that I am aware of at this moment. I was previously involved in a federal
7 criminal matter, but that proceeding has been completed.

8 4. Jenifer Canter, age 7, daughter, and Jennie Romano, age 64, my mother.

9 5. None.

10 6. My daughter and I have been supported by Gary Canter during the last 12 months. Since
11 the Court order of March 23, 1999, I have received from Gary Canter child support of \$420.00 per
12 month, and spousal support of \$600.00 per month. In addition, pursuant to court order, Gary Canter
13 has paid \$2,500.00 towards my attorney's fees.

14 7. No income other than current spousal support.

15 8. None.

16 9. I do not have access to any documents of taxes or otherwise. Gary took every copy of
17 returns after being completed to his father I was told.

18 10. See attached Schedule of Assets and Debts.

19 11. None known to me at this time.

20 12. No.

21 13. The property at 446 South Highland Avenue and my engagement ring. Gary confiscated
22 my engagement ring approximately one year ago, he said I no longer needed it. I do not know the
23 current values of these items at present.

24 14. None from my employment. I do not know if I have an interest in any retirement or other
25 employment benefits of Gary Canter.

26 15. None known at the present time.

27 16. No.

28 17. 1. Auto mobile insurance; State Farm, see attached.

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2. Health insurance, Blue Cross, see attached.

3. Gary insured me for \$500,000.00 in life insurance. The only information I know is the carrier Transamerica Occidental Life. Gary told me his father is holding the the policies. I do not know if Jenifer is insured. He told me I was the beneficiary his life insurance policy but I have never seen one.

18. Yes. Physically I cannot work because of a neck injury. Also Gary's behavior and abuse has me and my daughter so nervous it is hardly bearable.

19. Yes. Jennifer is in need of psychological counseling as well as dental treatment because of the stress level Gary has caused. I do not yet know the cost or duration.

20. To date I have incurred the amount of \$6,965.00 in attorney's fees plus costs. To date I have paid \$2,500.00 in attorney's fees and costs. \$1,500.00 of the money was a loan from my father who is on social security, and \$1,000.00 from an auto accident settlement in March of 1999. The arrangement with my attorney is \$225.00 per hour plus costs. Gary Canter has paid \$2,500.00 per court order.

21. None.

wp/act/canter/responserog2/9632

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing RESPONDENT'S RESPONSE TO FORM INTERROGATORIES SET NO. ONE and know their contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on ~~April~~ ^{JUNE} 2, 1999, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DEBORAH MARIE CANTER

1 DEBORAH MARIE CANTER
 2 In Pro Per
 3 446 South Highland Avenue
 Los Angeles, California 90036
 Telephone: (323) 965-0090

ENTERED OFFICES
 FEB 22 2001

FILED
 CLERK U.S. DISTRICT COURT
 FEB 20 2001
 UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 BY CENTRAL DISTRICT OF CALIFORNIA

*This Court cannot
 interfere with State Courts
 jurisdiction over
 marital property*

Red

In re:

11 DEBORAH M. CANTER aka D.
 12 MARISTINA CANTER,

Debtor(s).

14 DEBORAH M. CANTER, aka D.
 15 MARISTINA CANTER,

Plaintiff,

v.

18 GARY CANTER, CANTER'S FAIRFAX,
 19 ALAN CANTER, ELIZABETH CANTER,
 20 CANTER FAMILY TRUST, RICHARD
 DIAMOND, TRUSTEE,

Defendants.

DISTRICT COURT CASE NO.
 CV00-01185 R

BANKRUPTCY CASE NO.
 LA99-49126-AA

District Court Adv. No.
 CV-01-00139R ✓

APPLICATION FOR ORDER STAYING
 STATE COURT DETERMINATION OF
 PROPERTY ISSUES; DECLARATION
 OF DEBBIE CANTER IN SUPPORT OF
 APPLICATION; ORDER ~~DEUING~~
Application

Date:
 Time:
 Place: Courtroom 8
 The Honorable Manuel L. Real
 Courtroom 8

APPLICATION FOR ORDER STAYING

STATE COURT DETERMINATION

OF PROPERTY ISSUES

27 Debtor, Deborah Marie Canter, hereby applies for an Order staying the State
 28 Court in Case No.: BD 295236 from determining Debtor's ownership interest in

11

1 Canter's Restaurant and the real estate at 446 South Highland Avenue, Los Angeles,
2 California 90036.

3 This application is based on the attached declaration of Deborah Marie Canter
4 showing that these issues are now pending before the District Court and showing that
5 an essential party, Alan Canter, is not a party to the state court proceeding, but is a
6 party in the above-entitled case.
7

8 DATED: February 20, 2001

Respectfully submitted,

DEBORAH M. CANTER

By: Deborah M. Canter
Deborah M. Canter
In Pro Per

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ORDER

It is hereby ordered that Defendant Gary Canter and Alan Canter are stayed and enjoined from proceeding in state court with any action concerning the ownership of:

1. Canter's Restaurant; or
2. The real property at 446 South Highland Avenue, Los Angeles, California 90036.

MANUEL REAL
United States District Court Judge

PROOF OF SERVICE C.C.P. - §1013a, 2015.5

1
2 STATE OF CALIFORNIA)
3)ss.:
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the
6 age of 18 and not a party to the within action; my business address is 4829 Wilshire
Boulevard, Suite 988, Los Angeles, CA 90010.

7 On February _____, 2001, I served the foregoing document described as EX
8 PARTE APPLICATION FOR ORDER STAYING STATE COURT DETERMINATION
9 OF PROPERTY ISSUES; DECLARATION OF DEBORAH MARIE CANTER IN
SUPPORT OF APPLICATION; ORDER in this action:

- 10 By placing true copies thereof enclosed in sealed envelopes, addressed as
11 stated on the attached mailing list.
12 By placing the original a true copy thereof enclosed in sealed
13 envelopes, addressed as follows:

SEE ATTACHED SERVICE LIST.

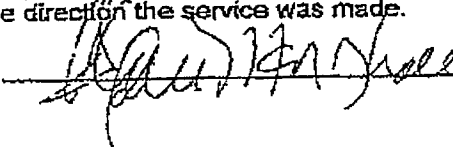
- 14 By Mail
15 I deposited such envelope in the mail at Los Angeles, California. The
16 envelope was mailed with postage thereon fully prepaid.
17 As follows: I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under that practice, it would be
19 deposited with the U.S. Postal Service on that same day with postage thereon
20 fully prepaid at Los Angeles, California, in the ordinary course of business. I
21 am aware that on motion of the party served, service is presumed invalid if the
22 postal cancellation date or postage meter date is more than one day after date
23 of deposit for mailing in affidavit.

24 Executed on February _____, 2001, at Los Angeles, California.

25 (State) I declare under penalty of perjury under the laws of the State of
26 California that the above is true and correct.

27 (Federal) I declare that I am employed in the office of a member of the bar
28 of this court at whose direction the service was made.

29 GLORIA MARSHALL
30 [Type or Print Name]



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SERVICE LIST
In re Deborah M. Canter
District Court Case No. CV 00-01185-R
Adv. No. CV 01-00139R

Deborah M. Canter
 446 S. Highland Ave.
 Los Angeles, CA 90036

Lawrence Diamond, Esq.
 Chapter 7 Trustee
 2029 Century Park East, 3rd Floor
 Los Angeles, CA 90067

Lauren Nemiroff, Esq.
 Blumberg, Canter, Cohen & Nemiroff
 5900 Sepulveda Blvd., Ste. 331
 Van Nuys, CA 91411
VIA FACSIMILE: (818) 901-0372

Herbert Katz, Esq.
 Peter C. Bronson, Esq.
 Kelly Lytton & Vann LLP
 1900 Avenue of the Stars, Ste. 1450
 Los Angeles, CA 90067

Courtesy Copy
 Hon. Manuel L. Real
 United States District Judge

TERMED

**U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:01-cv-00139-R
Internal Use Only**

Canter, et al v. Canter, et al
Assigned to: Judge Manuel L. Real
Demand: \$0

Date Filed: 01/05/2001
Jury Demand: None
Nature of Suit: 290 Real Property: Other
Jurisdiction: Federal Question

Lead Docket: 2:01-cv-00139-R
Case in other court: INTRATRANS, 8:01-cv-00687
USBC C/D CA @ LA, LA99-49126 AA
Cause: 28:1331(a) Fed. Question: Real Property

In re Debtor

Deborah M Canter
aka
D Maristina Canter

V.

Plaintiff

Deborah M Canter
aka
D Maristina Canter

represented by **Deborah M Canter**
446 S Highland Ave
Los Angeles, CA 90036
323-965-0080
PRO SE

V.

Defendant

Gary Canter

represented by **Peter C Bronson**
Kelly Lytton Mintz & Vann
1900 Avenue of the Stars, Ste 1450
Los Angeles, CA 90067
310-277-5333
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Canter's Fairfax

represented by **Peter C Bronson**

Professional Indexes & Files 800-422-9191 www.crlindex.com

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alan Canter

represented by **Peter C Bronson**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Canter

represented by **Peter C Bronson**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Canter Family Trust

represented by **Peter C Bronson**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Diamond, US Trustee

represented by **Richard K Diamond**
 Danning Gill Diamond & Kollitz
 2029 Century Park E, 3rd Fl
 Los Angeles, CA 90067-2904
 310-277-0077
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/05/2001	1	COMPLAINT (Summons(es) issued) (pc) (Entered: 01/09/2001)
01/05/2001	2	CERTIFICATION OF INTERESTED PARTIES filed by plaintiff Deborah M Canter (pc) (Entered: 01/09/2001)
01/17/2001	3	RETURN OF (Original) SUMMONS and proof of service executed upon Office of the U.S. Trustee by substituted svc by delivering S/C to Raven-Secretary on 1/11/01 & by mail on 1/16/01 (see doc for fur details) (ks) (Entered: 01/22/2001)
01/17/2001	4	PROOF OF SERVICE executed upon defendant Richard Diamond by personal svc on 1/11/01 by delivering S/C & by mail on 1/16/01 (see doc for fur details) (ks) (Entered: 01/22/2001)
01/17/2001	5	PROOF OF SERVICE executed upon defendant Gary Canter by personal svc on 1/16/01 by delivering S/C to Alan Canter-Owner <i>Canter's Fairfax and Father; by mail on 1/16/01 (see doc for fur details)</i> (ks) (Entered: 01/22/2001)

01/17/2001	6	PROOF OF SERVICE executed upon defendant Elizabeth Canter by personal svc & by mail on 1/16/01 by delivering S/C & Ntc-dated 1/8/01 (ks) (Entered: 01/22/2001)
01/17/2001	7	PROOF OF SERVICE executed upon defendant Alan Canter by personal svc & by mail on 1/16/01 by delivering S/C & Ntc-dated 1/8/01 (ks) (Entered: 01/22/2001)
01/17/2001	8	PROOF OF SERVICE executed upon Herbert Katz - Peter C Bronson, Kelly, Mintz & Vann, LLP by personal svc on 1/12/01 by delivering S/C to Laura - Secretary & by mail on 1/16/01 (see doc for fur details) (ks) (Entered: 01/22/2001)
01/17/2001	9	PROOF OF SERVICE executed upon Lauren Nemiroff, Esq on 1/12/01 by personal svc by delivering S/C to Laura - Staff member & by mail on 1/16/01 (see doc for fur details) (ks) (Entered: 01/22/2001)
01/23/2001	10	ANSWER filed by defendant Richard - Diamond to complaint [1-1] (ab) (Entered: 01/29/2001)
02/01/2001	13	NOTICE OF MOTION AND MOTION by defendant Alan Canter, defendant Elizabeth Canter, defendant Canter Family Trust, defendant Canter's Fairfax, defendant Gary Canter to dismiss the cmp , or in alt to abstain ; motion hearing set for 10:00 3/5/01 ; memo of PA; decl of Alan Canter and Lauren Nemiroff. (ab) (Entered: 03/23/2001)
02/01/2001	14	REQUEST by defendant Alan Canter, defendant Elizabeth Canter, defendant Canter Family Trust, defendant Canter's Fairfax, defendant Gary Canter for judicial notice re motion to dismiss the cmp [13-1], re motion to abstain [13-2] (ab) (Entered: 03/23/2001)
02/15/2001	15	RESPONSE by defendant Richard - Diamond to to motion to dismiss the cmp [13-1], to motion to abstain [13-2] (ab) (Entered: 03/23/2001)
02/20/2001	<u>11</u>	ORDER by Judge Manuel L. Real tht the appl for ord staying state crt determination of property issues is DENIED, this crt cannot interfer with State Crts jurisdiction over martial property. (ab) (Entered: 02/22/2001)
02/20/2001	16	OPPOSITION by plaintiff Deborah M Canter to motion to dismiss the cmp [13-1], motion to abstain [13-2] (ab) (Entered: 03/23/2001)
02/26/2001	<u>12</u>	MINUTES: dft mot to dismiss or to abstained is continued to 3/12/01 10am by Judge Manuel L. Real CR: n/a (dmjr) (Entered: 02/27/2001)

