

FEB 07 2011

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:	)	BAP No.	NC-10-1124-En Banc
	)		
THAO TRAN NGUYEN and ANDREW	)	Bk. No.	09-10549
HUNGLAM NGUYEN,	)		
	)		
Debtors.	)		
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JOEL J. MARGOLIS,	)		
	)		
Appellant.	)		
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**O P I N I O N**

Argued and Submitted on November 17, 2010  
at Pasadena, California

Filed - February 7, 2011

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Hon. Alan Jaroslovsky, Bankruptcy Judge, Presiding

Appearances: Michael P. Bradley of Murphy, Pearson,  
Bradley & Feeney argued for the Appellant.

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Before: PAPPAS, DUNN, JURY, MARKELL, HOLLOWELL, and KIRSCHER,  
Bankruptcy Judges.

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1 HOLLOWELL, Bankruptcy Judge:

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3 Joel J. Margolis (Margolis) appeals the disciplinary  
4 sanctions that the bankruptcy court imposed against him as a  
5 result of his unprofessional conduct. We AFFIRM.

6 **I. FACTS<sup>1</sup>**

7 Margolis is a sole practitioner with a law office in Santa  
8 Clara County, California. He has practiced law, in good  
9 standing, for almost 20 years. Approximately half of his  
10 practice is devoted to representing consumer debtors, almost all  
11 of whom are members of Northern California's South Bay Vietnamese  
12 community. Margolis advertises for clients in Vietnamese  
13 language newspapers. While Margolis does not speak Vietnamese,  
14 his wife is Vietnamese, and she is active in assisting Margolis  
15 in his practice as office manager and interpreter. She is not an  
16 attorney.

17 Sometime in late 2008, Thao Tran Nguyen and Andrew Hunglam  
18 Nguyen (the Debtors) responded to Margolis' advertisement  
19 regarding bankruptcy services. They met almost exclusively with  
20 Margolis' wife, provided her with their financial information and  
21 documentation, and, according to the Debtors, received advice  
22 from her.

23 On February 20, 2009, the Debtors went to Margolis' office  
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26 <sup>1</sup> The majority of the facts are taken from declarations  
27 submitted by Margolis in response to the bankruptcy court's order  
28 to show cause why Margolis should not be sanctioned, as well as  
from Margolis' direct testimony given in the Debtors'  
nondischargeability trial.

1 to sign the chapter 7<sup>2</sup> bankruptcy petition, schedules, and  
2 statement of financial affairs (the February Schedules).  
3 However, the February Schedules were not completed when the  
4 Debtors arrived. The Debtors signed them even though they were  
5 incomplete. The Debtors subsequently went to Margolis' office to  
6 review the completed February Schedules. They found some errors,  
7 made several handwritten corrections to the information contained  
8 on them, and assumed those corrections would be made.

9 On March 2, 2009, Margolis filed, on behalf of the Debtors,  
10 a chapter 7 bankruptcy petition and a set of schedules and  
11 statement of financial affairs (the Bankruptcy Schedules), which  
12 did not contain the Debtors' changes or the Debtors' original  
13 signatures.

14 During the course of the bankruptcy case, the chapter 7  
15 trustee (Trustee) discovered the following assets, which were not  
16 disclosed on the Bankruptcy Schedules: (1) a bank account  
17 containing \$24,000; (2) a 2008 Mercedes Benz; (3) a condominium;  
18 and (4) a storage unit containing furniture from the Debtors'  
19 business. Due to these omissions, and other conduct by the  
20 Debtors in concealing and removing furniture from the undisclosed  
21 storage unit, the Trustee filed a complaint to deny the Debtors a  
22 discharge under § 727(a)(2), (a)(3) and (a)(4) (the Complaint).  
23 In the Complaint, the Trustee alleged that the Debtors concealed  
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25 <sup>2</sup> Unless otherwise specified, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 all "Rule" references are to the Federal Rules of Bankruptcy  
28 Procedure, Rules 1001-9037. Reference to the "Local Rules" are  
to the Local Bankruptcy Rules for the Northern District of  
California.

1 assets, failed to preserve records, and filed false bankruptcy  
2 schedules and statements of financial affairs.

3 A trial on the Complaint was held January 20, 2010 (the  
4 Trial). In partial defense to the Complaint, the Debtors  
5 asserted that they were counseled by Margolis' wife regarding  
6 whether to schedule the bank account, Mercedes, and furniture  
7 business. Furthermore, they alleged that they had provided  
8 corrections to the February Schedules, which were not reflected  
9 in the filed Bankruptcy Schedules, and that some of the so-called  
10 undisclosed assets were not actually omitted from the schedules  
11 but listed in the wrong places or in an incomplete manner.<sup>3</sup>  
12 Finally, they contended that they did not file false schedules  
13 because they never reviewed or signed the Bankruptcy Schedules.

