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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NOT FOR PUBLICATION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

In re:) BAP No. EC-12-1393-MkJu
)
 JIMMIE STEPHEN C56483,) Bk. No. 12-27800
)
 Debtor.)
 _____)
)
 JIMMIE STEPHEN C56483,)
)
 Appellant,)
)
 v.) **MEMORANDUM***
)
 THOMAS E. MAY; U.S. TRUSTEE,)
)
 Appellees.)
 _____)

Submitted Without Oral Argument
on March 22, 2013

Filed - April 9, 2013

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

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Appearances: Appellant Jimmie Stephen C56483, pro se, on brief;
 no brief filed or other appearance made by either
 appellee.

Before: MARKELL, DUNN and JURY, Bankruptcy Judges.

 *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.

1 **INTRODUCTION****

2 Appellant Jimmie Stephen C56483¹ ("Stephen") appeals the
3 dismissal of his case under Section 521(i)(1)² for failure to
4 file the information required by Section 521(a)(1). We AFFIRM.

5 **FACTS**

6 Stephen filed a chapter 7 bankruptcy petition on April 23,
7 2012.³ With his petition, Stephen ostensibly filed a Schedule B
8 identifying his personal property. The Schedule B was
9 incomplete, however, because it only contained entries 1 through
10 11, leaving the remaining entries from 12 to 35 missing.⁴

11 _____
12 **We have exercised our discretion to independently review
13 several electronically filed documents in Stephen's underlying
14 bankruptcy case in order to develop a fuller understanding of the
15 record. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,
16 Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th
17 Cir. BAP 2003).

18 ¹C56483 appears to refer to Stephen's identification number
19 from the California Department of Corrections. He is, and was at
20 the time of his bankruptcy filing, incarcerated.

21 ²Unless specified otherwise, all chapter and Section
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
23 "Rule" references are to the Federal Rules of Bankruptcy
24 Procedure, Rules 1001-9037.

25 ³This case followed dismissal of Stephen's previous
26 chapter 7 bankruptcy on November 19, 2010, also for failure to
27 timely file required documents. He appealed that prior dismissal
28 to our Panel, and we affirmed. We take judicial notice of the
records in Stephen's prior bankruptcy and appeal. United States
v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

⁴The Official Form Schedule B is three pages long, and
requests information about 35 categories of personal property.
Stephen filed only the first page of Schedule B, which identifies
the first 11 categories. The remaining two pages, which refer to
(continued...)

1 On his Master Address List of creditors, Stephen identified
2 four entities as follows:

- 3 1. "I.R.S."-# 55-1001-0093..p.o. box
4 21126..PHILADELPHIA,PA..19114
- 5 2. "U.S.D.COURT" "EASTERN"..501 "I" ST # 4-200 SACRAMENTO
6 CALIF..95814..

7 (ANY AND ALL CREDITORS AND NEW LOANS,SANCTIONS ECT [sic])

8 A. CV-09-1516-MCE

9 B. CV-10-1678-KJM

10 C. CV-10-3469-KJM

11 D. CV-12-0630-GGH

- 12 3. "U.S.D.COURT" "NORTHERN"..235 PINE ST 19TH FL. SAN
13 FRANCISCO CALIF.94104

14 A. CV-10-0349-SI

15 B. CV-10-0496-SI

- 16 4. "U.S.D.COURT" "SOUTHERN"..800 FRONT ST SAN DIEGO
17 CALIF..92101

18 A. CV-06-1054-LAB

19 B. CV-06-0171-L

20 Apparently, the notations beginning with "CV" represent
21 civil cases that Stephen was or is a party to.

22 Stephen's Schedule E, relating to his priority unsecured
23 creditors, listed the same four entities and corresponding
24 addresses from the Master Address List.

25 On Stephen's list of nonpriority unsecured creditors,
26

27 _____
28 ⁴(...continued)

the remaining 24 categories of personal property, were omitted.