02/27/2001	17	SUPPLEMENT by defendant Alan Canter, defendant Elizabeth Canter, defendant Canter Family Trust, defendant Canter's Fairfax, defendant Gary Canter re motion to dismiss the cmp [13-1], re motion to abstain [13-2] (ab) (Entered: 03/23/2001)
03/09/2001	18	REQUEST by plaintiff Deborah M Canter for cont; resp to dfts suppl mot disp. (ab) (Entered: 03/23/2001)
03/12/2001	19	MINUTES: resetting hearing on motion to dismiss the cmp [13-1] 10:00 6/11/01, resetting hearing on motion to abstain [13-2] 10:00 6/11/01 by Judge Manuel L. Real CR: Leonore LeBlanc (ab) (Entered: 03/23/2001)
05/23/2001	<u>20</u>	MINUTES: Counsel are notified that on the court's own motion the hearing on the motion to dismiss the cmp [13-1] and the hearing on motion to abstain [13-2], are ordered continued to 10:00 6/18/01 by Judge Manuel L. Real CR: N/A (bp) (Entered: 05/25/2001)
06/18/2001	22	MINUTES by Mag Judge Manuel Real granting motion to dismiss the cmp [13-1] w/10 days Leave to Amd; CR: Leonore LeBlanc (dw) (Entered: 06/26/2001)
06/20/2001	<u>21</u>	ORDER by Judge Manuel L. Real granting motion to dismiss the cmp [13-1], finding the motion to abstain [13-2] moot. dismissing the complaint [1-1] plf has 10 days to amd cmp (ENT 6/22/01) (dmjr) (Entered: 06/22/2001)
07/03/2001	23	RECEIPT OF TRANSCRIPT of proceedings for the following date: 6/18/01 CR: Leonore A. LeBlanc. (PLEASE SEE CV 00-1185 R for the Transcript). (wdc) (Entered: 07/05/2001)
07/18/2001	24	ANSWER filed by defendant Richard - Diamond to complaint [1-1] (dmjr) (Entered: 07/19/2001)
07/19/2001		NOTICE PARTY(S) added: David O Carter, Dep In Chg So Div (rn) (Entered: 07/31/2001)
07/19/2001	<u>25</u>	ORDER TRANSFERRING ACTION Under Section 3.1 of General Order 224 Case reassigned from Judge Manuel L. Real to Judge David O. Carter for all further proceedings. The case number will now reflect the initials of the transferee Judge [SACV 01-687 DOC] (cc: all counsel) (rn) (Entered: 07/31/2001)
07/19/2001		NOTICE PARTY(S) added: David O Carter, Dep In Chg So Div (rn) (Entered: 07/31/2001)
07/19/2001	<u>26</u>	NOTICE RE INTRA-DISTRICT TRANSFER filed. Case reassigned

		to Southern Division by order filed 7/19/01. New case no. SACV 01-687 DOC assigned to Judge David O. Carter for all further proceedings. (Original file transferred.) (cc: all counsel) (rn) (Entered: 07/31/2001)
07/19/2001		Docket Modification (Utility Event) terminating case (MD JS-6) (rn) (Entered: 07/31/2001)



*United States District Court
Central District of California
411 West Fourth Street
Santa Ana, California 92701*

January 24, 2004

*Chambers of
David O. Carter
United States District Judge*

*Telephone
(714) 338-4545*

Honorable Mary M. Schroeder
Chief Judge
United States Court of Appeals
Sandra Day O'Connor U.S. Courthouse, Suite 610
401 W. Washington Street, SPC 54
Phoenix, AZ 85003-2156

Re: Complaint of Judicial Misconduct No. 03-89037 (In re Judge Manuel L. Real)

Dear Judge Schroeder:

Pursuant to Federal Rule of Appellate Procedure 10(e)(2), I am writing to make you and the Judicial Council aware of material that was omitted from the record by error or accident involving a judicial complaint filed by Stephen Yagman, Esq., against Judge Manuel L. Real. (Complaint of Judicial Misconduct No. 03-089037.)

In May 2001, Judge Real spoke to me and said that he wanted another judge of the District Court to review a case that he had withdrawn from the Bankruptcy Court. He asked if I would accept an Intra-District Transfer of the case and "take another look at it." A few weeks to a month later, he reaffirmed my willingness to take the transfer of the case he had mentioned before. At the time, I was aware that Judge Real had maintained a probation calendar for many years in which hundreds of probationers, in addition to their normal meeting with the probation officer, also checked in with Judge Real with the probation officer present. I agreed to the Intra-District Transfer. The "Order Transferring Action Under Section 3.1 of General Order 224" was signed by Judge Real on July 9, 2001 and accepted by my court on July 23, 2001. The transfer order clearly sets forth that "on all documents filed in this case, please substitute the initials DOC after the case number in, so that the case number will read SACV 01-688 DOC. This is very important because documents are routed to the assigned Judge by means of these initials." The Transfer Order also shows that the prior case number, CV 00-1185-R (BK Case # : LA 99-49126-AA), was lined out with the new case number, SACV 01-688 DOC, inserted by the Clerk's Office. (See Attachment 1)

After the case was transferred to this Court, the Defendants filed a motion to re-refer the case to the Bankruptcy Court. On September 14, 2001, in a written opinion, I granted Defendants' motion

to re-refer the case to the Bankruptcy Court. (See Attachment 2)

After the case was referred back to the Bankruptcy Court, proceedings continued despite the filing of a notice of appeal. On January 9, 2002, Bankruptcy Judge Ahart granted the bankruptcy trustee's motion to abandon the estate's interest in the residence at 446 South Highland Avenue, Los Angeles (the house at issue in the appeal). On February 19, 2002, weeks before the hearing on the appeal, Ms. Canter's debts were discharged. The bankruptcy case was closed on April 25, 2002, almost three months before the panel filed its opinion. (See Attachment 3)

In August of 2002, I read the Ninth Circuit published opinion, "In re: Deborah M. Canter from the United States District Court for the Central District of California Manuel L. Real, District Judge, Presiding." (USCA No. 01-56151). The opinion states that the case was argued and submitted March 7, 2002, in Pasadena, before the Ninth Circuit. The attorney for the debtor-appellee was Andrew E. Smyth and the attorney for the creditors-appellants was Herbert Katz, the same attorneys who brought the motion to re-refer the case to the Bankruptcy Judge before me which I had granted on September 14, 2001, eight months before argument in the Ninth Circuit. (See Attachment 4)

I immediately called the Circuit Executive Office to talk to the Circuit executive who was not in and was referred to Cathy Catterson, the chief clerk. I asked her about the appropriate protocol to let the three judge panel know that they had rendered an improper advisory opinion. I had vacated Judge Real's order and had re-referred this case back to the Bankruptcy Court eight months before argument to the Circuit. I was astounded that the Circuit panel was not informed by counsel that the issue before them was moot. Cathy said she would look into the matter.

On October 2, 2002, my court sent out a "Notice of hearing IN COURT HEARING RE: Judgment From the 9th Circuit U.S. Court of Appeal is set on 8:30 10/28/02." This hearing was continued to December 16, 2002 at 8:30 a.m. when counsel appeared. At the hearing, I asked the attorneys why they did not inform the Circuit of the transfer and that the matter before the panel was moot. I do not recall their exact explanation, but I can have my court reporter prepare the transcript of the hearing if it would be useful.

To help follow the chronology of events I have also included the Civil Dockets for this case which clearly sets forth the case numbers, the transfer and all relevant dates. (See Attachments 5a and 5b)

- In CASE NO. CV 00-1185-R, please note the transfer of the case on 7/19/01 with the new case number for SACV 01-688-DOC.
- In CASE NO. SACV 01-688-DOC, please note the transfer of this case on 7/19/01 from case number CV 00-1185-R.

All dockets clearly reflect the transfer of the case from Judge Real to Judge Carter. How the Circuit was not aware that the issue before it was moot and why counsel did not inform the Circuit is perplexing.

I read in an article in the Los Angeles Times, dated January 18, 2004, that Stephen Yagman states "that when he learned about the dispute involving Canter, he filed a misconduct charge against Real, suggesting that the judge's actions stemmed from a relationship with Canter, whom Yagman characterized as an attractive female." I have no memory or record of this attorney ever having appeared in my court on this case.

I hope this information is helpful to you and the Judicial Council.

Sincerely,



David O. Carter
United States District Judge

cc: Judge Alarcon
Judge Kozinski
Judge Thomas
Judge McKeown
Judge W. Fletcher
Judge Patel
Judge Huff
Judge Coughenour
Judge Hatter
Judge Shanstrom
Chief Judge Marshall
Judge Real
Robin Donoghue

EXHIBIT 23



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
7th at Mission Street
P.O.Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

November 4, 2004

(415) 556-9800

Stephen Yagman, Esq.
YAGMAN & YAGMAN &
REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

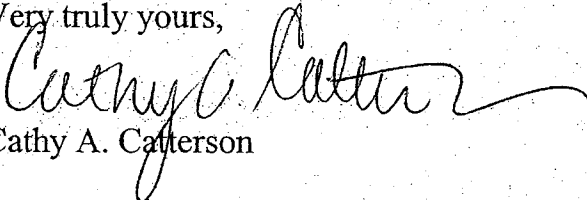
Re: Complaint of Judicial Misconduct 03-89037

Dear Mr. Yagman:

Chief Judge Schroeder has issued a supplemental order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge dismissing a complaint may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 352 (c) (10); Misconduct Rule 5 and 6(a).

Very truly yours,


Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Donald C. Smaltz, Esq.
Circuit Executive's Office

FILED

NOV - 4 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

In re Charge of)
)
)
Judicial Misconduct)
)
)
_____)

No. 03-89037
SUPPLEMENTAL
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

In February 2003 complainant, an attorney who was not a party and did not represent a party in the relevant litigation, submitted a misconduct complaint alleging that the judge in question had acted for inappropriate personal reasons in placing an attractive female criminal defendant on probation "to himself, personally," and that the judge's actions in withdrawing that defendant's bankruptcy matter from the bankruptcy court and staying enforcement of a state unlawful detainer judgment against her further supported complainant's allegation of improper conduct.

Before entering an Order, the Chief Judge conducted an inquiry into the charges, and specifically the allegation that there was an inappropriate personal relationship between the judge and the defendant/debtor. In the course of that inquiry, the Probation Office confirmed that all meetings that took place between the judge and the defendant were regularly scheduled, were documented in Probation Office files, and included a probation officer in attendance at all times. The Probation Office and the Clerk's Office further confirmed that the defendant was the subject of a formal probation/commitment order, and that it was the custom of the judge to hold periodic status meetings with probationers and their probation officers.

In a Dismissal Order and Memorandum filed on July 14, 2003, the Chief Judge noted that the Court of Appeals had already reviewed the case in which withdrawal of bankruptcy jurisdiction had occurred; the court had held that the withdrawal had been improper, and had remanded the case to Bankruptcy Court. This complaint was therefore related to the merits of a prior appeal. The Chief Judge observed that misconduct complaints relating to the merits of a judicial decision are not cognizable under the misconduct statute and the circuit's rules, and that such merits determinations are reserved for appellate review. In this instance appellate review had already occurred. The Chief Judge further stated that her inquiry had not substantiated the

conclusory charges of any inappropriate personal relationship between the judge and the defendant/debtor. Accordingly, in the July 14, 2003 Order, the Chief Judge dismissed the complaint in its entirety, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and Misconduct Rules 4(c)(1) and (c)(3).

Complainant petitioned for review by the Judicial Council. The Judicial Council then apparently made some further inquiry. By a divided vote, on December 18, 2003, the Judicial Council issued an Order vacating the Chief Judge's Dismissal Order and remanding the matter to the Chief Judge for further proceedings consistent with its Order. The council's Order stated that "In response to an inquiry from our council, the debtor's bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor 'a day or two before . . . [the district judge] withdrew the [bankruptcy] reference,' and the next time they saw each other, the debtor told her 'the letter had worked.'" The Judicial Council noted that this information was based on hearsay, but asked that it be investigated further. The Order expressed concern that the district judge might have exercised judicial power based on "secret communications," and a further concern that he assigned the case to himself for the express purpose of granting the debtor

relief in a matter unrelated to the criminal case assigned to him.

The Judicial Council focused on the ex parte nature of communications between the judge and the defendant/debtor and viewed the new information about a letter to be more serious than either the information considered by the panel that heard the prior appeal or the communications previously considered by the Chief Judge. Therefore, the Judicial Council remanded the misconduct complaint for further inquiry by the Chief Judge.

Accordingly, the Chief Judge directed that a further inquiry be conducted. That inquiry has now been concluded. In connection therewith additional information, including sworn declarations and other documentary evidence, was obtained.

The council's inquiry had included hearsay information from the debtor's former attorney and his secretary/wife concerning a letter prepared by the debtor and personally delivered by her to the judge. In the course of the Chief Judge's subsequent inquiry, the debtor and the judge, each of whom would have first-hand knowledge of such delivery, firmly denied that any such letter was written or delivered. No such document was found in the court's records, and both the debtor and the judge also firmly denied that any meetings or communications outside of the scheduled status meetings with a probation officer in attendance took place. The debtor further denied, under penalty of perjury,

that she had any conversation with her former attorney's secretary/wife in which the debtor stated either that she had delivered a letter to the judge or that "the letter had worked." Because the district judge, his staff, and the debtor all certified that the "letter" and "visit" mentioned in the hearsay account previously reported to the Judicial Council did not exist or happen, there is no basis for a finding that credible evidence exists of a letter or other "secret communication" having passed between the defendant/debtor and the district judge. There is similarly no basis for finding that there was any private meeting or discussion between them at any time.