14 Margolis was called as a witness at the Trial and provided  
15 testimony about his role and the role of his law office in the  
16 Debtors' bankruptcy case, as well as his office practices  
17 generally. Margolis' testimony indicated that he had little  
18 specific recollection of the Debtors' case. He admitted that he  
19 met only briefly with the Debtors and that his non-attorney staff  
20 had worked with the Debtors to determine their assets and  
21 liabilities and prepare the Bankruptcy Schedules.

22 After the Trial, on January 22, 2009, the bankruptcy court  
23 denied the Debtors a discharge. The denial of a discharge was  
24 not based on filing false schedules since it was Margolis who  
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26 <sup>3</sup> For example, the condominium was listed as collateral for  
27 a secured claim listed on Schedule D, but the condominium was not  
28 listed as a real property asset on Schedule A. The furniture  
business was listed on Schedule I, but not elsewhere.

1 failed to properly counsel the Debtors regarding their bankruptcy  
2 case and who filed the unsigned Bankruptcy Schedules. Rather,  
3 the bankruptcy court denied the Debtors' discharge because the  
4 Debtors lied and actively concealed assets from the Trustee  
5 postpetition. Thus, while the bankruptcy court determined there  
6 was "no doubt that competent advice of counsel, if followed,  
7 would have preserved the [Debtors'] discharge, . . . the absence  
8 of proper legal advice [could not] excuse" all of the Debtors'  
9 conduct, particularly in removing furniture from the storage unit  
10 postpetition. A Judgment Denying Debtors' Discharge was entered  
11 February 4, 2010.

12 Based on Margolis' Trial testimony, the bankruptcy court  
13 issued an Order to Show Cause (OSC) on February 8, 2010, as to  
14 why Margolis should not be sanctioned (1) pursuant to Rule 9011  
15 for filing schedules not actually signed by the Debtors and (2)  
16 because from Margolis' testimony it appeared he was "grossly  
17 negligent in [his] representation of the [D]ebtors by failing to  
18 discover and schedule business assets of the [D]ebtors and  
19 allowing an unlicensed and unqualified person" to counsel the  
20 Debtors without meaningful supervision.

21 The OSC directed Margolis to demonstrate why he should (1)  
22 not be required to return all fees paid in the case, (2) not be  
23 assessed a monetary fine, (3) not be suspended from bankruptcy  
24 practice in the Northern District of California (the District)  
25 until educational requirements could be completed, and (4) not be  
26 permanently enjoined from allowing his non-attorney employees to  
27 meet with clients without his supervision.

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1           On March 12, 2010, Margolis filed a response to the OSC.  
2 Margolis accepted responsibility for the inadequate management of  
3 his law office that led to filing unsigned documents and to the  
4 failure to disclose all the Debtors' assets. He conceded that  
5 his fees should be returned. However, he contended his conduct  
6 was the result of inadvertence, not recklessness or intentional  
7 misconduct. Margolis argued that the "preferred procedure" under  
8 the circumstances was to refer the matter to the Standing  
9 Committee on Professional Conduct for the District (the Standing  
10 Committee). In the event that the bankruptcy court retained the  
11 matter, Margolis argued that sanctions should be limited to an  
12 admonishment or reprimand. Additionally, Margolis contended that  
13 the attorney-client privilege impeded his ability to fully and  
14 fairly respond to the OSC.

15           A hearing on the OSC was held on March 26, 2010. On April  
16 2, 2010, the bankruptcy court issued a memorandum decision  
17 regarding Margolis' conduct (the Sanctions Decision). In the  
18 Sanctions Decision, the bankruptcy court directed Margolis to  
19 return to the Trustee the fees paid by the Debtors. Pursuant to  
20 Rule 9011, the bankruptcy court imposed a \$7,500 sanction against  
21 Margolis for filing the unsigned Bankruptcy Schedules.<sup>4</sup>  
22 Additionally, the bankruptcy court determined that the immediate  
23 imposition of disciplinary sanctions was required in order to  
24 protect future clients from Margolis' "incompetence and shoddy  
25 office practices."

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27           <sup>4</sup> As long as Margolis paid \$2,500 to the Clerk within 20  
28 days and did not file unsigned schedules again, \$2,500 of the  
total fine would be stayed.

