

JUL 17 2008

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

6	In re:	)	BAP No. CC-07-1432-PaMkSn
		)	
7	C. R. TILLMAN,	)	Bk. No. RS 07-14933-MJ
		)	
8	Debtor.	)	
	_____	)	
9		)	
10	C. R. TILLMAN,	)	
		)	
11	Appellant,	)	<b>M E M O R A N D U M<sup>1</sup></b>
		)	
12	v.	)	
		)	
13	ROD DANIELSON, Trustee,	)	
		)	
14	Appellee.	)	
	_____	)	

Argued and Submitted on June 19, 2008,  
at Pasadena, California

Filed - July 17, 2008

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

Hon. Meredith A. Jury, U.S. Bankruptcy Judge, Presiding

Before: PAPPAS, MARKELL and SNYDER<sup>2</sup>, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> Hon. Paul B. Snyder, U.S. Bankruptcy Judge for the Western District of Washington, sitting by designation.

1 Debtor C.R. Tillman ("Tillman") appeals the bankruptcy  
2 court's order dismissing his bankruptcy case for failure to file  
3 required documents and to cure deficiencies associated with the  
4 filing of his petition. We AFFIRM the order of the bankruptcy  
5 court.

6 **FACTS**

7 Tillman, acting pro se, filed a chapter 7<sup>3</sup> petition on  
8 August 20, 2007. Because his filing consisted solely of the  
9 petition, a Deficiency Notice was issued by the clerk and mailed  
10 to Tillman. The Deficiency Notice set a September 4, 2007  
11 deadline for Tillman to file all required documents in his case.<sup>4</sup>

12 On August 22, 2007, the bankruptcy court issued an Order to  
13 Show Cause Re: Dismissal ("OSC") directed to Tillman. The OSC  
14 required Tillman to file the documents necessary to cure each of  
15 the deficiencies listed in the Deficiency Notice "not later than  
16 15 days from the date of the filing of the petition." As with  
17 the Deficiency Notice, this fifteen-day period would lapse on  
18 September 4, 2007.

19 The OSC provided further that if the documents were not  
20 timely filed, a hearing would be conducted by the bankruptcy  
21 court on September 12, 2007, at which Tillman was required to  
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23 <sup>3</sup> Unless specified otherwise, all references are to the  
24 Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules  
of Bankruptcy Procedure, Rules 1001-9037.

25 <sup>4</sup> It appears from the docket that Tillman had not filed the  
26 following documents: Schedules A - J, Statement of Financial  
27 Affairs, Employee Income Record, Form 22A, Statement of  
28 Assistance of Non-attorney, Summary of Schedules, Declaration  
concerning Tillman's schedules, Certificate of Credit Counseling,  
and Statistical Summary.

1 appear in person (with or without attorney) and to show cause why  
2 the bankruptcy case should not be dismissed with a 180-day bar as  
3 to refiling.

4 On September 4, 2007, Tillman moved to convert his case from  
5 chapter 7 to chapter 13. A handwritten note on the motion  
6 incorporates an attached document entitled "Declaration for  
7 extention [sic] and/or conversion to chapter 13 from chapter 7  
8 filed on 8-20-07." The motion to convert was granted the  
9 following day, September 5, 2007. The chapter 7 trustee was  
10 discharged, and the Appellee, Rod Danielson, was appointed  
11 chapter 13 trustee.<sup>5</sup>

12 As Tillman had been advised in the OSC, on September 12,  
13 2007, the bankruptcy court conducted the hearing to consider his  
14 failure to file the missing schedules. As a result of the  
15 hearing, the bankruptcy court entered an Order Dismissing Case on  
16 September 12, 2007. A Notice of Dismissal of the bankruptcy case  
17 was filed and served on interested parties by the clerk on  
18 September 13, 2007. Tillman filed a timely appeal of the  
19 dismissal on September 24, 2007.

#### 20 JURISDICTION

21 The bankruptcy court had jurisdiction under 28 U.S.C.  
22 §§ 1334 and 157(b) (2) (A). The Panel has jurisdiction under 28  
23 U.S.C. § 158.