1 Schedule F, the sole entry for a creditor's name and mailing
2 address states "ALL CREDITORS."

3 Stephen filed a Motion/Application for Waiver of the
4 Chapter 7 Filing Fee or Other Fee ("IFP Motion") on April 23,
5 2012. On June 20, 2012, he filed what he styled an "opposition"
6 to the hearing set on the IFP Motion, requesting to either appear
7 telephonically, or have counsel appointed to appear for him. The
8 bankruptcy court denied the IFP Motion on July 2, 2012.

9 On May 21, 2012, Stephen filed a Motion/Application to Waive
10 Presence at 341 Meeting of Creditors Based on Exceptional
11 Circumstances ("341 Waiver Motion"). The United States Trustee
12 opposed the 341 Waiver Motion, but agreed to allow Stephen to
13 appear telephonically from prison for his meeting of creditors.
14 In correspondence attached to the opposition, Stephen was
15 notified that he was responsible for making arrangements for his
16 appearance with Trustee Thomas E. May ("May") and the prison
17 through certain described procedures.

18 On June 8, 2012, May filed a Motion to Dismiss for Failure
19 to Appear at Section 341 Meeting of Creditors and Motion to
20 Extend the Deadlines for Filing Objections to Discharge and
21 Motions to Dismiss ("Motion to Dismiss"). Stephen opposed the
22 Motion to Dismiss on June 28, 2012, alleging that May engaged in
23 misconduct by refusing to ask for Stephen when he called the
24 prison during the meeting of creditors.

25 On June 11, 2012, Stephen filed a Motion for Appointment of
26 Counsel for Federal Civil Rights Proceeding ("Motion for
27 Counsel"). He brought the Motion for Counsel based on 28 U.S.C.
28 § 1915, arguing that an attorney should be appointed for him to

1 protect his due process rights during the bankruptcy. The
2 bankruptcy court denied the Motion for Counsel on June 19, 2012.

3 On July 11, 2012, the bankruptcy court denied the Motion to
4 Dismiss as moot because it found Stephen's bankruptcy case had
5 already been automatically dismissed pursuant to Section 521(i).⁵
6 The court noted two reasons for the dismissal. First, Stephen
7 had omitted the information in entries 12 through 35 in his
8 Schedule B. Therefore, he did not file all of the information
9 required by Section 521(a)(1) within 45 days of his petition
10 date. Second, he failed to properly identify his creditors and
11 their addresses in his Schedules E or F, or in his Master Address
12 List. Accordingly, Stephen again did not comply with the
13 requirements of Section 521(a)(1) because there was no filed list
14 of creditors or schedule of liabilities.⁶

15 The bankruptcy court's order, entered on July 13, 2012,
16 states that the Motion to Dismiss was denied as moot, and
17 confirmed that Stephen's bankruptcy had been automatically
18 dismissed on June 8, 2012, the 46th day after he filed for
19 bankruptcy.

20 JURISDICTION

21 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
22 §§ 1334 and 157(b)(1) and (b)(2)(A). We have jurisdiction under
23 28 U.S.C. § 158.

24
25 ⁵The bankruptcy court resolved the Motion to Dismiss without
26 oral argument.

27 ⁶This dismissal should not have come as a surprise.
28 Stephen's prior chapter 7 bankruptcy was dismissed because he
failed to file a list of creditors, among other documents.

1 **ISSUE**

2 Did the bankruptcy court commit reversible error when it
3 dismissed Stephen's bankruptcy case pursuant to Section 521(i)(1)
4 for failure to file the information required under
5 Section 521(a)(1)?

6 **STANDARDS OF REVIEW**

7 We review the bankruptcy court's order dismissing Stephen's
8 case based on Section 521(i) de novo. Wirum v. Warren
9 (In re Warren), 568 F.3d 1113, 1116 (9th Cir. 2009).

10 **DISCUSSION**

11 **I. The Bankruptcy Court Did Not Commit Reversible Error in**
12 **Dismissing Stephen's Case**

13 **A. Section 521(a)(1) and (i)(1)**

14 Pursuant to Section 521(a)(1), a debtor must file a list of
15 creditors, and, unless otherwise ordered, a schedule of assets
16 and liabilities.⁷ Section 521(a)(1)(A) and (B)(i). "[I]f an
17 individual debtor in a voluntary case under chapter 7 or 13 fails
18 to file all of the information required under subsection (a)(1)
19 within 45 days after the date of the filing of the petition, the
20 case shall be automatically dismissed effective on the 46th day
21 after the date of the filing of the petition." Section 521(i)(1).