1           Accordingly, the bankruptcy court permanently enjoined  
2 Margolis, requiring that he or another licensed attorney conduct  
3 the initial client interviews in all bankruptcy cases and that  
4 Margolis or another licensed attorney spend at least one hour  
5 counseling the debtor before filing bankruptcy schedules.  
6 Additionally, the bankruptcy court determined that Margolis  
7 should be suspended from practice in the District until he  
8 completed at least 10 hours of continuing legal education in  
9 bankruptcy law or ethics.

10           An Order Regarding Conduct of Debtors' Former Counsel (the  
11 Sanctions Order) accompanied the Sanctions Decision. The  
12 Sanctions Order:

13           (1) permanently enjoined Margolis from "filing any  
14 bankruptcy case in any court" unless the initial client  
15 interview was conducted by an attorney;

16           (2) permanently enjoined Margolis from filing "any  
17 bankruptcy schedules in any court" unless an attorney spent  
18 at least one hour counseling the debtor and making sure all  
19 assets and debts were discovered and scheduled;

20           (3) permanently enjoined Margolis from allowing his wife or  
21 other non-attorney in his office to give legal advice to  
22 clients;

23           (4) suspended Margolis from bankruptcy practice in the  
24 District unless he filed a certificate demonstrating  
25 completion of 10 hours of continuing legal education in  
26 bankruptcy law;

27           (5) transmitted a copy of the Sanctions Decision to the  
28 Standing Committee for further proceedings; and,

          (6) transmitted a copy of the Sanctions Decision to the U.S.  
Trustee's Office to initiate a review of Margolis' other  
cases for improprieties.

Margolis timely appealed.

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## II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. § 157(b) (2) (A). See In re Brooks-Hamilton, 400 B.R. 238, 244 (9th Cir. BAP 2009) (acts leading to suspension occurred in matter central to administration of bankruptcy case). We have jurisdiction to review the appeal under 28 U.S.C. § 158. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1057 (9th Cir. 2009), cert. denied, 130 S.Ct. 739 (2009).

## III. EN BANC CONSIDERATION

In Peugeot v. U.S. Trustee (In re Crayton), 192 B.R. 970, 980-81 (9th Cir. BAP 1996), the Bankruptcy Appellate Panel (BAP or Panel) adopted the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards)<sup>5</sup> as the minimum standard for determining the reasonableness of sanctions. Under Crayton, it is reversible error for a bankruptcy court not to apply the ABA Standards when imposing sanctions.

The BAP questioned the mandatory requirement that each criterion of the ABA Standards be applied in In re Brooks-Hamilton, 400 B.R. at 252 n.18, but had no mechanism for overturning its prior precedent. Because the BAP now has that authority under BAP Rule 8012-2(a), the Panel entered an order directing that this appeal be argued and submitted for decision en banc to consider the continuing viability of Crayton as

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<sup>5</sup> The ABA Standards are more formally cited as Joint Committee on Professional Sanctions, Standards for Imposing Lawyer Sanctions, available at <http://www.abanet.org/cpr/regulation/scpd>. They are defined and discussed more fully below.



1 precedent.<sup>6</sup> BAP Rule 8012-2(a) provides that an en banc hearing  
2 may be ordered to maintain uniformity of the Panel's decisions,  
3 "including, without limitation, when there is a challenge to an  
4 existing precedent of the Panel."

#### 5 **IV. ISSUES**

6 (1) Whether the holding in Crayton, that the failure to  
7 apply the criteria of the ABA Standards when imposing sanctions  
8 is an abuse of discretion, should be modified or abandoned.

9 (2) Whether the bankruptcy court abused its discretion in  
10 entering the Sanctions Order.

#### 11 **V. STANDARDS OF REVIEW**

12 We review sanctions and the terms of a disciplinary order  
13 for abuse of discretion. Chambers v. NASCO, Inc., 501 U.S. 32,  
14 55 (1991); Price v. Lehtinen (In re Lehtinen), 332 B.R. 404, 411  
15 (9th Cir. BAP 2005), aff'd, 564 F.3d 1052 (9th Cir. 2009); In re  
16 Crayton, 192 B.R. at 974-75. The bankruptcy court's choice of  
17 sanction is reviewed for abuse of discretion. U.S. Dist. Ct. for  
18 E.D. Wash. v. Sandlin, 12 F.3d 861, 865 (9th Cir. 1993). Under  
19 the abuse of discretion standard of review, we first "determine  
20 de novo whether the [bankruptcy] court identified the correct  
21 legal rule to apply to the relief requested." United States v.  
22 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). If the  
23 bankruptcy court identified the correct legal rule, we then  
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26 <sup>6</sup> In accordance with BAP Rule 8012-2(c), the members of the  
27 merits panel requested that the Panel hear and decide this appeal  
28 en banc. Thereafter, en banc consideration was approved by a  
unanimous vote of the regular members of the Panel, as provided  
for in BAP Rule 8012-2(d).