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<sup>5</sup> Although named as appellee in this appeal, Danielson did  
not submit a brief or participate in oral argument.

1 **ISSUES**<sup>6</sup>

2 1. Whether the bankruptcy court abused its discretion in  
3 denying Tillman an extension of time in which to file documents  
4 required under Rule 1007.

5 2. Whether the bankruptcy court abused its discretion when  
6 it dismissed Tillman's chapter 13 case for failing to file  
7 required documents under Rule 1007.

8 3. Whether the bankruptcy court violated Tillman's rights  
9 as a pro se debtor when it did not grant him an extension of time  
10 in which to file the required documents.

11 **STANDARDS OF REVIEW**

12 A bankruptcy court's denial of an extension of time under  
13 Rule 9006(b), the general rule governing enlargement of time, is  
14 reviewed for an abuse of discretion.<sup>7</sup> Nunez v. Nunez (In re  
15 Nunez), 196 B.R. 150, 155 (9th Cir. BAP 1996); Zidell, Inc. v.  
16 Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1431  
17 (9th Cir. 1990).

18 We review the bankruptcy court's decision to dismiss a  
19 bankruptcy case for abuse of discretion. Leavitt v. Soto (In re  
20 Leavitt), 171 F.3d 1219, 1222-23; Ho v. Dowell (In re Ho), 274

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21 <sup>6</sup> In his brief at pages 2, 4 and 5, Tillman refers to a  
22 purported violation of the automatic stay. This apparently  
23 refers to a county tax sale of some property Tillman owned that  
24 occurred the day after Tillman filed his chapter 7 petition.  
25 There is no indication in the record that this sale was ever  
brought to the attention of the bankruptcy court. The Panel  
expresses no opinion concerning that subject.

26 <sup>7</sup> We were unable to locate a reported decision that  
27 addresses the standard of review for an order granting or denying  
for an extension of time to file schedules under Rule 1007(c).  
28 We have no reason, however to believe the standard of review  
should be anything other than abuse of discretion.

1 B.R. 867, 871 (9th Cir. BAP 2002). "A court abuses its  
2 discretion if it does not apply the correct law or if it rests  
3 its decision on a clearly erroneous finding of material fact."  
4 Ho, 274 B.R. at 871 (citing United States v. Sprague, 135 F.3d  
5 1301, 1304 (9th Cir. 1998)).

6 Whether a procedure comports with basic requirements of due  
7 process is a question of law that we review de novo. Alonso v.  
8 Summerville (In re Summerville), 361 B.R. 133, 139 (9th Cir. BAP  
9 2007); Garner v. Shier (In re Garner), 246 B.R. 617, 619 (9th  
10 Cir. BAP 2000).

## 11 DISCUSSION

### 12 I.

13 We first address the problematic state of the record in this  
14 appeal.

15 It has been the long-standing policy in our circuit that pro  
16 se appellants, without training in the law, should be treated  
17 with "great leniency" and their briefs "read liberally." Horphag  
18 Research Ltd. v. Garcia, 475 F.3d 1029, 1034 (9th Cir. 2006);  
19 Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986).

20 Accordingly, while Tillman's brief does not comply with Rule  
21 8010,<sup>8</sup> we will endeavor to address his arguments as best we can,  
22 considered in tandem with his presentation at oral argument.

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23  
24 <sup>8</sup> He presents no statement of the case or presentation of  
25 facts, except to state that he would answer questions from the  
26 Panel regarding these matters at oral argument. His  
27 jurisdictional statement refers to the jurisdiction of the Ninth  
28 Circuit Court of Appeals, and is incorrect for that court. His  
standard of review discusses, without citation to authority, a  
substantial evidence standard that is appropriate for review of  
administrative proceedings, not bankruptcy cases. His argument  
is unfocused, and there is no conclusion.

1 But while we will attempt to treat his arguments thoughtfully, it  
2 is difficult to do so because of the deficiencies in his excerpts  
3 of record.