Furthermore, with respect to the withdrawal of bankruptcy jurisdiction itself, two material points have been considered that were not addressed before the Judicial Council. The first relates to the district judge's reason for withdrawal of the bankruptcy reference. In a supplemental statement the district judge wrote that he had been made aware that the defendant/debtor's pre-sentence report had been unlawfully filed and/or referred to in Bankruptcy Court and in state court proceedings. In response to the Chief Judge's inquiry, he stated that he withdrew the bankruptcy reference in light of that knowledge. Withdrawal for the purpose of preventing further violations of confidentiality and conducting contempt proceedings constitutes, at the least, an "arguably legitimate basis" for such

action.

Second, the district judge himself recognized the questionable nature of his intervention in the bankruptcy case and, pursuant to the court's internal procedures, asked another district judge to review the record. Following the voluntary transfer of the bankruptcy case to a disinterested judge in his district for independent review, that judge granted a motion to return the case to bankruptcy court. This transfer occurred several months before the matter was argued in the Court of Appeals. For reasons that are not clear, the appellate panel apparently was unaware that at the time of oral argument on the propriety of withdrawal of the bankruptcy reference, the case had long since been returned to Bankruptcy Court and closed by the assigned bankruptcy judge.

Having considered all of the evidence in this matter, it is apparent that complainant's factual allegations of an inappropriate personal relationship, and the Judicial Council's subsequent concern about secret communications having occurred between the district judge and the defendant/debtor, are not reasonably in dispute within the meaning of 28 U.S.C. § 352(a). Furthermore, the unlawful filing of and references to a confidential pre-sentence report in defendant/debtor's bankruptcy proceedings constituted a legitimate basis for the district judge's initial assumption of jurisdiction in the bankruptcy case,

sufficient to preclude a finding of judicial misconduct.

Accordingly, for the reasons expressed herein, the complaint is dismissed.

COMPLAINT DISMISSED.

William M. Schweder
Chief Judge

EXHIBIT 24

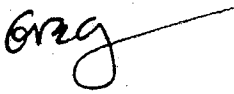
OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

GREGORY B. WALTERS, CIRCUIT EXECUTIVE
PHONE: (415) 556-2000
FAX: (415) 556-6179

TO: Members of the Ninth Circuit Judicial Council:
Circuit Judges Alarcon, Kozinski, Kleinfeld, Wardlaw and W. Fletcher,
District Judges Ezra, Huff, Levi, Strand and Winmill

FROM: Gregory B. Walters, *Circuit Executive* 

DATE: November 19, 2004

RE: Petition for Review of Complaint of Judicial Misconduct
No. 03-89037

NOV 23 2004

Pursuant to Chapter III of the Rules of the Judicial Council Governing
Complaints of Judicial Misconduct or Disability, enclosed is a petition for review of Chief
Judge Schroeder's order of dismissal in the above complaint.

A copy of the file in this matter is also enclosed. Please return your completed
ballot by December 13, 2004. You may keep the file materials in your office or destroy them.

GBW/gb

Encls.

cc: Complainant

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real ✓
Donald C. Smaltz, Esq.
Circuit Executive's Office

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN
723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

Cathy A. Catterson, Clerk
U.S. Court of Appeals for
the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

FILED
NOV 19 2004
CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

PETITION FOR REVIEW OF DISPOSITION BY CHIEF JUDGE

Re: Complaint against Judge Manuel L. Real, 03-89037

Dear Ms. Catterson:

I hereby petition the judicial council for review of the chief judge's November 4, 2004 order dismissing the complaint in this matter.

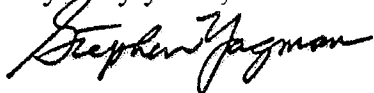
The grounds for this petition, briefly stated, are as follows: the order is inconsistent with the prior order of the judicial council; the order seems confused in that it states that "[t]he Judicial Council then *apparently* made some further inquiry." (emphasis added) -- this appears to be confused because of the italicized word when, in fact, the judicial council *did* make further inquiry; a stark conflict in testimony from various witnesses, some interviewed by the judicial council and some interviewed by the chief judge, inappropriately was resolved without adequate testing of credibility and in an arbitrary, capricious, and result-oriented manner, with the chief judge simply choosing to believe those witnesses whose information would support the result of dismissal of the complaint, and without observation of the demeanor of those witnesses; there is significant reliance on the testimony of the debtor who, as a convicted felon, should have her testimony fully tested by cross-examination; oddly, there is no mention of further testimony from or recantation of prior material testimony from the secretary/wife of the bankruptcy attorney, though it seems to be directly in conflict with the new testimony upon which the chief judge relied; though it is recited that "[n]o such document [the letter in issue] was found in the court's *records*," (emphasis added), it is unclear whether, or not, such a letter actually was written or if it may reside in some place that is not described by "the court's records;" credible evidence does exist to support the complaint;

there is no information as to how, when, and from whom "the district judge [indicated] he was made aware that the defendant/debtor's pre-sentence report had been unlawfully filed and/or referred to in Bankruptcy Court and in state court proceedings[,]" and this information would appear to be material to the inquiry; there was no "arguably legitimate basis" for withdrawal of the bankruptcy reference; there is evidence, for the first time, that "the district judge . . . recognized the questionable nature of his intervention in the bankruptcy case," and this recognition bears upon both the credibility of the judge, who apparently did not previously disclose this information to the judicial counsel, and his state of mind, which is relevant to the inquiry; there is no identification of or testimony from the "[o]ther district judge [who allegedly] review[ed] the record;" Judge Real apparently impeded the investigation of the judicial council by not providing to it during its inquiry, and perhaps concealing from it, facts he presented to the chief judge, including, but not limited to, the matters of the questionable nature of his own conduct, his prior knowledge of its questionable nature; the reference to the other, unnamed district judge, the transfer back to the bankruptcy court of the bankruptcy matter (about which none of the parties to that matter or the panel of this court who heard the appeal seem to have been notified); it is stated in the order that "[f]or reasons that are not clear, the appellate panel apparently was unaware that at the time of oral argument on the propriety of withdrawal of the bankruptcy reference, the case had long since been returned to Bankruptcy Court and closed by the assigned bankruptcy judge[,]" and this statement raises serious issues concerning the way in which the transfer occurred, why it was not set forth in the court's docket, and whether, or not, it actually happened, and why, when this allegedly occurred, Judge Real did not notify this court it had happened, knowing the case was up on appeal on this precise issue, and why, after the panel of this court rendered its disposition, Judge Real did not speak up on this matter; it was not a "legitimate basis for the district judge's initial assumption of jurisdiction in the bankruptcy case, sufficient to preclude a finding of judicial misconduct" that there might have been "the unlawful filing of and reference to a confidential pre-sentence report" because that is a matter that fully was within the jurisdiction of the bankruptcy judge, who surely could have addressed it -- there was no necessity at all for Judge Real to withdraw the reference in order for him to address this matter; the matters on which there is dispute remain in dispute and they should be resolved by a fact-finder who will hear all

testimony and, at minimum, be able to cross-examine witnesses and observe their demeanors.

Based on the foregoing, a reasonable person could conclude that there may have been a results-oriented predisposition on the part of the chief judge to re-instate her prior order of dismissal and, if such is the case, this also is a basis for further review by the judicial council.

Very truly yours,

A handwritten signature in cursive script that reads "Stephen Yagman". The signature is written in black ink and is positioned above the printed name.

STEPHEN YAGMAN

EXHIBIT 25



JUDICIAL COUNCIL OF THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

TEL. 415-556-2000
FAX. 415-556-6179

May 18, 2005

CONFIDENTIAL

The Honorable Manuel L. Real
United States District Judge
312 North Spring Street
Los Angeles, California 90012

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Judge Real:

As you know, a complaint of judicial misconduct has been lodged against you. Chief Judge Schroeder dismissed the complaint, but complainant has appealed to the Judicial Council pursuant to Circuit Misconduct Rule 5. Because Chief Judge Schroeder is recused from reviewing her own decision, I am the senior member of the Judicial Council and am writing to you in that capacity.

Complainant alleged that you acted for inappropriate personal reasons in supervising the probation of Deborah M. Canter. The Council believes, as the Chief Judge did, that this allegation is entirely unfounded.

Complainant also alleged that you acted inappropriately in withdrawing the reference in Canter's bankruptcy proceeding, Bankruptcy of Deborah M. Canter, Bankruptcy No. 99-49126. The Council had previously expressed concern that you may have received an improper ex parte letter from Canter, and that the withdrawal of the reference may have been based on information contained in the alleged letter. While we cannot be certain whether such a letter was in fact transmitted or received, we assume it was not.

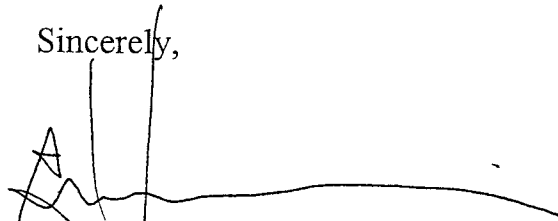
The Honorable Manuel L. Real
May 18, 2005
Page Two

Nevertheless, it appears clear from the undisputed facts in the record that you learned about Canter's bankruptcy proceeding in the course of your supervision of her probation, and that you withdrew the reference based on that information. It likewise appears clear that you then ordered reinstatement of the automatic bankruptcy stay in the withdrawn case, No. CV 00-1185-R, thereby precluding the Canter Family Trust from proceeding with its unlawful detainer action against Canter—even though the bankruptcy court had lifted the automatic stay to allow that litigation to proceed. Moreover, you took these actions without providing notice to the Canter Family Trust, without allowing it the opportunity to respond and without offering a reasoned basis for your decision.

The Council need not address whether your actions amount to judicial misconduct if it concludes that sufficient corrective action has been taken and that the conduct will not be repeated. We believe that, in this case, the most appropriate corrective action would be for you to acknowledge your improper conduct, apologize for it and pledge not to repeat it. You may send a letter to that effect to our Circuit Executive, Greg Walters, at the following address: Office of the Circuit Executive, Post Office Box 193939, San Francisco, California 95119-3939. Upon receipt of a satisfactory letter as described above, the Council will conclude that no further action is necessary.

The Council intends to resume its discussion of the misconduct complaint 30 days from the date of this letter. We hope to hear from you before then.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Kozinski', with a long horizontal flourish extending to the right.

Alex Kozinski
Circuit Judge

AK:spm

cc: Judicial Council
Greg Walters

EXHIBIT 26

June 17, 2005

The Honorable Alex Kozinski
Circuit Judge
Judicial Council for the Ninth Circuit
95 Seventh Street
P. O. Box 193939
San Francisco, CA 94119-3939

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Judge Kozinski and Members of the Judicial Council:

I. INTRODUCTION

On behalf of Respondent, the Honorable Manuel L. Real, we respond to the May 18, 2005 letter from the Honorable Alex Kozinski, who was writing as the "senior member of the Judicial Council." That letter is attached as Exhibit 1.

The letter begins by setting forth two determinative conclusions in this proceeding. First, the letter rejects the allegation that Respondent acted for personal reasons in this matter, deeming that allegation "entirely unfounded." Exh. 1, p. 1. Second, the letter addresses the allegation that the Respondent received and acted upon an improper *ex parte* letter, stating that the Council "assume[s] it was not" transmitted. *Id.*

Nonetheless, Judge Kozinski's letter goes on to state certain other facts which "appear[] clear" concerning Respondent's actions in the underlying bankruptcy matter. It then declares that the Council "need not address whether your actions amount to judicial misconduct if it concludes that sufficient corrective action has been taken and that the conduct will not be repeated." It states that "the most appropriate corrective action would be for you to acknowledge your improper conduct, apologize for it, and pledge not to repeat it." Exh. 1, p. 2. The letter concludes that "[u]pon receipt of a satisfactory letter as described above, the Council will conclude that no further action is necessary." *Id.* It asks for a reply within 30 days.

With all respect to the Council, the latter paragraph of the letter is puzzling and, we submit, unfounded. The Council has rejected the core allegation of the complaint: that Respondent acted for inappropriate personal reasons. It has also disposed of the issue raised in the Council's previous Order, viz. whether Respondent "withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information he obtained *ex parte* from an individual who benefitted directly from that order." Judicial Council Order, Dec. 18, 2003, Exh. 4, pp. 4-5.

As set forth more fully below, we submit that, in light of the Council's conclusions on these two issues, the petition for review should be denied, and for the reasons we set forth, the Council's request for an apology should be withdrawn. Initially, though, as an aid to understanding the significance of the prior proceedings in this matter, we briefly summarize those proceedings.

II. PROCEDURAL HISTORY

A. The Initial Complaint

The complainant, Steven Yagman, directed the initial complaint in this matter to Chief Judge Schroeder with a copy sent directly to Judge Kozinski. See Exh. 2, attached. The letter alleges judicial misconduct in a bankruptcy proceeding in which complainant was neither a party nor counsel for a party. The last two paragraphs make clear the nature of the alleged misconduct:

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Exhibit 2, p. 3, emphasis added.

Chief Judge Schroeder, after consideration and review, dismissed the complaint in a written opinion. Mr. Yagman thereupon appealed to the Judicial Council, declaring that his complaint “appears, so far, to have been whitewashed,” and thoroughly castigated the Chief Judge’s actions. Exh. 3, p. 1. He reiterated that the ground for the complaint was alleged misconduct in Respondent’s relationship with the debtor. He even went so far as to accuse Respondent of perhaps acting to favor the debtor in “exchange for something . . . of value”:

[T]here is a serious question as to *whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress* and did some special favors for her, perhaps in exchange for something that someone might consider to be of value. . . .