22 Relief from automatic dismissal under Section 521(i)(1) can
23 only be obtained if: (1) the court grants a debtor's request for
24 an extension; (2) the court grants a trustee's motion requesting
25 an exception based on the debtor's good faith and the best

26 ⁷Section 521(a)(1)(B) requires a debtor to file several
27 documents in addition to a schedule of assets and liabilities,
28 however, those documents are not relevant to review of the
bankruptcy court's dismissal order in this case.

1 interest of creditors; or (3) the court uses its discretion to
2 waive the filing requirements because it determines the
3 information is unnecessary or because dismissal will reward abuse
4 by the debtor. Section 521(i)(3), (4); Warren, 568 F.3d 1113,
5 1118-19.

6 Here, the provisions of Section 521(a)(1) and (i)(1) applied
7 to Stephen's case because he was an individual debtor in a
8 voluntary chapter 7 case.

9 He has made no convincing showing, however, that he was
10 entitled to relief from automatic dismissal based on any
11 exception. As to the first basis for relief from automatic
12 dismissal, Stephen never sought an extension of time to file the
13 information required under Section 521(a)(1). As to the second
14 grounds for relief, May did not file a motion requesting a good
15 faith exception. As to the third basis for relief, the
16 bankruptcy court did not exercise its discretion to waive the
17 filing requirements.⁸ Therefore, Stephen's failure to file a
18 list of creditors, schedule of assets and schedule of liabilities
19 within 45 days of his petition, as explained below, properly
20 resulted in the automatic dismissal of his case.

21 Stephen's purported Schedule B, which should have identified
22 all of his personal property assets, omitted entries 12 through
23 35. This left the filing so facially deficient as to not
24 substantially comply with Section 521(a)(1)(B)(i)'s requirement
25
26

27 ⁸Stephen did not point to any basis for waiver of Section
28 521(a)(1)'s filing requirements.

1 of a schedule of assets.⁹ Accordingly, Stephen's failure to file
2 a Schedule B, or to correct the one he did file, within 45 days
3 of his bankruptcy filing warranted automatic dismissal under
4 Section 521(i)(1).

5 Similarly, Stephen's purported Master Address List, and
6 Schedules E and F, did not properly identify the names and
7 addresses of his creditors, other than the IRS.¹⁰ Instead, those
8 documents refer to litigation pending in particular courts. The
9 courts themselves, however, are not creditors, as they are not
10 the parties who have claims against Stephen.¹¹ Apparently, the
11 opposing parties in the referenced cases are entities that have
12 prepetition claims against Stephen, but his filings leave no clue
13 as to any of their names or addresses. In addition, Stephen's
14 generic reference to "ALL CREDITORS" in his Schedule F and Master
15 Address List did not properly describe those who have claims
16 against him or his property. Again, this is an example of a
17 failure to substantially comply with Section 521(a)(1).

18 Stephen "ha[d] a duty to prepare [his] schedules carefully,
19 completely, and accurately[,]" but instead he left the bankruptcy
20 court without the necessary information to notify his creditors
21 of his bankruptcy. Cusano v. Klein, 264 F.3d 936, 946 (9th Cir.

23 ⁹Debtors must prepare their schedules of assets and
24 liabilities in compliance with the Official Forms.
Rule 1007(b)(1)(A).

25 ¹⁰Stephen did not properly list the IRS' address.
26 Bankr. E.D. Cal. R. 2002-1(b).

27 ¹¹A creditor is an "entity that has a claim against the
28 debtor that arose at the time of or before the order for relief
concerning the debtor." Section 101(10)(A).

1 2001) (citations and quotations omitted). His failure to file a
2 proper list of creditors and schedule of assets and liabilities
3 within 45 days of his petition date merited dismissal of his
4 case.