4 The appellant bears the burden of presenting an adequate and  
5 accurate record on appeal. Kritt v. Kritt (In re Kritt), 190  
6 B.R. 382, 387 (9th Cir. BAP 1995). This is a mandatory  
7 requirement, and no exceptions are permitted. Drysdale v. Educ.  
8 Credit Mgmt. Corp. (In re Drysdale), 248 B.R. 386, 388 (9th Cir.  
9 BAP 2000). In particular, BAP Rule 8006-1 provides that "the  
10 excerpts of record shall include the transcripts necessary for  
11 adequate review in light of the standard of review to be applied  
12 to the issues before the Panel." 9th Cir. BAP Rule 8006-1; see  
13 also Rule 8009(b) (9) (mandating submission of transcript if  
14 required by BAP rule).

15 While Tillman included the dismissal order from the  
16 bankruptcy court in the excerpts, he did not provide a transcript  
17 of the OSC hearing conducted on September 12, 2007, at which the  
18 bankruptcy court decided to dismiss Tillman's bankruptcy case.  
19 Although the dismissal order implements the bankruptcy court's  
20 decision, it provides little insight into the reasons for that  
21 ruling. Instead, a transcript of the September 12, 2007 hearing  
22 is the "one document that would directly identify the manner in  
23 which the bankruptcy court exercised its discretion." McCarthy v.  
24 Prince (In re McCarthy), 230 B.R. 414, 416 (9th Cir. BAP 1999)  
25 (quoting Syncom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir.  
26 1991)).

27 Tillman's failure to supply a transcript significantly  
28 interfered with the Panel's ability to effectively review the

1 bankruptcy court's decision. In addition, there is cause for  
2 concern about the reliability of the excerpts of record he has  
3 submitted. Tillman's excerpts include a copy of a declaration  
4 that was attached to his motion to convert filed in the  
5 bankruptcy court entitled "Declaration for extention and/or  
6 conversion to chapter 13 from chapter 7 filed on 8-20-07."  
7 ("Tillman Declaration"). Tillman asserts that in his declaration  
8 he sought to convert his case from chapter 7 to chapter 13 and he  
9 requested an extension of time to file the missing documents  
10 outlined in the Deficiency Notice. Since the copy of the Tillman  
11 Declaration included in the excerpts at page 1(a) contains a  
12 combination of typed and handwritten text and underlining, the  
13 Panel deemed it appropriate to compare it to the original of the  
14 Tillman Declaration in the record of the bankruptcy court.  
15 O'Rourke v. Seaboard Surety Co. (In re Fegert, Inc.), 887 F.2d  
16 955, 957-58 (9th Cir. 1989) (appellate court may take judicial  
17 notice of the bankruptcy court records). It appears there are  
18 several differences between the two documents. Of particular  
19 significance to the Panel is that the original Tillman  
20 Declaration includes his "request [for] a 3 day extention" to  
21 file his missing documents, whereas the copy in the excerpts has  
22 apparently been altered to include a "request [for] a 13 day  
23 extention" by inserting a handwritten numeral "1" before the  
24 typed numeral 3.<sup>9</sup>

25 The Panel could speculate about why Tillman would submit

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26  
27 <sup>9</sup> This is a precise rendering of the appearance of the  
28 Tillman Declaration in the bankruptcy court's record and in the  
excerpts on appeal. We have not noted Tillman's obvious  
misspelling of "extension."

1 what appears, at best, to be an inaccurate excerpt from the  
2 bankruptcy court's record. Under the circumstances, however, we  
3 are compelled to disregard the copy of the Tillman Declaration in  
4 the excerpts in favor of the one filed in the bankruptcy court.  
5 Atwood v. Chase Manhattan Mortg. Co., (In re Atwood), 293 B.R.  
6 227, 233 (9th Cir. BAP 2003) (the BAP may supplement incomplete  
7 excerpts of record with information obtained from the bankruptcy  
8 court docket).