Id. at p. 1. (emphasis added)

Accordingly, at this point in time, the former Chief Judge of the Central District of California stood accused of highly improper and extremely salacious conduct. The complaint was submitted by a lawyer who had not participated in the bankruptcy case, who admitted he based the complaint only on “a little district court docket research” (Exh. 2, p. 1), and who bore a well-known, longstanding antipathy toward Respondent.

B. The Judicial Council’s Opinion

Thereafter, by a 6-4 vote, the Judicial Council issued an Order, dated Dec. 18, 2003; that reversed the Chief Judge. See Exh. 4. The Council acted after undertaking what the Order termed “an inquiry” into the facts. Respondent received no notice of that inquiry and heard of its result only when the Council issued its Order. Based on this inquiry, the Order cited rank hearsay from the debtor’s bankruptcy attorney to the effect that the debtor had sent an *ex parte*

letter to the Respondent Judge. Exh. 4, p. 3. The Order found that this evidence suggested the following conclusion:

The district judge withdrew the reference in a bankruptcy case that was not previously assigned to him, and entered an order in that case based upon information he obtained *ex parte* from an individual who benefitted directly from that order.

Id. at pp. 4-5. Then, based on this “evidence”, the Order flatly concluded: “The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction.” *Id.* at p. 5.

The Council’s Order remanded to the Chief Judge “for further proceedings consistent with our order.” *Id.* at p. 6.

C. The Chief Judge’s Opinion on Remand

On remand, the Chief Judge conducted further proceedings as ordered by the Judicial Council. Respondent submitted a brief with supporting exhibits. (We have not attached these documents because of their length). Based on that inquiry, the Chief Judge entered an order dismissing the case. (Exh. 5)

The Chief Judge’s Order dealt specifically with the issue, raised by the Council’s inquiry, about an alleged *ex parte* letter from the debtor to the judge. Her opinion found that “the debtor and the judge, each of whom would have first-hand knowledge of such delivery, firmly denied that any such letter was written or delivered.” Exh. 5, p. 4. She also cited other new evidence rebutting the hearsay evidence cited in the Council’s Order. See Exh. 5, pp. 4-5.

Finally, Chief Judge Schroeder noted Respondent’s statement that he had withdrawn the referral of the bankruptcy case only after being made aware of the unlawful filing in that case of the debtor’s presentence report in a criminal matter. The Chief Judge concluded that “[w]ithdrawal for the purpose of preventing further violations of confidentiality and conducting contempt proceedings constitutes, at the least, an ‘arguably legitimate basis’ for such action.” *Id.* pp. 5-6. She dismissed the complaint.

Mr. Yagman again appealed. In response to that appeal, Respondent received Judge Kozinski's letter suggesting the proceedings would be terminated if Respondent apologizes for "improper conduct."

III. THE STATUS OF THE ALLEGATIONS OF MISCONDUCT

The Council, as did the Chief Judge, has now found that Complainant's allegations have no basis in fact. Given the Council's conclusions and the state of the record in this proceeding, it is our view that there is no factual basis for any apology from Respondent. Moreover, Respondent did not commit the acts alleged by the Complainant and cannot apologize for something he did not do.

A. The Council's Rejection of Complainant's Allegation of Misconduct

As discussed *supra*, the complainant alleged that the Respondent Judge acted "inappropriately to benefit an attractive female," the debtor. Exh. 2, p. 3. The complainant explicitly requested an investigation into that issue. *Id.*

However, the Council has now expressly found that, based on the evidence in the case, this allegation is meritless. The letter from Judge Kozinski so declares:

Complainant alleged that you acted for inappropriate personal reasons in supervising the probation of Deborah M. Canter. The Council believes, as the Chief Judge did, that this allegation is entirely unfounded.

Exh. 1, p. 1.

By any logic, this finding must end the proceeding. The allegation of improper conduct in the complaint initiating the proceeding, as reiterated in the original appeal to the Judicial Council, has been rejected.

B. The Issue Raised By the Council of an *Ex Parte* Letter

The complaint initiating this proceeding **never** alleged that Respondent acted on the basis of an *ex parte* letter from the debtor, Ms. Canter. See Exh. 2.

It was the Council's own inquiry, undertaken after Mr. Yagman appealed to the Council, that raised this issue.

We pass over, for the present, whether an inquiry of this type and under these circumstances was permissible under the Council's rules. We also pass over whether basing an opinion, as the Council did, on the hearsay results of its own inquiry, without notice to Respondent, was in accord with the Council's rules. The important point is that the letter from Judge Kozinski states that the Council "assumes" such a letter from the debtor was not transmitted or received. Exh. 1, p. 1.

With all respect to the Council, while that "assumption" is undoubtedly correct, it greatly understates both the quality and quantity of the evidence before the Council that supports this conclusion. Most importantly, as the Chief Judge's Order plainly states, the debtor denies under oath that she wrote such a letter. Furthermore, Respondent produced evidence that neither he nor his office ever received such a letter. Finally, in response to our request, we received no additional evidence from the Council that would bear on this issue.

Based on this evidence, the issue raised in the Council's earlier Order—whether Respondent received and acted upon the basis of an *ex parte* letter—has been resolved. Aside from the fact that this allegation was not in the original complaint, the Council's "assumption" that no letter was sent or received means that the allegation cannot form the basis for a conclusion of misconduct by Respondent.

C. Respondent's Actions in the Bankruptcy Matter

The letter from Judge Kozinski (Exh. 1) does not suggest an apology based on either complainant's allegation of an "inappropriate relationship" or the alleged *ex parte* communication. Instead, it suggests an apology based on a *new and different* allegation that does not appear in the complaint:

Nevertheless, it appears clear from the undisputed facts in the record that you learned about Canter's bankruptcy proceeding in the course of your supervision of her probation, and that you withdrew the reference based on that information. It likewise appears clear that you then ordered reinstatement of the

The Honorable Alex Kozinski

June 17, 2005

Page 7

automatic bankruptcy stay in the withdrawn case, No. CV00-11-1185-R, thereby precluding the Canter Family Trust from proceeding with its unlawful detainer action against Canter—even though the bankruptcy court had lifted the automatic stay to allow that litigation to proceed. Moreover, you took these actions without providing notice to the Canter Family Trust, without allowing it the opportunity to respond and without offering a reasoned basis for your decision.

Exh. 1, p. 2. In other words, Judge Kozinski's letter asks Respondent to apologize for his judicial decisions related to withdrawing the bankruptcy referral.

Of course, this was not the misconduct charged by complainant, and there are significant facts relevant to Respondent's action that are not mentioned in this paragraph. But there is a broader point that the Council should consider. Under the Council's rules, this specific allegation can provide no basis for further misconduct proceedings.

The charge alleges only legal error. A presentence report in a criminal case, confidential under the rules of the Central District of California because of the highly personal information it contains, had been illegally filed not only in the bankruptcy proceeding but also in a state court case. The letter from Judge Kozinski posits that Respondent, after receiving information about this violation of the Court's rules, erred in concluding that he had the authority to (1) withdraw the reference to the bankruptcy court and (2) reinstate the stay until he could rule on the violation of the local rules.

However, if Respondent were wrong in so concluding, that error was correctible by appeal. Legal errors of this type are outside the scope of a finding of misconduct. See Commentary on Judicial Misconduct Rule No. 4 ("Absent other evidence of a problem, the 'wrongness' of a judicial determination is not grounds for misconduct proceedings.")

Indeed, the Circuit has already decided an appeal and issued an opinion finding that Judge Real committed legal error. See In re Canter, 299 F.3d 1150 (9th Cir. 2002). Even then, however, the finding of legal error was made on an appeal that was moot when the opinion was handed down. As the Hon. David

O. Carter explained in a letter to the Chief Judge dated January 24, 2004 (attached as Exh. 6), Respondent had previously transferred the case to Judge Carter, and the case had ultimately been returned to the bankruptcy court. By the time this Circuit rendered its opinion, the issues before the Court were moot.

The Council has rejected both the original charge of misconduct involving a salacious relationship and the later charge of misconduct involving the alleged *ex parte* letter. Given these two findings, the only possible outcome is dismissal of the proceeding.

IV. THE FAIRNESS OF THE SUGGESTION OF AN APOLOGY

Finally, we want to make an additional point about the fairness of requiring an apology as a means of ending this proceeding.

Judge Kozinski's letter asks the Respondent to admit and apologize for what the letter terms "improper conduct" rather than "judicial misconduct." It states:

The Council need not address whether [Respondent's] actions amount to judicial misconduct if it concludes that sufficient corrective action has been taken and that the conduct will not be repeated. We believe that, in this case, the most appropriate corrective action would be for you to acknowledge your improper conduct, apologize for it and pledge not to repeat it.

Exh. 1, p. 2.

Unquestionably, if Respondent were to write such a letter as an expedient way of ending this proceeding, that letter would be read as an admission of judicial misconduct, not just of "improper conduct." The reason is simple: apologies have been used as a remedy for *found* judicial misconduct. See In re Charges of Judicial Misconduct, 404 F.3d 688, 697 (Jud. Council 2d Cir. 2005) (Judicial Council considered Judge's letter of apology as part of the sanction and appropriate corrective action imposed for a found violation).

Furthermore, there is every likelihood such an apology would be immediately leaked to the press and portrayed as an admission of judicial misconduct. This was precisely what occurred after the Council issued its first Order in this matter.

As discussed above, the Council's own inquiry led it to conclude that "[t]he judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction." Exh. 4, p. 5. It cited hearsay as support for its conclusion and directed the Chief Judge to investigate. The Chief Judge then did so and her investigation conclusively rejected this allegation.

In the meantime, however, someone had leaked that order of the Council to the press. One-sided stories damaging to Respondent's reputation appeared both in the Los Angeles Times and the Los Angeles Daily Journal. The complainant, Mr. Yagman, was quoted in those stories (e.g., "'Real violated the most important ethic of a judge,' Yagman said in a recent interview, adding that the judge had acted 'according to his own good pleasure,' rather than 'according to the laws.'" See Henry Weinstein, "Judge May Face Sanctions; Federal Jurist Improperly Took Over Bankruptcy Case," L.A. Times, Jan. 18, 2004, B1.)¹ Judge Kozinski was also quoted in the Daily Journal article: "Defending the vote, Alex Kozinski said that 'many actions by the chief justice are appealed,' and that this case was not unusual in that regard. Kozinski declined to comment further, saying, 'The ruling speaks for itself.'" See L.A. Daily Journal, "Council Orders New Probe of Jurist's Actions," Jan. 20, 2004.

Respondent, as mandated by Judicial Council Rules 16(a) (all matters relating to this proceeding are confidential) and 17(a) (opinions are to be released "when final action on the complaint has been taken and is no longer subject to review") remained silent at all times. He did so even though he well knew that the allegations and innuendos in these articles were untrue and unfounded.

¹ Since this Court's initial Order reversing the Chief Judge, Mr. Yagman has filed yet another complaint of misconduct against Respondent in an entirely unrelated case. Complaint No. 04-89030, filed Mar. 19, 2004. As in the present case, Mr. Yagman again is neither a party nor counsel for a party in that litigation.

Respondent has been an active federal judge since 1966. His morality and personal integrity, and his reputation for morality and personal integrity, have been above reproach throughout this forty year period until these scandalous and scurrilous allegations by complainant. Because of the illegal leak of this Court's Order, and the resulting publicity, Respondent has already suffered significant and needless injury to his reputation, person, and family. Under these circumstances, where any action by Respondent will be misconstrued as an admission of the conduct alleged by complainant, we submit that requiring an apology is neither warranted nor fair.

Finally, Respondent has asked that we convey to you that he has carefully reflected upon the underlying events surrounding this proceeding. Upon reflection, he recognizes that if he had articulated his reasons for withdrawing the reference and re-imposing the stay, and his underlying concerns that led to those actions, misunderstandings by the parties could have been prevented. As would any dedicated jurist, he believes those types of misunderstandings should be avoided wherever possible, and he recognizes that it was unfortunate they occurred in this situation. He does not believe that any similar situation will occur in the future.

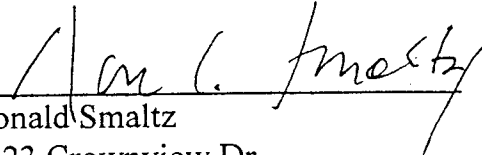
V. CONCLUSION

In sum, we request that, when the Council resumes its discussion of this matter, it reconsider whether any further action is appropriate in light of both the Council's findings set forth in the letter from Judge Kozinski, as well as this response. We submit that the Council should deny the petition for review of this matter and end this proceeding.

The Honorable Alex Kozinski
June 17, 2005
Page 11

We remain available to appear before the Council on this matter for oral argument to help resolve these issues. We also will be pleased to brief any of the legal issues raised in this letter, if briefing would aid the Council in its deliberations.

Respectfully submitted,



Donald Smaltz
3323 Crownview Dr.
Rancho Palos Verdes, CA 90275
(310) 514-3444
Cal. State Bar No. 37312

Daniel P. Selmi
c/o 919 S. Albany St.
Los Angeles, CA 90015
(213) 736-1098
Cal. State Bar No. 67481

cc: Judicial Council



JUDICIAL COUNCIL OF THE NINTH CIRCUIT

95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

TEL. 415-556-2000
FAX. 415-556-6179

May 18, 2005

CONFIDENTIAL

The Honorable Manuel L. Real
United States District Judge
312 North Spring Street
Los Angeles, California 90012

Re: Complaint of Judicial Misconduct No. 03-89037

Dear Judge Real:

As you know, a complaint of judicial misconduct has been lodged against you. Chief Judge Schroeder dismissed the complaint, but complainant has appealed to the Judicial Council pursuant to Circuit Misconduct Rule 5. Because Chief Judge Schroeder is recused from reviewing her own decision, I am the senior member of the Judicial Council and am writing to you in that capacity.