1 determine under the clearly erroneous standard whether its  
2 factual findings and its application of the facts to the relevant  
3 law were: "(1) illogical, (2) implausible, or (3) without support  
4 in inferences that may be drawn from the facts in the record."  
5 Id. (internal quotation marks omitted).

6 Additionally, the bankruptcy court's interpretation and  
7 application of a local rule is reviewed for abuse of discretion.  
8 In re Lehtinen, 564 F.3d at 1058. Finally, due process is a  
9 question of law that we review de novo. Miller v. Cardinale (In  
10 re DeVille), 280 B.R. 483, 492 (9th Cir. BAP 2002), aff'd, 361  
11 F.3d 539 (9th Cir. 2004).

## 12 VI. DISCUSSION

13 In reviewing attorney disciplinary sanctions we determine  
14 whether (1) the disciplinary proceeding is fair, (2) the evidence  
15 supports the findings, and (3) the penalty imposed was  
16 reasonable.<sup>7</sup> In re Crayton, 192 B.R. at 978; In re Lehtinen, 332  
17 B.R. at 411; In re Brooks-Hamilton, 400 B.R. at 250.

18 Margolis makes several arguments essentially contending that  
19 the bankruptcy court's Sanctions Order was unfair, unsupported by  
20 the evidence, and unreasonable. We address his arguments below.

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24 <sup>7</sup> Margolis's arguments on appeal do not refer to the Rule  
25 9011 monetary sanctions included in the Sanctions Decision and  
26 the Sanctions Order. Therefore, any argument that the bankruptcy  
27 court abused its discretion in imposing the monetary fine against  
28 him under Rule 9011 is waived. In re Lehtinen, 332 B.R. at 410;  
see also, O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,  
Inc.), 887 F.2d 955, 957 (9th Cir. 1989).

1 **A. The ABA Standards**

2 Relying on Crayton, Margolis contends that the bankruptcy  
3 court abused its discretion by not applying the ABA Standards in  
4 the Sanctions Order.

5 In Crayton, the BAP determined that reasonable sanctions are  
6 those that apply the ABA Standards. The ABA Standards dictate  
7 consideration of four criteria: (1) whether the duty violated was  
8 to a client, the public, the legal system, or the profession, (2)  
9 whether the attorney acted intentionally, knowingly or  
10 negligently, (3) the seriousness of the actual or potential  
11 injury caused by the attorney's misconduct, and (4) the existence  
12 of aggravating and mitigating factors. 192 B.R. at 980.

13 Aggravating factors justifying an increase in the degree of  
14 discipline imposed include considerations of a prior disciplinary  
15 offense, multiple offenses, a pattern of misconduct, or a refusal  
16 to acknowledge the wrongful nature of the conduct. Id. at 981.  
17 Mitigating circumstances justifying a reduction in the degree of  
18 discipline include the absence of a prior disciplinary record,  
19 personal or emotional problems, inexperience in the practice of  
20 law, or a timely good faith effort to make restitution or to  
21 rectify the consequences of the misconduct. Id.

22 Crayton requires that bankruptcy courts specifically address  
23 each criterion of the ABA Standards when deciding to impose  
24 sanctions for attorney misconduct. Id.; In re Brooks-Hamilton,  
25 400 B.R. at 252. In this case, the bankruptcy court did not  
26 expressly address the ABA Standards. However, the bankruptcy  
27 court's findings demonstrate that it effectively considered the  
28 first three criteria. It found that Margolis violated his duty

1 to the legal system as well as the public, acted with at least  
2 gross negligence, and caused a serious injury to the Debtors (and  
3 possible injury to other clients). However, the bankruptcy court  
4 did not specifically analyze whether any aggravating or  
5 mitigating factors justified an increase or decrease in the  
6 degree of discipline imposed.

7 In Crayton, the BAP adopted the ABA Standards because it  
8 determined that they “promote[d] the thorough, rational  
9 consideration of relevant factors, and help[ed] to achieve  
10 consistency when imposing attorney discipline.” 192 B.R. at 980.  
11 While the ABA Standards do promote a certain level of consistency  
12 for attorney discipline, requiring explicit consideration of the  
13 ABA Standards in determining the reasonableness of sanctions is  
14 too restrictive. As noted in Brooks-Hamilton, requiring a  
15 bankruptcy court to “slavishly intone” the ABA Standards makes  
16 little sense given that sanctions are within the sound discretion  
17 of the bankruptcy court, and that deference should be given to  
18 bankruptcy courts’ choice of sanction in that they have “the  
19 inherent power to run the type of courtroom that they believe  
20 best serves justice.” Id. at 255 (Markell, J., concurring).