9 In sum, Tillman's failure to provide a complete and adequate  
10 record on appeal could serve as grounds for dismissal of the  
11 appeal. McCarthy, 230 B.R. at 416. It may also constitute  
12 grounds for a summary affirmance of the order of the bankruptcy  
13 court. Friedman v. Sheila Plotsky Brokers, Inc. (In re  
14 Friedman), 126 B.R. 63, 68 (9th Cir. BAP 1991). However, since  
15 Tillman is acting pro se and apparently has no legal training, we  
16 will exercise our discretion and, subject to these limitations,  
17 review the merits of Tillman's arguments on appeal.

18 II.

19 A.

20 Reading his brief liberally, and based on his comments at  
21 oral argument, Tillman apparently misapprehends that conversion  
22 of his case from chapter 7 to chapter 13 obviated his obligation  
23 to either file his documents timely or respond to the bankruptcy  
24 court's OSC:

25 After said OSC was set the judge signed his conversion  
26 to a chapter 13 but failed to take the chapter 7 OSC  
27 off calendar since it was moot. Once a case is  
28 converted the prior case does not exist and a new OSC  
must be set in the new chapter. This was not done in  
the case at hand as the excerpts [sic] and argument to  
follow will demonstrate.



1 Tillman's Br. at 3. Tillman has provided no authority for these  
2 statements, which are not correct.

3 Contrary to Tillman's position, conversion from one chapter  
4 to another does not nullify the effect of the orders of the  
5 bankruptcy court entered before the conversion. In re Sheard,  
6 1999 WL 454260 (Bankr. E.D. Pa. 1999) ("Conversion from chapter 7  
7 to chapter 13 does not upset orders entered in the chapter 7  
8 case."); 2 KEITH LUNDEN, CHAPTER 13 BANKRUPTCY § 8.27 (1993) ("Orders  
9 that were entered in the prior Chapter 7 case are still  
10 effective. Conversion to Chapter 13 does not upset" such  
11 orders.). Although neither the BAP nor the Ninth Circuit has  
12 addressed this issue specifically, we have aligned with other  
13 circuits in affirming a general policy that a change in chapters  
14 should leave matters as they existed at the time of conversion.

15 A proper reading of § 348 indicates that it is not a  
16 source of disruption but, instead, preserves the  
17 continuity of the bankruptcy proceedings. It should  
18 not be read as a nullification act. It is not designed  
19 to change what has gone before but, rather, to leave  
20 matters as they existed on the date of conversion.

19 Ramirez v. Whelan (In re Ramirez), 188 B.R. 413, 415 (9th Cir.  
20 BAP 1995) (quoting with approval In re Lybrook, 107 B.R. 611, 613  
21 (Bankr. N.D. Ind. 1989), aff'd, 135 B.R. 321 (N.D. Ind. 1990),  
22 aff'd, 951 F.2d 136 (7th Cir. 1991)); accord In re Bell, 225 F.3d  
23 203, 216 (2d Cir. 2000) (Conversion "is not designed to change  
24 what has gone before but, rather, to leave matters as they  
25 existed on the date of conversion."); Baker v. Rank (In re  
26 Baker), 154 F.3d 534, 537 (5th Cir. 1998) (quoting Lybrook as  
27 "persuasive"); Calder v. Job (In re Calder), 973 F.2d 862, 866  
28 (10th Cir. 1992) (same). Therefore, the weight of authority is

1 against Tillman's argument that conversion effectively mooted the  
2 bankruptcy court's OSC.<sup>10</sup>

3 B.

4 Tillman is also incorrect in his contention that the  
5 bankruptcy court abused its discretion by not allowing him a  
6 fifteen-day extension for filing his schedules following the  
7 conversion of his case to chapter 13.

8 Nothing in the Bankruptcy Code, Rules, or the case law  
9 allows a debtor a new fifteen-day period to file his schedules  
10 after converting his case to chapter 13. Instead, § 348(a)  
11 provides that:

12 Conversion of a case under one chapter of this title to  
13 a case under another chapter of this title constitutes  
14 an order for relief under the chapter to which the case  
15 is converted, but, except as provided in subsections  
(b) and (c) of this section, does not effect a change  
in the date of filing the petition, the commencement of  
the case, or the order for relief.