Complainant alleged that you acted for inappropriate personal reasons in supervising the probation of Deborah M. Canter. The Council believes, as the Chief Judge did, that this allegation is entirely unfounded.

Complainant also alleged that you acted inappropriately in withdrawing the reference in Canter's bankruptcy proceeding, Bankruptcy of Deborah M. Canter, Bankruptcy No. 99-49126. The Council had previously expressed concern that you may have received an improper ex parte letter from Canter, and that the withdrawal of the reference may have been based on information contained in the alleged letter. While we cannot be certain whether such a letter was in fact transmitted or received, we assume it was not.

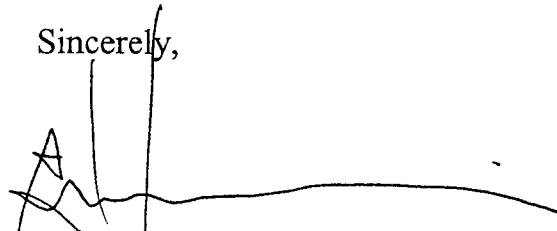
The Honorable Manuel L. Real
May 18, 2005
Page Two

Nevertheless, it appears clear from the undisputed facts in the record that you learned about Canter's bankruptcy proceeding in the course of your supervision of her probation, and that you withdrew the reference based on that information. It likewise appears clear that you then ordered reinstatement of the automatic bankruptcy stay in the withdrawn case, No. CV 00-1185-R, thereby precluding the Canter Family Trust from proceeding with its unlawful detainer action against Canter—even though the bankruptcy court had lifted the automatic stay to allow that litigation to proceed. Moreover, you took these actions without providing notice to the Canter Family Trust, without allowing it the opportunity to respond and without offering a reasoned basis for your decision.

The Council need not address whether your actions amount to judicial misconduct if it concludes that sufficient corrective action has been taken and that the conduct will not be repeated. We believe that, in this case, the most appropriate corrective action would be for you to acknowledge your improper conduct, apologize for it and pledge not to repeat it. You may send a letter to that effect to our Circuit Executive, Greg Walters, at the following address: Office of the Circuit Executive, Post Office Box 193939, San Francisco, California 95119-3939. Upon receipt of a satisfactory letter as described above, the Council will conclude that no further action is necessary.

The Council intends to resume its discussion of the misconduct complaint 30 days from the date of this letter. We hope to hear from you before then.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Kozinski', with a long horizontal flourish extending to the right.

Alex Kozinski
Circuit Judge

AK:spm

cc: Judicial Council
Greg Walters

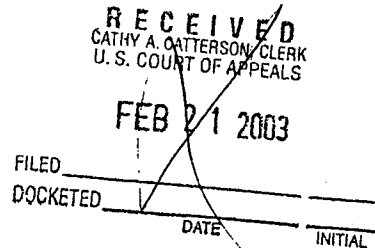
LAW OFFICES
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(310) 452-3200

STEPHEN YAGMAN

February 7, 2003

Honorable Mary M. Schroeder
Chief Judge
230 North First Avenue
Phoenix, AZ 85025



Re: Complaint against U.S. Dist. Judge Manuel L. Real

Dear Judge Schroeder:

This letter is written to make a complaint against the above-named Judge pursuant to 28 U.S.C. § 372(c), based on the following.

In re Deborah M. Canter: Canter v. Canter, 2002 DJDAR 9407 (9th Cir. August 15, 2002), the owners of Los Angeles' Canter's Delicatessen were stuck for two years, to the tune of \$35,000 they never will be able to recoup, until the Ninth Circuit wrested the case away from U.S. Dist. Judge Manuel L. Real, who had hijacked the case from the U.S. Bankruptcy Court in Los Angeles.

Elizabeth and Alan Canter, the owners of Canter's Deli bought a house as an investment in 1991, and rented it out to their son, Gary Canter, who, from 1991 to 1999, lived there with his wife, comely Deborah M. Canter, aka D. Maristina Canter, until their separation. Gary Canter always paid rent to his parents on the house.

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. *He put her on probation*, not to the United States Probation Dept., but rather *to himself, personally*. The Ninth Circuit disposition omits fact from its opinion probably because this fact was not in the record of this case, but my curiosity in the opinion that led to a little district court docket research revealed this fact.

Deborah Canter stayed on in the Canter house. The Canters filed an unlawful detainer action against her in state court, but the proceedings were stayed twenty-four minutes before the unlawful detainer trial was to have begun, when Deborah Canter filed a Chapter 13 bankruptcy proceeding.

Three months later, on January 26, 2000, the bankruptcy court lifted the stay and allowed the Canter parents to pursue their unlawful detainer action.

On February 7, 2000, Deborah signed a stipulated judgment providing that she would vacate the premises, and judgment was entered.

Judge Real, on February 17, 2000, withdrew the matter from bankruptcy court, and on February 29, 2000 Judge Real stayed enforcement of the state

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court unlawful detainer judgment, which required Deborah Canter to vacate the premises. She remained on personal probation to Judge Real.

Twice the Canter parents asked Judge Real to lift the stay, and twice Judge Real refused.

When the Canter parents asked Judge Real why the stay was reinstated, his response was "because I said it."

Under then-current federal law Judge Real's refusal to lift the stay was an unappealable interlocutory order. Then this court rendered its disposition.

In *In re Canter*, the Ninth Circuit re-stated the old rule of *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1997), that five conditions governed eligibility for mandamus: (1) no other adequate means of relief, such a direct appeal; (2) damage not correctable on appeal; (3) a clearly erroneous order; (4) an oft-repeated error or manifestation of a persistent disregard of federal rules; and (5) new and important problems, or issues of law of first impression. In a rarity, the Circuit found all five factors to be present.

Citing *In re Kemble*, 776 F.2d 802, 806 (9th Cir. 1985), the court restated that it does not "have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court." Thus, no direct appeal was available.

The court found the Canters would be damaged and prejudiced in a way not correctable on appeal, citing *DeGeorge v. U.S. Dist. Ct.*, 219 F.3d 930, 934 (9th Cir. 2000). It held the Canters "sit in limbo . . . [and] Deborah [bankrupt and on probation to Judge Real] continues to reside in the property . . . without any rental payments"

The court held that "[t]he district court's [action] was an inefficient allocation of judicial resources, . . . [r]ather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings[,] negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case[,] [and] derailed the [bankruptcy] process provided by statute." Moreover, the court said that "[t]he district court's [action] also resulted in great delay and costs to Appellants[,] . . . [and] encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations."

The court found the final two *Bauman* factors met because Judge Real's action "manifests a persistent disregard of the federal court rules," and because the case raised an issue of first impression. The court commented on the phenomenon: "In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus[,] " which is what was done.

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Rather than send the case back to Judge Real, perhaps in light of its knowledge of *Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), *cert. denied*, 484 U.S. 963 (1987), a case remanded by the Ninth Circuit to Judge Real in which he simply refused to turn over the files to a new judge, the court itself remanded the case directly to the bankruptcy court.

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Thank you.

Very truly yours,



STEPHEN YAGMAN

c: Hon. Alex Kozinski

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STEPHEN YAGMAN

July 21, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals for the
Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

FILED
AUG -7 2003
CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

Re: Complaint against Judge Manuel L. Real, 03-89037

Dear Ms. Catterson:

This letter is written to petition the judicial council for review of Chief Judge Schroeder's July 14, 2003 order and memorandum dismissing the above-referenced complaint of judicial misconduct.

The grounds for the petition are these: (1) it would appear to a reasonable person knowledgeable of the pertinent facts that the complaint was processed in a way that seems intended to result in its dismissal, and not diligently or thoroughly, or with a view toward getting to the truth; (2) it appears there was no real investigation at all; (3) there is a serious issue of judicial misconduct that appears, so far, to have been whitewashed; (4) any novice prosecutor would have done more to investigate the complaint; (5) the stated purposes of 28 U.S.C. 372(c) seem to have been ignored; (6) 28 U.S.C. 372(c) is undermined by the way in which the complaint was addressed, and is rendered a mere façade, that creates an illusion that there actually is a remedy for federal judicial misconduct; (7) it would appear to a reasonable layperson (in fact, it did so appear to three intelligent laypersons who were shown the order of dismissal) that the complaint was blown-off and rejected based on illusory technicalities that only a lawyer or a judge could make up; (8) there is a serious question as to whether a male federal judicial officer got salaciously cozy with an attractive female defendant in distress and did some special favors for her, perhaps in exchange for something that someone might consider to be of value; (9) section 372(c) has to mean something, and can't mean nothing; (10) that this court reversed the withdrawal of the bankruptcy matter from bankruptcy court to the district judge surely can't be the end of the matter, given that this court did not have all the facts before it and couldn't, at least in the appeal to it, do anything else. Indeed, this court surely remanded the case directly to the bankruptcy court because it feared that if it remanded it to the district judge, with instructions to transfer the case back to the bankruptcy court, he simply would not, as he has not before, *see, e.g., Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), *cert. denied sub nom. Real v. Yagman*, 484 U.S. 963 (1987), do what he was told to do; (11) dumping the complaint as this court did will foster disrespect for the Ninth Circuit, the federal court system, and section 372(c).

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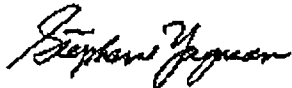
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STEPHEN YAGMAN

Complainant could not submit any more "objectively verifiable proof" than he had, and asserting he should have done this is misplaced. This court had and has the power to obtain any proof it wants to get in order to do a real investigation. If the standard applied here were applied in federal criminal investigations, the number of federal criminal charges surely would be halved.

Complainant no longer has any copies of the original complaint and requests that the court make 10 copies for itself; but, if it declines to do so, it is requested that one copy be provided to complainant, who then will make 10 copies and provide them back to the court.

Very truly yours,



STEPHEN YAGMAN



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTII CIRCUIT
7th at Mission Street
P.O.Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

(415) 556-9800

December 18, 2003

Stephen Yagman, Esq.
YAGMAN & YAGMAN &
REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

DEC 22 2003

Re: Complaint of Judicial Misconduct No.03-89037

Dear Mr. Yagman:

The Judicial Council has issued an order in response to the petition for review filed in your complaint of judicial misconduct. A copy is enclosed.

Very truly yours,

Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Circuit Executive's Office

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

FILED

DEC 18 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 03-89037

ORDER

Before: **ALARCÓN, KOZINSKI, THOMAS, McKEOWN** and **W. FLETCHER**, Circuit Judges, and **PATEL, HUFF, COUGHENOUR, HATTER** and **SILANSTROM**, District Judges.

A complaint of judicial misconduct was filed against a district judge of this circuit pursuant to 28 U.S.C. § 351-64. Complainant, an attorney who was not involved in the matters alleged in the complaint, claims that the district judge committed misconduct in the handling of a bankruptcy matter, which has been the subject of an adverse ruling by the Court of Appeals. See In re Canter, 299 F.3d 1150 (9th Cir. 2002). Specifically, complainant alleges that the district judge acted improperly in withdrawing the reference from the bankruptcy court and then re-imposing the automatic stay that the bankruptcy court had vacated on the motion of certain creditors. Re-imposition of the stay precluded the creditors from enforcing an unlawful detainer judgment that would have entitled them to immediate possession of premises occupied by the debtor. The Chief Judge dismissed the complaint, noting that "[a] complaint will be dismissed if it is

directly related to the merits of a judge's ruling or decision in the underlying case." Chief Judge Order at 2 (citing 28 U.S.C. § 352(b)(1)(a)(ii); 9th Cir. Misconduct R. 4(c)(1)).

While legal error alone will not amount to misconduct, the converse is not necessarily true: Misconduct can cause error. That a judge's ruling can be, or has been, subject to appellate review does not automatically insulate the judge's conduct from disciplinary proceedings. Jeffrey M. Shaman, Steven Lubet & James J. Alfini, Judicial Conduct and Ethics § 2.02, at 36 (3d ed. 2000) ("In some instances . . . legal error may amount to judicial misconduct calling for sanctions . . ."). If the misconduct claimed consists of nothing more than the judge's erroneous ruling, the complaint will be deemed to be "directly" related to the subject of the underlying proceeding, and must be dismissed summarily by the Chief Judge. However, where the complainant presents solid evidence that the judge's ruling was the result of "conduct prejudicial to the effective and expeditious administration of the business of the courts," 28 U.S.C. § 351(a), then such underlying conduct will not be deemed "directly" related to the merits of the ruling and the Chief Judge must make an initial determination whether it amounts to misconduct. In so doing, she must bear in mind that "[t]he purpose of the complaint procedure is to improve the administration of justice in the federal

courts by taking action when judges engage in conduct that does not meet the standards expected of federal judicial officers." 9th Cir. Misconduct R. 1(a).