21 Furthermore, the ABA Standards, which were developed  
22 primarily for nonfederal, nonbankruptcy courts by unelected and  
23 nonjudicial parties, are ill-adapted to federal bankruptcy  
24 proceedings. Id. at 256. The ABA Standards were not drafted to  
25 address the distinctive context of bankruptcy where, as here,  
26 administrative matters rather than litigation may be the focus of  
27 an attorney’s work. While the ABA Standards remain a helpful  
28 guide in the imposition of sanctions, the requirement of applying

1 the ABA Standards is inconsistent with the exercise of discretion  
2 needed for a bankruptcy court to remedy attorney misconduct, as  
3 well as with procedures that certain districts have in place for  
4 sanctioning attorneys under their local rules.

5 Therefore, we modify the holding of Crayton, such that the  
6 failure of a bankruptcy court to apply each criterion of the ABA  
7 Standards in imposing sanctions for attorney misconduct will no  
8 longer constitute an abuse of discretion. Bankruptcy courts  
9 remain free to consult the ABA Standards when formulating  
10 sanctions; however, it is not reversible error if a bankruptcy  
11 court does not do so. Having determined that it is not an abuse  
12 of discretion for the bankruptcy court not to address the ABA  
13 Standards in imposing sanctions, the balance of our decision  
14 examines whether the bankruptcy court's sanctions against  
15 Margolis were fair, supported by the evidence, and reasonable.

16 **B. The Sanctions Proceeding Was Fair**

17 Margolis argues that he was denied due process because  
18 (1) the OSC did not identify any specific testimony or  
19 documentary evidence that would be used against him at the OSC  
20 hearing; and (2) his response to the OSC was constrained by the  
21 attorney-client privilege, including that he was unable to call  
22 witnesses to testify at the OSC hearing. These arguments are not  
23 supported by the record.

24 1. Specific Evidence

25 Importantly, Margolis did not raise in the bankruptcy court  
26 the argument that he was unable to defend properly against the  
27 OSC due to the failure of the OSC to identify specific evidence  
28 of misconduct. While we generally do not consider arguments

1 raised for the first time on appeal (In re E.R. Fegert, Inc., 887  
2 F.2d at 957), we will do so here because we must review whether  
3 the disciplinary proceeding was fair.

4 When an attorney is subject to discipline, he or she has a  
5 right to notice and an opportunity to be heard. In re Ruffalo,  
6 390 U.S. 544, 551-52 (1968); In re Lehtinen, 564 F.3d at 1060.  
7 In order to satisfy the requirements of due process in this  
8 context, the attorney must receive prior notice of the "the  
9 particular alleged misconduct and of the particular disciplinary  
10 authority under which the court is planning to proceed" along  
11 with an opportunity to respond. In re DeVille, 361 F.3d at 548.

12 Here, the OSC notified Margolis of the conduct charged  
13 against him. The bankruptcy court was concerned that Rule 9011  
14 had been violated when Margolis filed unsigned schedules and  
15 statements of financial affairs. Additionally, the bankruptcy  
16 court was concerned that Margolis was at least grossly negligent  
17 by allowing unlicensed, non-attorney staff to counsel the Debtors  
18 without meaningful supervision and by failing to discover and  
19 schedule assets. The bankruptcy court identified its  
20 disciplinary authority under Rule 9011, and, while the bankruptcy  
21 court did not explicitly invoke its inherent sanctioning power,  
22 the OSC notified Margolis of the possible imposition of sanctions  
23 for his unprofessional conduct, which are expressly authorized  
24 under the Bankruptcy Code and Local Rules. The record  
25 demonstrates that Margolis did not question the bankruptcy  
26 court's authority to impose sanctions and that he understood the  
27 bankruptcy court's concerns regarding his conduct.

1           2.    Attorney-Client Privilege

2           Margolis argues that he was unable to fully defend against  
3 the OSC because of restrictions imposed by the attorney-client  
4 privilege. However, we fail to see how the attorney-client  
5 privilege prohibited Margolis from fully responding to the OSC.  
6 The OSC notified Margolis that sanctions might be imposed based  
7 on the bankruptcy court's concern that Margolis' representation  
8 of the Debtors was inadequate because he allowed non-attorney  
9 staff to counsel the Debtors and prepare bankruptcy schedules  
10 without meaningful supervision. The Sanctions Order was not  
11 entered, as Margolis asserts, simply because of one omission or  
12 error such as the failure to schedule the Mercedes Benz.  
13 Instead, the sanctions were based on the bankruptcy court's  
14 finding that Margolis did not understand the fundamental  
15 importance of the bankruptcy schedules and his role in preparing  
16 them--a task that is integral to a bankruptcy case and "goes to  
17 the integrity of the bankruptcy system."