16 Section 348(b) specifically enumerates exceptions to this rule,  
17 in which the conversion date, rather than the petition date, is  
18 used to measure deadlines. However, Rule 1007(c), which  
19 establishes the fifteen-day deadline for filing schedules and  
20 statements, is not addressed in any of those exceptions. The  
21 fifteen-day deadline in Rule 1007 is specifically tied to the  
22 petition filing date and not the date of conversion. Therefore,  
23 Tillman's argument that the Bankruptcy Code and Rule 1007 allows  
24 him a fifteen-day period following conversion for the filing of

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26 <sup>10</sup> We acknowledge that some orders dealing with matters  
27 solely implicated by the provisions of chapter 7 may not be  
28 effective after conversion to chapter 13. But, in this case, the  
bankruptcy court's order was entered to enforce Tillman's  
obligations under § 521(a) and Rule 1007, which are applicable in  
both chapter 7 and chapter 13.

1 his schedules lacks merit.

2 Tillman's suggestion that he should have been afforded  
3 fifteen additional days from conversion to file his schedules  
4 also reflects an inconsistency with the original Tillman  
5 Declaration he submitted to the bankruptcy court with his motion  
6 to convert. As noted above, in that declaration filed on  
7 September 4, 2007, Tillman requested conversion of his chapter 7  
8 case to chapter 13 and also a three-day extension following  
9 conversion to submit his schedules. While the bankruptcy court  
10 promptly granted Tillman's motion to convert in its order of  
11 September 5, 2007, the conversion order made no reference to  
12 Tillman's request for a three-day extension to complete his  
13 schedules. But the bankruptcy court's failure to directly  
14 address Tillman's request for a three-day extension upon  
15 conversion did not prejudice Tillman. Even if the bankruptcy  
16 court granted Tillman's request, an additional three days would  
17 have required Tillman to file his missing schedules by Monday,  
18 September 10, 2007. Since Tillman failed to file anything by  
19 that date, and because the hearing on the OSC and the bankruptcy  
20 court's decision to dismiss his case did not occur until  
21 September 12, Tillman cannot be heard to complain.

22 Finally, even if Tillman could assert that he was prejudiced  
23 by the bankruptcy court's failure to grant his request for a  
24 three-day extension to file missing documents, the bankruptcy  
25 court did not abuse its discretion in denying that request under  
26 these facts. Extensions of time under Rule 1007(c) are not  
27 handed out as a matter of course, but only upon a showing of  
28 cause. Rule 1007(c). Bankr. C.D. Cal. Local Rule 1007-1

1 requires that "[m]otions to extend time to file . . . schedules .  
2 . . shall comply with F.R.B.P. 1007 . . . [and] shall be  
3 accompanied by evidence supporting the extension of time." It  
4 was therefore Tillman's burden to demonstrate that good cause  
5 existed for an extension. But the only evidence Tillman  
6 submitted to the bankruptcy court was the original Tillman  
7 Declaration, which stated, "The . . . county violation of the  
8 automatic stay on 8-21-07 in favor of investor with bidder no.  
9 298 has delayed my filing schedules on time." Tillman has not  
10 explained how this alleged violation of the stay prevented him  
11 from timely filing his schedules, complying with the rules, or  
12 satisfying the Deficiency Notice and OSC.

13         Simply put, there is nothing in the record to show that the  
14 bankruptcy court abused its discretion in declining to extend the  
15 time for Tillman to file the necessary documents. The  
16 appropriate sanction for failure to file mandatory documents, as  
17 provided by the Code, is dismissal of his case. §§ 707(a)(3) and  
18 1307(c)(9).<sup>11</sup> The bankruptcy court acted within its discretion

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19  
20         <sup>11</sup> Section 707 provides:

21             (a) The court may dismiss a case under this  
22             chapter only after notice and a hearing and only for  
23             cause, including -

24                     (3) failure of the debtor in a  
25                     voluntary case to file, within  
26                     fifteen days or such additional  
27                     time as the court may allow after  
28                     the filing of the petition  
                      commencing such case, the  
                      information required by paragraph  
                      (1) of section 521, but only on a  
                      motion by the United States

(continued...)