Complainant alleges, and the public record supports these allegations, that the district judge withdrew the reference from the bankruptcy court and re-imposed the stay without a motion from any party. The district judge gave no explanation for his actions, despite repeated inquiries from the aggrieved creditors. At the time of the bankruptcy proceeding, the debtor was on probation in a criminal case presided over by the district judge. The district judge had placed the debtor-defendant under his personal supervision, which means that he met with her and the probation officer personally at 120-day intervals. Probation office records indicate that there had been a meeting between the debtor, the probation officer and the district judge less than a month before the judge withdrew the case from the bankruptcy court. In response to an inquiry from our council, the debtor's bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor "a day or two before . . . [the district judge] withdrew the reference," and the next time they saw each other, the debtor told her "the letter had 'worked.'" Though this information is based on hearsay and should be investigated further, it

Page 4

suggests the district judge may have withdrawn the reference in response to a direct plea for help from the debtor.

In response to our inquiry, the district judge gives the following explanation:

I felt . . . [the bankruptcy case] was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents. She was still living in the house with her 8 year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so it could not be adequately presented to the state court. . . .

....

I have no exact memory of any specific conversation with . . . [the debtor] concerning the withdrawal of the reference in the bankruptcy matter. But what I can re-construct from the records I have in the criminal case is that at a 120 day meeting with . . . [the debtor] in connection with her performance of community service[, she] advised me that there was an unlawful detainer action pending in the Municipal Court to evict her from the property in which she and her minor daughter were living that was nominally owned by . . . [the creditors] but was given to them when she married her then estranged husband.

The district judge's explanation confirms what complainant alleges and the evidence suggests: The district judge withdrew the reference in a bankruptcy case

Page 5

that was not previously assigned to him, and entered an order in that case based upon information he obtained ex parte from an individual who benefitted directly from that order.

It is well established that a judge may not exercise judicial power based on secret communications from one of the parties to the dispute. United States v. Thompson, 827 F.2d 1254, 1258-59 (9th Cir. 1987). The district judge did not, either before or after his ruling, disclose to the parties that this ex parte communication had taken place, its substance or the fact that it formed the basis of his ruling.

While parties do not have a due process right to the random assignment of cases, a judge may not assign a case in order to affect its outcome. See Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). The judge here withdrew the reference and assigned the case to himself for the very purpose of granting the debtor relief from her imminent eviction. The debtor, represented by her counsel, had stipulated to a judgment requiring her to vacate the premises, and the unlawful detainer court had entered the judgment. The district judge acted based on his belief that the dispute over possession of the property should be "finalized" in the divorce proceeding rather than the unlawful detainer proceeding, because "it appeared to . . . [him] that her counsel had abandoned her interest so it could not

Page 6

be adequately presented to the state court." However, we are not aware of any authority for a bankruptcy court to determine whether parties in state court proceedings were adequately represented by their counsel. Nor are we aware of any authority allowing the district court to allocate jurisdiction between two state courts dealing with related subject matter.

That the district judge believed his actions would help his probationer's rehabilitation is of no consequence. A judge may not use his authority in one case to help a party in an unrelated case. Exercise of judicial power in the absence of any arguably legitimate basis can amount to misconduct.

The line between abuse of discretion and misconduct is not always clear. It depends, rather, on the balancing of a variety of factors. See Shaman, supra, § 2.02. We need not decide whether that line was crossed in this case. We hold only that the Chief Judge erred in dismissing the complaint as frivolous or unsubstantiated; it is plainly neither. We therefore vacate the Chief Judge's dismissal order and remand to the Chief Judge for further proceedings consistent with our order.

Judges Huff, Coughenour, Hatter and Shanstrom would affirm the order of dismissal.



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
7th at Mission Street
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San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

November 4, 2004

(415) 556-9800

Stephen Yagman, Esq.
YAGMAN & YAGMAN &
REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270

Re: Complaint of Judicial Misconduct 03-89037

Dear Mr. Yagman:

Chief Judge Schroeder has issued a supplemental order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge dismissing a complaint may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 352 (c) (10); Misconduct Rule 5 and 6(a).

Very truly yours,


Cathy A. Catterson

CAC/gb

bc: Chief Judge Schroeder
Chief Judge Marshall
Judge Real
Donald C. Smaltz, Esq.
Circuit Executive's Office

FILED

NOV - 4 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

In re Charge of)
)
)
Judicial Misconduct)
)
)
_____)

No. 03-89037
SUPPLEMENTAL
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

In February 2003 complainant, an attorney who was not a party and did not represent a party in the relevant litigation, submitted a misconduct complaint alleging that the judge in question had acted for inappropriate personal reasons in placing an attractive female criminal defendant on probation "to himself, personally," and that the judge's actions in withdrawing that defendant's bankruptcy matter from the bankruptcy court and staying enforcement of a state unlawful detainer judgment against her further supported complainant's allegation of improper conduct.

Before entering an Order, the Chief Judge conducted an inquiry into the charges, and specifically the allegation that there was an inappropriate personal relationship between the judge and the defendant/debtor. In the course of that inquiry, the Probation Office confirmed that all meetings that took place between the judge and the defendant were regularly scheduled, were documented in Probation Office files, and included a probation officer in attendance at all times. The Probation Office and the Clerk's Office further confirmed that the defendant was the subject of a formal probation/commitment order, and that it was the custom of the judge to hold periodic status meetings with probationers and their probation officers.

In a Dismissal Order and Memorandum filed on July 14, 2003, the Chief Judge noted that the Court of Appeals had already reviewed the case in which withdrawal of bankruptcy jurisdiction had occurred; the court had held that the withdrawal had been improper, and had remanded the case to Bankruptcy Court. This complaint was therefore related to the merits of a prior appeal. The Chief Judge observed that misconduct complaints relating to the merits of a judicial decision are not cognizable under the misconduct statute and the circuit's rules, and that such merits determinations are reserved for appellate review. In this instance appellate review had already occurred. The Chief Judge further stated that her inquiry had not substantiated the

conclusory charges of any inappropriate personal relationship between the judge and the defendant/debtor. Accordingly, in the July 14, 2003 Order, the Chief Judge dismissed the complaint in its entirety, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and Misconduct Rules 4(c)(1) and (c)(3).

Complainant petitioned for review by the Judicial Council. The Judicial Council then apparently made some further inquiry. By a divided vote, on December 18, 2003, the Judicial Council issued an Order vacating the Chief Judge's Dismissal Order and remanding the matter to the Chief Judge for further proceedings consistent with its Order. The council's Order stated that "In response to an inquiry from our council, the debtor's bankruptcy attorney claimed that, unbeknownst to him, his secretary had drafted a letter from the debtor to the district judge, asking for his help in preventing her eviction. According to the secretary, the letter was delivered by the debtor 'a day or two before . . . [the district judge] withdrew the [bankruptcy] reference,' and the next time they saw each other, the debtor told her 'the letter had worked.'" The Judicial Council noted that this information was based on hearsay, but asked that it be investigated further. The Order expressed concern that the district judge might have exercised judicial power based on "secret communications," and a further concern that he assigned the case to himself for the express purpose of granting the debtor

relief in a matter unrelated to the criminal case assigned to him.

The Judicial Council focused on the ex parte nature of communications between the judge and the defendant/debtor and viewed the new information about a letter to be more serious than either the information considered by the panel that heard the prior appeal or the communications previously considered by the Chief Judge. Therefore, the Judicial Council remanded the misconduct complaint for further inquiry by the Chief Judge.

Accordingly, the Chief Judge directed that a further inquiry be conducted. That inquiry has now been concluded. In connection therewith additional information, including sworn declarations and other documentary evidence, was obtained.

The council's inquiry had included hearsay information from the debtor's former attorney and his secretary/wife concerning a letter prepared by the debtor and personally delivered by her to the judge. In the course of the Chief Judge's subsequent inquiry, the debtor and the judge, each of whom would have first-hand knowledge of such delivery, firmly denied that any such letter was written or delivered. No such document was found in the court's records, and both the debtor and the judge also firmly denied that any meetings or communications outside of the scheduled status meetings with a probation officer in attendance took place. The debtor further denied, under penalty of perjury,

that she had any conversation with her former attorney's secretary/wife in which the debtor stated either that she had delivered a letter to the judge or that "the letter had worked." Because the district judge, his staff, and the debtor all certified that the "letter" and "visit" mentioned in the hearsay account previously reported to the Judicial Council did not exist or happen, there is no basis for a finding that credible evidence exists of a letter or other "secret communication" having passed between the defendant/debtor and the district judge. There is similarly no basis for finding that there was any private meeting or discussion between them at any time.

Furthermore, with respect to the withdrawal of bankruptcy jurisdiction itself, two material points have been considered that were not addressed before the Judicial Council. The first relates to the district judge's reason for withdrawal of the bankruptcy reference. In a supplemental statement the district judge wrote that he had been made aware that the defendant/debtor's pre-sentence report had been unlawfully filed and/or referred to in Bankruptcy Court and in state court proceedings. In response to the Chief Judge's inquiry, he stated that he withdrew the bankruptcy reference in light of that knowledge. Withdrawal for the purpose of preventing further violations of confidentiality and conducting contempt proceedings constitutes, at the least, an "arguably legitimate basis" for such

action.

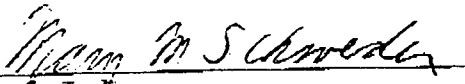
Second, the district judge himself recognized the questionable nature of his intervention in the bankruptcy case and, pursuant to the court's internal procedures, asked another district judge to review the record. Following the voluntary transfer of the bankruptcy case to a disinterested judge in his district for independent review, that judge granted a motion to return the case to bankruptcy court. This transfer occurred several months before the matter was argued in the Court of Appeals. For reasons that are not clear, the appellate panel apparently was unaware that at the time of oral argument on the propriety of withdrawal of the bankruptcy reference, the case had long since been returned to Bankruptcy Court and closed by the assigned bankruptcy judge.

Having considered all of the evidence in this matter, it is apparent that complainant's factual allegations of an inappropriate personal relationship, and the Judicial Council's subsequent concern about secret communications having occurred between the district judge and the defendant/debtor, are not reasonably in dispute within the meaning of 28 U.S.C. § 352(a). Furthermore, the unlawful filing of and references to a confidential pre-sentence report in defendant/debtor's bankruptcy proceedings constituted a legitimate basis for the district judge's initial assumption of jurisdiction in the bankruptcy case,

sufficient to preclude a finding of judicial misconduct.

Accordingly, for the reasons expressed herein, the complaint is dismissed.

COMPLAINT DISMISSED.



Chief Judge



*United States District Court
Central District of California
411 West Fourth Street
Santa Ana, California 92701*

January 24, 2004

*Chambers of
David O. Carter
United States District Judge*

*Telephone
(714) 338-4545*

Honorable Mary M. Schroeder
Chief Judge
United States Court of Appeals
Sandra Day O'Connor U.S. Courthouse, Suite 610
401 W. Washington Street, SPC 54
Phoenix, AZ 85003-2156

Re: Complaint of Judicial Misconduct No. 03-89037 (In re Judge Manuel L. Real)

Dear Judge Schroeder:

Pursuant to Federal Rule of Appellate Procedure 10(e)(2), I am writing to make you and the Judicial Council aware of material that was omitted from the record by error or accident involving a judicial complaint filed by Stephen Yagman, Esq., against Judge Manuel L. Real. (Complaint of Judicial Misconduct No. 03-089037.)

In May 2001, Judge Real spoke to me and said that he wanted another judge of the District Court to review a case that he had withdrawn from the Bankruptcy Court. He asked if I would accept an Intra-District Transfer of the case and "take another look at it." A few weeks to a month later, he reaffirmed my willingness to take the transfer of the case he had mentioned before. At the time, I was aware that Judge Real had maintained a probation calendar for many years in which hundreds of probationers, in addition to their normal meeting with the probation officer, also checked in with Judge Real with the probation officer present. I agreed to the Intra-District Transfer. The "Order Transferring Action Under Section 3.1 of General Order 224" was signed by Judge Real on July 9, 2001 and accepted by my court on July 23, 2001. The transfer order clearly sets forth that "on all documents filed in this case, please substitute the initials DOC after the case number in, so that the case number will read SACV 01-688 DOC. This is very important because documents are routed to the assigned Judge by means of these initials." The Transfer Order also shows that the prior case number, CV 00-1185-R (BK Case # : LA 99-49126-AA), was lined out with the new case number, SACV 01-688 DOC, inserted by the Clerk's Office. (See Attachment 1)

After the case was transferred to this Court, the Defendants filed a motion to re-refer the case to the Bankruptcy Court. On September 14, 2001, in a written opinion, I granted Defendants' motion

to re-refer the case to the Bankruptcy Court. (See Attachment 2)

After the case was referred back to the Bankruptcy Court, proceedings continued despite the filing of a notice of appeal. On January 9, 2002, Bankruptcy Judge Ahart granted the bankruptcy trustee's motion to abandon the estate's interest in the residence at 446 South Highland Avenue, Los Angeles (the house at issue in the appeal). On February 19, 2002, weeks before the hearing on the appeal, Ms. Canter's debts were discharged. The bankruptcy case was closed on April 25, 2002, almost three months before the panel filed its opinion. (See Attachment 3)

In August of 2002, I read the Ninth Circuit published opinion, "In re: Deborah M. Canter from the United States District Court for the Central District of California Manuel L. Real, District Judge, Presiding." (USCA No. 01-56151). The opinion states that the case was argued and submitted March 7, 2002, in Pasadena, before the Ninth Circuit. The attorney for the debtor-appellee was Andrew E. Smyth and the attorney for the creditors-appellants was Herbert Katz, the same attorneys who brought the motion to re-refer the case to the Bankruptcy Judge before me which I had granted on September 14, 2001, eight months before argument in the Ninth Circuit. (See Attachment 4)

I immediately called the Circuit Executive Office to talk to the Circuit executive who was not in and was referred to Cathy Catterson, the chief clerk. I asked her about the appropriate protocol to let the three judge panel know that they had rendered an improper advisory opinion. I had vacated Judge Real's order and had re-referred this case back to the Bankruptcy Court eight months before argument to the Circuit. I was astounded that the Circuit panel was not informed by counsel that the issue before them was moot. Cathy said she would look into the matter.