18           The bankruptcy court made its findings based on Margolis'  
19 own sworn testimony at the Trial about his role in the Debtors'  
20 bankruptcy case and about his general office procedures.  
21 Importantly, Margolis did not assert the attorney-client  
22 privilege during any of his testimony at the Trial.

23           The record demonstrates that Margolis understood the  
24 bankruptcy court's concern regarding his conduct and had an  
25 adequate opportunity to explain it. At the hearing on the OSC,  
26 Margolis presented argument and evidence in the form of  
27 declarations. He also took responsibility for his inadequate  
28 office procedures and presented a declaration from an office

1 management consultant retained to improve his practices. As the  
2 bankruptcy court noted at the OSC hearing, "It's not like  
3 [Margolis] hasn't been allowed to testify. He testified fully  
4 and freely, and I would assume that if there were extenuating  
5 circumstances, they would have come out in the trial."

6 We conclude that the due process requirements for a fair  
7 proceeding were met because Margolis received advance notice of  
8 the particular alleged misconduct and potential sanctions.  
9 Margolis prepared a written response, provided declaration  
10 testimony, and appeared at the OSC hearing to present his  
11 arguments and explanations for his conduct. He was, therefore,  
12 provided the requisite notice and opportunity to be heard.

13 **C. The Bankruptcy Court's Findings Of Fact Were Supported By**  
14 **The Evidence**

15 Margolis argues that "there is not one scintilla of evidence  
16 that he engaged in any recurring unprofessional conduct" that  
17 justified the bankruptcy court's decision to impose sanctions  
18 against him. Additionally, Margolis contends there were other  
19 factual errors in the Sanctions Decision and the Sanctions Order,  
20 including that: (1) the Vietnamese community was victimized by  
21 Margolis; (2) Margolis did not interview the Debtors himself; and  
22 (3) he knew about the Mercedes but removed it from the Bankruptcy  
23 Schedules.

24 At the OSC hearing, the bankruptcy court stated that it was  
25 concerned that Margolis did not understand the fundamentals of  
26 how to represent a debtor and that it merely "came home to roost"  
27 in the Debtors' case. The bankruptcy court found that Margolis  
28 lacked a basic understanding of the responsibilities of an



1 attorney for a chapter 7 debtor and that "some action was  
2 necessary to protect other debtors" from his professional  
3 shortcomings. Thus, the bankruptcy court's finding of the  
4 "recurring nature" of Margolis' conduct was not based on the  
5 particular failures associated with the Debtors' case, but on  
6 Margolis' own testimony regarding his general office practices,  
7 which implicitly covered prior cases.

8 The Trial testimony of Margolis revealed that it was  
9 Margolis' practice to delegate client interviews and intake of  
10 financial information to his wife or other non-attorney staff.  
11 He testified that he usually does not go over a debtor's  
12 financial information with his clients in much detail, but that  
13 his wife or staff does. He also testified that his wife makes  
14 the tentative decisions regarding accepting clients and has  
15 significant input in deciding whether a chapter 7 or 13 case  
16 should be filed.

17 These practices were evidenced in the Debtors' case by  
18 Margolis' testimony that he "pretty much" delegated the whole  
19 task of putting the schedules together to his wife and staff and  
20 spent only about 15 minutes with the Debtors "in meandering  
21 conversation" reviewing the information contained with their  
22 petition.

23 As far as the Mercedes is concerned, Margolis admitted that  
24 his staff was aware of its existence early on. He stated at the  
25 Trial that he personally did not know about the Mercedes prior to  
26 filing the petition because he "was out of the loop."

27 As a result, the bankruptcy court found that Margolis'  
28 testimony led to the conclusion that he did not take a

1 sufficiently active role in working with his clients to ascertain  
2 all of their assets and liabilities and that he exhibited a  
3 cavalier attitude toward the accuracy of bankruptcy schedules.  
4 The bankruptcy court found this attitude set the tone for the  
5 office and allowed for an environment that ultimately led to the  
6 denial of the Debtors' discharge. Such unprofessional conduct,  
7 the bankruptcy court reasoned, combined with the fact that  
8 Margolis' practice drew heavily from the Vietnamese population in  
9 the South Bay area, that he advertised in Vietnamese periodicals,  
10 and that he had filed over 100 bankruptcy cases, could lead to  
11 "contin[ued] victimization of the Vietnamese community" if the  
12 bankruptcy court did not immediately impose disciplinary  
13 sanctions.