1 in dismissing Tillman's case.

2 III.

3 Tillman's final basis for challenging the dismissal of his  
4 case stems from his belief that the bankruptcy court violated his  
5 constitutional rights. It is unclear whether Tillman frames his  
6 constitutional issue as one of due process or equal protection.  
7 Regardless, both arguments fail.

8 Interpreting his brief generously, Tillman contends that he  
9 was denied due process by the procedure used by the  
10 bankruptcy court in dismissing his case. Due process requires  
11 that Tillman be given notice "reasonably calculated, under all  
12 the circumstances, to apprise [him] of the pendency of the action  
13 and afford [him] an opportunity to present [his] objections."  
14

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15 <sup>11</sup>(...continued)  
16 trustee.

17 Section 1307 provides, in pertinent part:

18 Except as provided in subsection (e) of this  
19 section, on request of a party in interest or  
20 the United States trustee and after notice  
21 and a hearing, the court may convert a case  
22 under this chapter to a case under chapter 7  
23 of this title, or may dismiss a case under  
24 this chapter, whichever is in the best  
25 interests of creditors and the estate, for  
26 cause, including -

24 (9) only on request of the United  
25 States trustee, failure of the  
26 debtor to file, within fifteen  
27 days, or such additional time as  
28 the court may allow, after the  
filing of the petition commencing  
such case, the information required  
by paragraph (1) section 521[.]

1 Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1016-17  
2 (9th Cir. 2002) (quoting Mullane v. Cent. Hanover Bank & Trust  
3 Co., 339 U.S. 306, 314 (1950)). But even given the scanty  
4 record, this much is clear: Tillman was given proper notice of  
5 the deficiencies in his filings; an opportunity, as well as a  
6 deadline, to cure those deficiencies; and fair warning of the  
7 adverse consequences flowing from his failure to comply with the  
8 Rules.

9 The bankruptcy court may dismiss a case for the debtor's  
10 failure to file the necessary documents. §§ 707(a)(3) and  
11 1307(c)(9).<sup>12</sup> As required by the Rules, the bankruptcy court  
12 provided Tillman with timely, proper notice of its intended  
13 action, and scheduled a hearing at which Tillman was directed to  
14 appear to justify his failure to timely file his schedules and  
15 statements. The hearing occurred as scheduled, and Tillman  
16 declined to appear. At the conclusion of the hearing, the  
17 bankruptcy court entered an order of dismissal. There were no  
18 procedural deficiencies in Tillman's case to support a due  
19 process challenge.

20 Tillman's brief, charitably read, and some of his comments  
21 at oral argument, assert that he was denied equal protection  
22 because, he believes, debtors proceeding pro se are treated  
23 differently by the bankruptcy court than those who are  
24

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25 <sup>12</sup> The U.S. Trustee joined in the bankruptcy court's OSC,  
26 which satisfies the statutory requirement that it be the U.S.  
27 Trustee that requests dismissal for failure to comply with § 521.  
28 However, even if the U.S. Trustee had not joined in the OSC, the  
bankruptcy court could properly dismiss Tillman's case sua sponte  
under § 105(a). Tennant v. Rojas (In re Tennant), 318 B.R. 860,  
869 (9th Cir. BAP 2004).

1 represented by counsel. Specifically, Tillman argues that  
2 extensions of time are granted upon conversion to those debtors  
3 represented by lawyers, but are denied to those not appearing  
4 with an attorney.