On October 2, 2002, my court sent out a "Notice of hearing IN COURT HEARING RE: Judgment From the 9th Circuit U.S. Court of Appeal is set on 8:30 10/28/02." This hearing was continued to December 16, 2002 at 8:30 a.m. when counsel appeared. At the hearing, I asked the attorneys why they did not inform the Circuit of the transfer and that the matter before the panel was moot. I do not recall their exact explanation, but I can have my court reporter prepare the transcript of the hearing if it would be useful.

To help follow the chronology of events I have also included the Civil Dockets for this case which clearly sets forth the case numbers, the transfer and all relevant dates. (See Attachments 5a and 5b)

- In CASE NO. CV 00-1185-R, please note the transfer of the case on 7/19/01 with the new case number for SACV 01-688-DOC.
- In CASE NO. SACV 01-688-DOC, please note the transfer of this case on 7/19/01 from case number CV 00-1185-R.

All dockets clearly reflect the transfer of the case from Judge Real to Judge Carter. How the Circuit was not aware that the issue before it was moot and why counsel did not inform the Circuit is perplexing.

I read in an article in the Los Angeles Times, dated January 18, 2004, that Stephen Yagman states "that when he learned about the dispute involving Canter, he filed a misconduct charge against Real, suggesting that the judge's actions stemmed from a relationship with Canter, whom Yagman characterized as an attractive female." I have no memory or record of this attorney ever having appeared in my court on this case.

I hope this information is helpful to you and the Judicial Council.

Sincerely,



David O. Carter
United States District Judge

cc: Judge Alarcon
Judge Kozinski
Judge Thomas
Judge McKeown
Judge W. Fletcher
Judge Patel
Judge Huff
Judge Coughenour
Judge Hatter
Judge Shanstrom
Chief Judge Marshall
Judge Real
Robin Donoghue

EXHIBIT 27

LAW OFFICES
YAGMAN & YAGMAN & REICHMANN
723 OCEAN FRONT WALK
VENICE BEACH, CALIFORNIA 90291-3270
(310) 452-3200

October 1, 2005

Hon. John G. Roberts
Chief Justice of the United States, as
Chairperson, Judicial
Conference of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Request for review of action of Ninth Circuit Judicial Council

Dear Mr. Chief Justice:

Pursuant to 28 U.S.C. § 357, as the complainant in the subject matter, no. 03-89037, it is requested that the Judicial Conference of the United States review the September 29, 2005 Order of the Ninth Circuit Judicial Council and take action consistent with the dissents of Circuit Judge Alex Kozinski and District Judges David Alan Ezra and B. Linn Winmill. Enclosed are (1) the Order in no. 03-89037 and (2) a report of it in the Los Angeles *Times*. Thank you.

Very truly yours,


STEPHEN YAGMAN

Enclosures-as noted

EXHIBIT 28

**THE FOLLOWING WERE RELEASED ON JULY 21, 2006 TO JUDGE REAL'S
COUNSEL BY ORDER OF CHIEF JUDGE SCHROEDER:**

- 1. Memorandum from Robin Donoghue, Assistant Circuit Executive for Legal Affairs for the Ninth Circuit dated 8/23/03**
- 2. Memorandum from Robin Donoghue, Assistant Circuit Executive for Legal Affairs for the Ninth Circuit dated 10/14/03**
- 3. Memorandum from Robin Donoghue, Assistant Circuit Executive for Legal Affairs for the Ninth Circuit dated 11/4/03**
- 4. Memorandum from Robin Donoghue, Assistant Circuit Executive for Legal Affairs for the Ninth Circuit dated 11/11/03**
- 5. Memorandum from Robin Donoghue, Assistant Circuit Executive for Legal Affairs for the Ninth Circuit dated 11/20/03**

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TO: Circuit Judge Kozinski
Circuit Judge Tashima
Circuit Judge Thomas
Circuit Judge William Fletcher
Senior Circuit Judge Alarcón
Chief District Judge Ezra
Chief District Judge Huff
Chief District Judge Patel
Senior District Judge Bryan
Senior District Judge Shanstrom

FROM: Robin Donoghue, *Assistant Circuit Executive for Legal Affairs*

DATE: August 28, 2003

RE: Complaint of Judicial Misconduct No. 03-89037 (Yagman)

The background on this complaint from attorney Stephen Yagman is as follows. When we received the complaint I discussed it with Chief Judge Schroeder. She was of the view that the Court of Appeals decision had dealt with the issue of Judge Real's withdrawal of reference of the case to bankruptcy court and that the misconduct inquiry should focus on the allegation that there was an improper relationship between Judge Real and Deborah Canter, as allegedly evidenced by complainant's "docket research" indicating that Ms. Canter was placed on probation to Judge Real personally.

Staff reviewed the docket and found no reference to the alleged probation arrangement. Staff then contacted Clerk of Court Sherri Carter, who reviewed the matter and told staff that there was no record of the judge placing Ms. Canter or the other criminal defendants in his personal custody. The complaint did not include a direct allegation of an improper ex parte communication.

Complainant's Petition for Review protests the "dumping" of his complaint. He states that he could not submit any more proof of the alleged "salaciously cozy" relationship between Judge Real and Ms. Canter. Nevertheless, the dismissal was in accordance with the statutory and Misconduct Rule standards for unsupported allegations. Judge Thomas, in his e-mail of August 8, 2003, indicates that the Court of Appeals had information that Judge Real ordered Ms. Canter to report to him personally rather than to the Probation Department and

Circuit Judge Kozinski et al.

Page 2

August 28, 2003

that Judge Real had some ex parte meetings with Ms. Canter in his chambers.¹ Thus the Judicial Council may well wish a further inquiry to be made, and staff will follow its guidance.

cc: Greg Walters

¹As complainant noted, this information was not referenced in the Court of Appeals opinion.

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TO: Circuit Judge Thomas
Circuit Judge McKeown
Circuit Judge Fletcher
Senior Circuit Judge Adarcón
Chief District Judge Coughenour
Chief District Judge Huff
Chief District Judge Patel
District Judge Haner
Senior District Judge Shanstrom
Robin Donoghue
FROM: Robin Donoghue, Assistant Circuit Executive for Legal Affairs
DATE: October 14, 2003
RE: Update on Judicial Misconduct No. 03-89037 (Yagman)

Judge Kozinski has received a written response from Judge Real in this matter. A copy of the response is attached, along with a copy of Judge Kozinski's original request.

Since the last council meeting Robert Latta, Chief Probation Officer for the Central District of California, arranged for me to speak separately with Probation Officers Randall Limbach and Noel Jones about Judge Real's supervised release of Maristina (Deborah) Canter. Mr. Limbach was Ms. Canter's probation officer following Judge Real's Judgment and Probation/Commitment Order and until fairly recently, when Ms. Jones assumed the role. Each of them had reviewed the office file before speaking with me.

Mr. Limbach and Ms. Jones said that the file indicates that 120-day review sessions were scheduled for August 23, 1999; December 13, 1999; January 24, 2000; April 7, 2000; April 24, 2000; August 7, 2000; and six dates in 2002 and 2003. Chambers hearings did not take place on all of those dates because the clerk would call the cases on the calendar and ask only those people with matters that needed to be discussed to come forward. Based on notations in the file, the hearings closest to the time of Judge Real's actions in February 2000 took place on January 24 and April 7.

On January 24, 2000, Mr. Limbach accompanied Ms. Canter into Judge Real's chambers. Ms. Canter mentioned that she had filed for bankruptcy and that she was going through a divorce. She asked Judge Real if he could recommend a divorce attorney (he declined). She said that it was difficult getting a lawyer because her husband's divorce attorney was well known as a very aggressive litigator. She also stated that her husband's

Circuit Judge Thomas, et al.

Page 2

October 13, 2003

divorce attorney had obtained information from court records that were supposed to be filed under seal. Judge Real told her to contact Assistant U.S. Attorney Guy Iversen for an investigation. She had brought a copy of the cover page from the bankruptcy file and Judge Real took it. Ms. Canter stated that she was afraid that the bankruptcy judge had come to believe a number of false accusations of bankruptcy fraud that had been made by her husband. Ms. Canter also mentioned that she was facing eviction on February 3, 2000. Mr. Limbach said that these statements are reflected in his notes and are in line with his recollection. Mr. Limbach also said that Ms. Canter was often emotional and cried in her discussions with him, but that before Judge Real she displayed a "matter of fact" demeanor. Nevertheless Mr. Limbach had the impression that Judge Real was uneasy about discussing her personal problems. He said that Judge Real tried to steer Ms. Canter back to the subject of her community service. Mr. Limbach said that in all of their appearances before Judge Real the judge's behavior was always above board and he did not detect in Judge Real any special interest in or relationship with Ms. Canter.

There is a note in the file on March 3, 2000, by Mr. Limbach, indicating that Judge Real had taken jurisdiction of the bankruptcy proceeding.

On April 7, 2000, there was a chambers meeting, that included opposing counsel, to discuss the fact that the seal on Ms. Canter's criminal case file was broken. Judge Real wanted to find out who broke the seal. There are no further notes on the subject or anything else relating to her bankruptcy.

Attachments

cc: Circuit Judge Kozinski

Greg Walters

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TO: Circuit Judge Thomas
Circuit Judge McKeown
Circuit Judge Fletcher
Senior Circuit Judge Alarcón
Chief District Judge Coughenour
Chief District Judge Huff
Chief District Judge Patel
District Judge Hatter
Senior District Judge Shanstrom
FROM: *Robin Donoghue*
Robin Donoghue, Assistant Circuit Executive for Legal Affairs
DATE: November 4, 2003
RE: Update on Judicial Misconduct No. 03-89037 (Yagman)

Judge Kozinski asked me to interview Chief District Judge Marshall and Clerk of Court Sherri Carter to determine what procedures for withdrawal of bankruptcy matters and assignment of withdrawn matters existed at the time that Judge Real withdrew the reference in this matter.

According to Sherri, there were no local rules or general orders in the Central District of California governing a judge's sua sponte removal of a bankruptcy matter. That is, there was nothing either permitting or prohibiting sua sponte withdrawal. She recalled one other instance of such withdrawal, so long ago that she could not remember the name of the judge, but she believed it was a judge who has long since retired. She indicated that there may have been other instances of sua sponte withdrawal of which she was not aware. The only authority she mentioned was 28 U.S.C. § 157 (d), which provides that a district court may withdraw, in whole or in part, any bankruptcy proceeding on its own motion or on timely motion of any party, for good cause shown.

If one of the parties had moved for withdrawal of the bankruptcy reference, the procedure would have been governed by General Order No. 224-C, a copy of which is attached. In 1995 the court eliminated the position of "bankruptcy duty judge" and provided that motions for withdrawal of reference would be randomly assigned through the civil assignment system (i.e., the wheel). Sherri noted that if Ms. Carter (or another party) had filed a motion for withdrawal of the reference, she/they would also have needed to file a Notice of Related Case in order to request that Judge Real, who presided over her criminal case, receive the assignment.

I then spoke with Chief Judge Marshall, who reiterated what Sherri told me about the

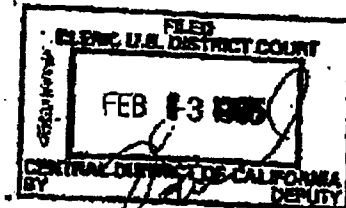
Circuit Judge Thomas, et al.
Page 2
November 4, 2003

procedures in effect for assigning withdrawn matters. She had no specific recollection of other sua sponte withdrawals of reference.

Attachment
cc: Circuit Judge Kozinski
Greg Walters

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF)
)
THE ASSIGNMENT OF CASES)
AND DUTIES TO JUDGES)
_____)



GENERAL ORDER NO. 224-C

WHEREAS, it has been determined that the position of bankruptcy duty judge for the Central District shall be abolished,

IT IS HEREBY ORDERED that General Order 224 be amended by deleting Section 14.0 in its entirety, and modifying Section 16.0 as follows:

***16.0 BANKRUPTCY CASES AND PROCEEDINGS**

16.1 INDIVIDUAL ASSIGNMENT OF BANKRUPTCY CASES AND PROCEEDINGS

The following matters in bankruptcy cases and proceedings, some of which were previously handled by the bankruptcy duty judge, shall be randomly assigned through the civil assignment system to the individual calendar of the judges of this Court:

- a. motions for withdrawal of reference,
- b. motions for stay of orders of the bankruptcy court,
- c. applications for leave to appeal an interlocutory order of a

2 GENERAL ORDER NO. 224-C

bankruptcy judge and/or for modification of time for appeal,

- d. matters heard under 28 U.S.C. § 157 (c)(1),
- e. matters certified to the district court by the bankruptcy court,
- f. bankruptcy contempt orders for which objections have been filed pursuant to Bankruptcy Rule 9020 (e),
- g. notices of appeals in which the Bankruptcy Appellate Panel has

been objected to.