14 While the term "victimization" may be strong, there is  
15 evidence in the record that potential debtors from the Vietnamese  
16 community could be harmed through Margolis' office practices.  
17 Findings of fact are clearly erroneous if they are illogical,  
18 implausible, or without support in the record. Here, there is  
19 ample evidence to support the bankruptcy court's findings that  
20 underlay the Sanctions Decision and Sanctions Order.

21 **D. The Sanctions Order Was Reasonable**

22 Margolis makes several arguments as to why the Sanctions  
23 Order was unreasonable, including that the bankruptcy court  
24 failed to address the ABA Standards. Even though we have  
25 determined that application of the ABA Standards is no longer  
26 required, reasonableness continues to require that the sanction  
27 imposed be within the scope of the bankruptcy court's authority  
28 and that the sanction be tailored to address the misconduct.

1 Therefore, we address Margolis' remaining arguments challenging  
2 the Sanctions Order.

3 1. Standing Committee Referral

4 Margolis contends that the bankruptcy court abused its  
5 discretion by imposing any sanctions at all. He argues that the  
6 bankruptcy court should have referred the matter to the Standing  
7 Committee and that the BAP should establish a bright-line rule  
8 that all disciplinary matters be referred to the Standing  
9 Committee.<sup>8</sup> However, we decline to establish a rule that  
10 interferes with the bankruptcy court's inherent authority,  
11 especially when the Local Rules do not restrict that authority.

12 Bankruptcy courts have the inherent authority to regulate  
13 the practice of attorneys who appear before them. Chambers v.  
14 NASCO, Inc., 501 U.S. at 43-45 (federal courts are vested with  
15 inherent powers to manage their cases and courtrooms and to  
16 maintain the integrity of the judicial system); Caldwell v.  
17 Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d  
18 278, 284-85 (9th Cir. 1996). Bankruptcy courts also have express  
19 authority under the Code and the Rules to sanction attorneys,  
20 including disbarment or suspension from practice. See In re  
21 Lehtinen 564 F.3d at 1058, 1062; 11 U.S.C. § 105(a); Rule 9011  
22 and Local Rule 1001-2 (incorporating N.D. Cal. Civ. R. 11-1  
23 through 11-9).

24 "There is no uniform procedure for disciplinary proceedings  
25 in the federal system." In re Lehtinen, 564 F.3d at 1062. As a

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27 <sup>8</sup> We note, however, that it would be impossible to  
28 establish such a rule because not all judicial districts in the  
Ninth Circuit have standing committees.

1 result, "individual judicial districts are free to define the  
2 rules to be followed and the grounds for punishment." Id.  
3 The bankruptcy courts in the District have adopted Civil Rule 11-  
4 6(a)<sup>9</sup> through its Local Rule 1001-2. Pursuant to that rule, the  
5 bankruptcy court is empowered to supervise and discipline  
6 attorneys. If the bankruptcy court finds that an attorney has  
7 engaged in unprofessional conduct, the court "may do any or all"  
8 of the following: (1) initiate proceedings for civil or criminal  
9 contempt; (2) impose other appropriate sanctions, (3) refer the  
10 matter to the District's disciplinary authority, (4) refer the  
11 matter to the Standing Committee, or (5) refer the matter to the  
12 Chief Judge. N.D. Cal. Civ. R. 11-6(a).

13 Here, the bankruptcy court, consistent with Local Rule 1001-  
14

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15 <sup>9</sup> Civil Rule 11-6. Discipline.

16 (a) General. In the event that a Judge has cause to  
17 believe that an attorney has engaged in unprofessional  
18 conduct, the Judge may do any or all of the following:

19 (1) Initiate proceedings for civil or criminal contempt  
20 under Title 18 of the United States Code and Rule 42 of  
21 the Federal Rules of Criminal Procedure;

22 (2) Impose other appropriate sanctions;

23 (3) Refer the matter to the appropriate disciplinary  
24 authority of the state or jurisdiction in which the  
25 attorney is licensed to practice;

26 (4) Refer the matter to the Court's Standing Committee  
27 on Professional Conduct; or

28 (5) Refer the matter to the Chief Judge for her or him  
to consider whether to issue an order to show cause  
under Civ. L. R. 11-7.

1 2, imposed appropriate disciplinary sanctions and referred the  
2 matter to the Standing Committee for further proceedings. Given  
3 that the plain language of the Local Rule does not restrict the  
4 bankruptcy court's inherent authority and provides the bankruptcy  
5 court with a non-exclusive list of discretionary measures for  
6 imposing sanctions, we cannot conclude that the bankruptcy court  
7 must refer all matters to the Standing Committee. Its choice of  
8 which measures to employ under the Local Rule cannot, therefore,  
9 be an abuse of discretion.<sup>10</sup> See In re Lehtinen, 564 F.3d at  
10 1062.