5 In general, equal protection requires the government, and  
6 the courts, to treat similarly situated individuals alike. City  
7 of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439  
8 (1985) ("The Equal Protection Clause of the Fourteenth Amendment  
9 commands that no State shall 'deny to any person within its  
10 jurisdiction the equal protection of the laws,' which is  
11 essentially a direction that all persons similarly situated  
12 should be treated alike.") (quoting Plyler v. Doe, 457 U.S. 202,  
13 216 (1982)).<sup>13</sup> It follows that different treatment of  
14 dissimilarly situated persons does not violate equal protection.  
15 Hedquist v. Fokkena (In re Hedquist), 342 B.R. 295, 299 (8th Cir.  
16 BAP 2006). It is a violation of an individual's equal protection  
17 rights when it is proven that a person is a member of an  
18 identifiable class, that the person is intentionally treated  
19 differently from others similarly situated, and that there is no  
20 rational basis for the difference in treatment. Vill. of  
21 Willowbrook v. Olech, 528 U.S. 562, 564 (2000). However, unequal  
22 treatment alone does not prove an equal protection violation.  
23 Rather, there must also be proof of an unlawful intent to  
24 discriminate against a person for an invalid reason.

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25  
26 <sup>13</sup> Although this appeal does not implicate state action,  
27 the due process clause of the Fifth Amendment, binding on the  
28 federal government and courts, includes equal protection  
components. Equal protection claims under federal law are  
treated the same as equal protection claims under the Fourteenth  
Amendment. Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Beller  
v. Middendorf, 632 F.2d 788 (9th Cir. 1980).

1 Discriminatory intent "implies more than intent as volition or  
2 intent as awareness of consequences. It implies that the  
3 decisionmaker . . . selected or reaffirmed a particular course of  
4 action at least in part 'because of,' not merely 'in spite of,'  
5 its adverse effects upon an identifiable group." Pers. Adm'r of  
6 Mass. v. Feeney, 442 U.S. 256, 279 (1979) (citation omitted).

7 Tillman has not shown discriminatory unequal treatment here.  
8 By way of proof, Tillman relies solely on the clerk's docket  
9 concerning the bankruptcy case of a differently situated,  
10 although similarly named, debtor, R.C. Tillman. Tillman argues  
11 that R.C. Tillman was represented by an attorney and was granted  
12 an extension of time by the bankruptcy court after conversion of  
13 his case to file missing schedules and statements, while Tillman  
14 was not. Based solely on this docket, Tillman argues that pro se  
15 debtors are treated differently from those with attorneys in the  
16 subject bankruptcy court. But even a cursory review of the R.C.  
17 Tillman case docket reveals important differences between the two  
18 cases.

19 Both R.C. Tillman and Tillman began their journeys in  
20 bankruptcy court by filing chapter 7 petitions with no  
21 accompanying documents. The same deficiency notices were sent by  
22 the clerk to each, as were similar show cause orders. Here is  
23 where similarities end, however.

24 In the month between the issuance of OSC and the dismissal  
25 hearing, R.C. Tillman's case docket reflects two separate  
26 substitutions of counsel, a creditor's request for special notice  
27 with proof of service, and another continuance of the show cause  
28 hearing. The docket does not, however, indicate that R.C.



1 Tillman ever requested an extension of time in which to file the  
2 required documents. It indicates only that R.C. Tillman's show  
3 cause hearing was continued twice, apparently by the court.

4 The threshold for an equal protection claim is a showing of  
5 unequal treatment. Tillman's "proof" falls woefully short.

6 "Until such time as [a party] can show that it is receiving  
7 disparate treatment, there is no need for us to decide whether  
8 such treatment is violative of the right to equal protection."

9 Excess and Cas. Reinsurance Assoc. v. Ins. Comm'r, 656 F.2d 491,  
10 497 (9th Cir. 1981).

11 Here, the record shows that while both bankruptcy cases  
12 began with a "skeletal" filing, they thereafter took different  
13 paths, and then reconverged at dismissal because neither debtor  
14 had filed the required documents. Significantly for this  
15 analysis, R.C. Tillman never sought an extension of time, and his  
16 case was ultimately dismissed for failure to file the necessary  
17 documents. Tillman has not demonstrated that he was treated  
18 differently in the first instance, let alone that he was singled  
19 out for discriminatory treatment because he was pro se.

#### 20 CONCLUSION

21 We AFFIRM the order of the bankruptcy court dismissing  
22 Tillman's case.