16.2 CASE CREDIT

All motions for withdrawal of reference and applications for leave to appeal an interlocutory order from the bankruptcy court shall be determined by the district court judge for no case credit. If the motion or application is granted, the bankruptcy case or proceeding shall remain with the district court judge who granted the motion or application, and a credit against the general obligation to receive civil cases shall be given.

The district judge who is assigned any bankruptcy matter other than a motion for withdrawal of reference or application for leave to appeal an interlocutory order shall be given a credit against the general obligations to receive civil cases.

16.3 RELATED BANKRUPTCY MATTERS

Related bankruptcy cases and proceedings subsequently filed in the district court shall be assigned to the district judge to whom the first

GENERAL ORDER NO. 224-C

previously assigned. Case credit for related bankruptcy cases and proceeding shall be in accordance with Section 5.5 of General Order 224.

This General Order shall be effective February 13, 1995.

Dated: FEB 13 1995

Chief Judge Wm. Matthew Byrne, Jr.

Margaret L. Rea

Robert M. Takasugi

Mariana R. Pfalzer

Terence J. Matter, Jr.

A. Wallace Tashima

David V. Ketyon

Consuela B. Marshall

Richard A. Gadbois, Jr.

Edward Ruffe

Harry L. Stone

Alicemarie H. Stofler

William J. Rea

James M. Ideman

William D. Estler

Stephen V. Wilson

J. Spencer Letts

Dickson Tsvirizak

John G. Davies

Ronald S.W. Law

Gary L. Taylor

Lourdes G. Baird

Linda H. McLaughlin

Andrew B. Collins

Richard A. Paez

Robert J. Timko

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TO: Circuit Judge Thomas
 Circuit Judge McKeown
 Circuit Judge Fletcher
 Senior Circuit Judge Alarcón
 Chief District Judge Coughenour
 Chief District Judge Huff
 Chief District Judge Patel
 District Judge Hatter
 Senior District Judge Shanstrom

FROM: *Robin Donoghue*
 Robin Donoghue, Assistant Circuit Executive for Legal Affairs

DATE: November 11, 2003

RE: Update on Judicial Misconduct No. 03-89037 (Yagman)

Judge Kozinski asked me to contact counsel for the parties in the Canter bankruptcy proceeding to gauge their reactions to Judge Real's withdrawal of the bankruptcy court reference. On November 7 I spoke with Andrew Smyth, bankruptcy counsel for Deborah Canter, and on November 11 I spoke with Herbert Katz, bankruptcy counsel for the Canter Family Trust. Mr. Katz succeeded Mark Brenner, who was counsel at the time that the Canter Family Trust obtained relief from the automatic stay. To date I have not been able to reach Mr. Brenner.

Andrew Smyth

Mr. Smyth said that when Deborah Canter filed in bankruptcy, she was being threatened with eviction by her in-laws and going through a nasty divorce. He was also aware that she was on probation and had regular appearances before Judge Real. The Canter Family Trust moved for relief from the automatic stay in order to pursue its unlawful detainer action in state court, and Mr. Smyth stipulated to an order. He speculated that Ms. Canter may have lost some trust in him after that, but said that he believed that all of her defenses could best be raised in the state court action. He said he was surprised when Judge Real withdrew the bankruptcy reference and reimposed the stay. At the time he had no idea why Judge Real had done so. He recalls that when the parties questioned Judge Real in court, Judge Real said "Because I said so." Mr. Smyth said that even at the time of the Court of Appeals argument, he and Mr. Katz were still speculating on the reason for Judge Real's action. Mr. Smyth said that he had "absolutely zero evidence" of any improper relationship between Judge Real and Ms. Canter, but was "suspicious" because Ms. Canter was a "cute girl" who projected a "waif" persona that was appealing. At the time he thought that perhaps Judge Real had become aware of her divorce and imminent eviction in the course of one of her probation visits.

Circuit Judge Thomas, et al.

Page 2

November 11, 2003

Mr. Smyth then said that he had only become aware of the "real" reason for the withdrawal sometime after the Court of Appeals opinion. He explained that his wife and legal secretary Michelle, whom he described as a Korean emigre unfamiliar with the habits of American judges, told him that one day Ms. Canter had come into the office crying about her circumstances, and that Michelle had offered to help her to compose a letter to Judge Real and told her to go see him. Michelle did "ghostwrite" a letter for Ms. Canter explaining how her husband's family was picking on her and how she was being victimized in the divorce. I asked Mr. Smyth whether he knew if Ms. Canter actually delivered such a letter to Judge Real, so he put his wife on the phone. She said that Ms. Canter told her that she had taken the letter in to Judge Real. It was Michelle's understanding that Ms. Canter delivered the letter to Judge Real personally and had some brief discussion with him. Ms. Canter told Michelle that the letter had "worked." I asked Michelle when this delivery took place, and she said she believed it was a day or two before Judge Real withdrew the reference.

Mr. Smyth said that he has not told anyone else about the letter, and Michelle said that she did not keep a copy of it. I do not believe that the Probation Office is aware of this matter. I also asked Mr. Smyth if he was aware of any connection that Stephen Yagman had to the Canter litigation, and he said that he was not.

Herbert Katz

Mr. Katz took over representation of the Canter Family Trust shortly after Mark Brenner obtained relief from the automatic stay and a judgment in unlawful detainer. He said that "for some unbeknownst reason" Judge Real on his own motion withdrew the bankruptcy reference and entered an order staying enforcement of the unlawful detainer judgment. Mr. Katz twice moved Judge Real for an order lifting the stay but was unsuccessful. He said that Judge Real would not give him a reason for his actions. He said he was trying both to make a record and to give Judge Real an opportunity to change his mind, but ultimately filed an appeal.

In the meantime, he said that Ms. Canter had filed a complaint in federal court against the Canter Family Trust, arguing that she was a co-owner of the property that was the subject of the unlawful detainer action. The matter was before Judge Real, whom Mr. Katz asked to abstain. Instead Judge Real dismissed the complaint with leave to amend. When Ms. Canter filed an amended complaint, Judge Real referred it to District Judge Carter because Judge Carter had before him an unrelated case dealing with the issue of bankruptcy court jurisdiction over a pure state claim. Mr. Katz said that Judge Carter expressed an opinion that he saw no basis for Judge Real's withdrawal of the bankruptcy reference.

Mr. Katz said that on appeal the circuit judges asked both counsel if they knew why the reference had been withdrawn by Judge Real, and that both counsel declined to speculate. To this date he has no idea what motivated Judge Real, although he assumes that he received some information in the context of Ms. Canter's supervised probation visits that led to the withdrawal. He suggested that I contact the probation officers. He also said that he believes that Alan

Circuit Judge Thomas, et al.

Page 3

November 11, 2003

Canter's divorce lawyer had tried to put some matters into the bankruptcy court record, and that Judge Real had issued an order to show cause against that attorney for raising irrelevant issues.

**cc: Circuit Judge Kozinski
Greg Walters**

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

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Chief District Judge Coughenour
Chief District Judge Huff
Chief District Judge Patel
District Judge Hatter
Senior District Judge Shanstrom
FROM: *Robin Donoghue*
Robin Donoghue, Assistant Circuit Executive for Legal Affairs
DATE: November 20, 2003
RE: Supplemental Memo
Continued Petition for Review in Judicial Misconduct No. 03-89037 (Yagman)

Following are summaries of a number of telephone inquiries conducted over the past few days, at the request of Judges Kozinski and Thomas. It is my understanding that all judges present at the last Judicial Council session on this matter will participate on November 20 (with Judge Thomas and Judge Hatter on the phone), with the exception of Judges McKeown and Huff.

District Judge David Carter

Judge Carter recalled the Carter case. He said that Judge Real had taken a couple criminal cases off his hands when he drew the Mexican Mafia trial assignment, and Judge Carter had offered to reciprocate if called upon. Judge Real told him about his withdrawal of the bankruptcy reference, stating that he believed he had done the right thing but would appreciate an independent look at the matter. When Judge Carter reviewed the file he disagreed with the withdrawal and issued an Order (attached) on September 14, 2001, granting defendants' motion to re-refer the case to bankruptcy court. The order was issued approximately two months after the Carters had filed their appeal. After the Court of Appeals issued its opinion Judge Carter called Cathy Catterson to express surprise about the appeal, which he viewed as moot after his order. He thought that appellants should have withdrawn their appeal or at least informed the court of his order. He felt that the Court of Appeals had decided "a non-issue." He also expressed surprise that the matter was being reviewed again in a misconduct context.

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Cathy Catterson

She recalls the telephone call from Judge Carter. She referred to a staff memo indicating that counsel in the case were only obligated to report related cases pending in the Court of Appeals. The appellants' excerpt of record referred to the various other proceedings and staff was of the opinion that the panel must have known about Judge Carter's order. Staff's explanation now for why the court proceeded was that apparently even though the matter was referred back to bankruptcy court, the stay against the unlawful detainer action had not been lifted by Judge Carter. I have been attempting to re-contact the bankruptcy counsel and trustee to determine why a motion to lift the stay was not filed, but to date have been unsuccessful.

Bankruptcy Judge Alan Ahart

Judge Ahart was the assigned judge when Judge Real withdrew the bankruptcy reference. He said that Judge Real never talked to him about the case, either before or after withdrawing it. He also said that it was not typical for district judges to communicate with bankruptcy judges when withdrawing bankruptcy references. As in most cases, he believes he heard about the withdrawal from the parties, although he may have seen a copy of Judge Real's order (also attached). Judge Ahart said he had "guessed" that the withdrawal had something to do with a criminal proceeding before Judge Real.

Randall Limbach

I followed up with Mr. Limbach, the assigned probation officer at the time of the bankruptcy reference withdrawal, to determine if he was aware of a letter that Ms. Canter had written to Judge Real or of a personal visit she may have had with Judge Real. He said he was not aware of either. He said he always encouraged her to voice whatever issues or concerns she had during their probation reviews before Judge Real.

Richard Diamond

Mr. Diamond was appointed as bankruptcy trustee in September of 2000 after Ms. Canter's bankruptcy was converted from Chapter 7 to Chapter 13 five months earlier. Thus he was not "on the scene" when the bankruptcy reference was withdrawn. He recalled some discussion from attorneys speculating that Judge Real was motivated by the fact that Ms. Canter was on probation in a criminal case assigned to him. He dimly recalled something about Judge Carter and speculated that the re-reference prompted his filing of a no-asset report in January 2002. He recalls attending a couple hearings before Judge Real but does not recall appearing before Judge Carter. He also was not "on the scene" for the Court of Appeals argument. He said that he understood that the bankruptcy action was pending while the case was on appeal, but had no further involvement after January 2002. (The docket sheet indicates that the final report was not filed until July 2002.)

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Edwina Dowell

Ms. Dowell was the Chapter 7 bankruptcy trustee but could recall little about the case. She assigned it to one of three staff attorneys. She said she would order the case notes and attempt to put me in touch with the assigned attorney. To date I have not heard back from the attorney.

Michael Lightfoot

Mr. Lightfoot represented Mark Brenner, the Canters' original bankruptcy attorney, on Judge Real's OSC re contempt. He recalled that Mr. Brenner had cited to Deborah Canter's probation report and had attached a copy of it to one of the bankruptcy filings. Alan Canter's family law attorney had also cited to the report. Deborah's counsel, Assistant FPD Guy Iversen, brought the motion for contempt. Mr. Lightfoot made one appearance with Mr. Brenner, who returned three copies of the probation report, and the matter was dismissed. He said that in light of what he believed to be a serious violation, Judge Real was extremely civil to his client.

Mark Brenner

Mr. Brenner asked to be relieved as the Canters' bankruptcy attorney after he was served with the contempt motion. He said that to this day, he has no idea why Judge Real withdrew the bankruptcy reference.

Robert Brodny

Mr. Brodny represented the Canters in the unlawful detainer proceeding. After Judge Real re-imposed the stay, he toyed with the idea of filing a new unlawful detainer action but thought better of it. He was not a federal court practitioner and did not think about filing a recusal motion. He said that both Mark Brenner and Herbert Katz were "appalled" by the bankruptcy reference withdrawal. He also said that his client, Alan Canter, was "sick about it" because Deborah Canter was able to sit in his parents' house for months without paying any rent. He felt that there should have been a hearing about the withdrawal. He did not know why Judge Real had taken that action, but mentioned "hearsay" from one of the lawyers about Judge Real making anti-Semitic remarks. He suggested that I try to reach Deborah Canter's attorney on the unlawful detainer, Remo Pabello, but I was unable to locate him. I asked him about Judge Carter's order. He did not recall that Judge Carter had ordered the matter sent back to bankruptcy court. He did not receive any order lifting the stay and thus did not go forward with the unlawful detainer.

Efforts to Contact Deborah Canter

I was unable to obtain a current phone number for Ms. Canter from Directory Assistance, so I contacted Probation Officer Noel Jones. Ms. Jones left a message stating that

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after consultation with Chief Probation Officer Robert Latta, he had said it would be inappropriate to release Ms. Canter's phone number without authorization from Judge Real.

Other Threads

I have a call in to Gail Chen, family law attorney for Mr. Canter, as well as follow-up calls in to Herbert Katz and Andrew Smyth. A time line, as best as I have been able to construct it, is also attached.

Attachments

cc: Circuit Judge Kozinski
Greg Walters