## 11 2. Injunction From Filing

12 Margolis argues that the bankruptcy court exceeded its  
13 authority and abused its discretion by enjoining him from filing  
14 bankruptcy cases or schedules in "any court" unless he met  
15 certain conditions. As discussed above, bankruptcy courts have  
16 the inherent authority to run their courtrooms and to supervise  
17 the attorneys who appear before them. Hale v. United States  
18 Trustee, 509 F.3d 1139, 1148 (9th Cir. 2007). Similarly, under  
19 § 105(a)<sup>11</sup> and the District's Local Rule, the bankruptcy court  
20 may discipline or suspend attorneys who practice before the

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21  
22 <sup>10</sup> In districts where a local rule mandates a particular  
23 procedure, failure to follow that procedure could be an abuse of  
24 discretion, but we can only address the facts of the case before  
25 us, and on these facts, there is no abuse of discretion.

26 <sup>11</sup> Section 105(a) provides:  
27 The court may issue any order, process, or judgment that is  
28 necessary or appropriate to carry out the provisions of this  
title. No provision of this title providing for the raising of  
an issue by a party in interest shall be construed to preclude  
the court from, sua sponte, taking any action or making any  
determination necessary or appropriate to enforce or implement  
court orders or rules, or to prevent an abuse of process.

1 courts in its district in order to protect the integrity of the  
2 bankruptcy process. In re Brooks-Hamilton, 400 B.R. at 247  
3 (citing 1 COLLIER ON BANKRUPTCY ¶ 8.07[1] (Alan N. Resnick & Henry J.  
4 Sommer, eds., 15th ed. Rev. 2008)). Because the bankruptcy  
5 court's authority is over the attorneys who appear before it in  
6 its district, to the extent the bankruptcy court enjoined  
7 Margolis from filing in "any court," we clarify its meaning as  
8 any court within the District. That reading is also consistent  
9 with the OSC and Sanctions Decision.

10 3. Meeting With Clients And Scheduling Assets

11 Margolis argues that it was beyond the bankruptcy court's  
12 authority to impose the "potentially onerous obligation to meet  
13 for at least an hour with a prospective debtor [which] goes well  
14 beyond the duties of a lawyer." Furthermore, he contends that he  
15 cannot be held to guarantee debtors' representations in the  
16 schedules and statements of financial affairs.

17 Local Rule 1001-2 does not circumscribe the bankruptcy  
18 court's inherent powers. Thus, the bankruptcy court has the  
19 ability to fashion an appropriate sanction for unprofessional  
20 conduct.

21 The court has significant discretion in determining  
22 what sanctions, if any, should be imposed for a  
23 violation, subject to the principle that the sanctions  
24 should not be more severe than reasonably necessary to  
deter repetition of the conduct by the offending person  
or comparable conduct by similarly situated persons.

25 In re DeVille, 361 F.3d at 553 (applying sanctions under Rule  
26 9011). Under a court's inherent authority, civil penalties may  
27 be imposed, which are designed to be either compensatory or to  
28 coerce compliance. In re Lehtinen, 564 F.3d at 1059; Knupfer v.

1 Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1197 (9th Cir.  
2 2003).

3 Here, Margolis' testimony revealed his generally lax and  
4 hands-off approach to the accuracy of bankruptcy schedules and  
5 statements of financial affairs. The bankruptcy court was  
6 correct to be concerned with potential injury to the public  
7 resulting from these practices. Therefore, it enjoined Margolis  
8 from filing schedules unless an attorney conducted the initial  
9 client interview and spent at least an hour with the debtor to  
10 make sure that assets and debts would be discovered and properly  
11 scheduled. Consistent with the bankruptcy court's findings, the  
12 sanction was tailored to coerce Margolis into spending time with  
13 clients to ascertain a full picture of their financial history,  
14 assure the clients' awareness of the importance of correctly  
15 completing bankruptcy documents, and to assure that Margolis has  
16 an adequate understanding of his clients' needs. The sanction  
17 was not meant to shift the burden of responsibility for the  
18 truthfulness of the information from debtors to Margolis.  
19 Accordingly, we conclude that the bankruptcy court did not abuse  
20 its discretion here because the Sanctions Order does not mean  
21 that Margolis must certify the validity and accuracy of debtors'  
22 schedules.

23 As for Margolis' assertion that it is unduly burdensome to  
24 be required to spend a minimum of one hour with his clients, we  
25 agree with the bankruptcy court that one hour is below the amount  
26 of time competent counsel generally spend with their clients.  
27 Margolis has chosen to be an attorney and must accept the duties  
28 and responsibilities associated with the position.