5 Stephen argues that his Master Address List had all of his
6 creditors and that any errors in his petition were corrected or
7 correctable. Therefore, he argues it was a violation of his due
8 process rights to automatically dismiss his case. His argument
9 is not persuasive.

10 Contrary to Stephen's position that his Master Address List
11 was proper, as discussed above, his method of describing his
12 creditors was inadequate. In addition, although the errors in
13 his Master Address List, and Schedules B, E and F could have been
14 corrected, they never were.

15 Stephen has not pointed to any authority supporting the
16 proposition that a notice of filing deficiencies or any other
17 notice must be sent to a debtor prior to automatic dismissal
18 under Section 521(i)(1), nor is this Panel aware of any such
19 requirement. Indeed, the contrast between Section 521(i)(1)'s
20 language, with its automatic effect of dismissal, and the
21 language of Section 707(a), which requires notice and a hearing
22 prior to dismissal, belies the notion that Congress believed that
23 a debtor must independently receive some prior notice of filing
24 deficiencies under Section 521(i). Compare 11 U.S.C. 521(a)(1)
25 ("notwithstanding section 707(a)," failure to file the required
26 Section 521(a)(1) information will result in automatic dismissal)
27 with Section 707(a)("[t]he court may dismiss a case under this
28 chapter only after notice and a hearing and only for cause

1").

2 Moreover, when read together, the provisions of
3 Section 521(a)(1) and (i)(1) identify the information that
4 debtors are required to file as well as the consequences for not
5 timely doing so. The Panel finds this to be sufficient notice
6 for due process purposes. Stephen's due process argument is thus
7 without merit.¹² In re Parker, 351 B.R. 790, 801 (Bankr. N.D.
8 Ga. 2006)(automatic dismissal under Section 521(i)(1) "would not
9 require notice and a hearing. Rather, it is a determination that
10 the court can make with no notice to any party in interest and no
11 hearing of any nature.").¹³

13 ¹²The docket report for Stephen's underlying bankruptcy case
14 has a notation at BK Dkt. No. 1 that states, "[a]ll Schedules and
15 Statements filed." Stephen, however, did not indicate in his
16 opening brief or any other filings that he relied on that
17 notation for any purpose, or that he was even aware it existed.
18 The Panel declines to find that the notation has any bearing on
19 this appeal.

20 ¹³Some courts have suggested that automatic dismissal under
21 Section 521(i)(1) without notice to the debtor and trustee, or an
22 opportunity for a hearing, gives rise to "due process concerns."
23 In re Dienberg, 348 B.R. 482, 483 n.1 (Bankr. N.D. Ind. 2006);
24 In re Spencer, 388 B.R. 418, 425 n.7 (Bankr. D.C. 2008).
25 Similarly, a recent article discusses alleged due process
26 violations caused by automatic dismissal. Gregory Germain,
27 A Constitutional Challenge to the Automatic-Dismissal Rules,
28 32 Am. Bankr. Inst. J. 22 (March 2013).

These authorities do not raise any issues on the facts of
this case. To the extent a few courts have raised due process
concerns in dicta without analysis, they are not persuasive.
Moreover, the arguments made in Professor Germain's article do
not influence this Panel's conclusion that any violation of
Stephen's due process rights (of which we think there were none)
would lead to reversal. That result would only follow if Stephen
could identify some prejudice that he suffered as a result of the
(continued...)

1 Based on the foregoing, the bankruptcy court properly
2 dismissed Stephen's case.

3 **B. Stephen's Remaining Arguments**

4 The other issues Stephen raised in his appeal relate to the
5 bankruptcy court's denial of the IFP Motion and Motion for
6 Counsel, and May's alleged misconduct during the meeting of
7 creditors. None of those arguments change the outcome of this
8 appeal.

9 There are two reasons to dismiss Stephen's IFP Motion
10 challenge. First, the denial of the IFP Motion was irrelevant to
11 the disposition of Stephen's bankruptcy case because the court
12 dismissed his case for failure to timely file the required
13 information, not for failure to pay filing fees. Second, the
14 order denying the IFP Motion indicates that the motion was denied
15 for the reasons stated on the record. We do not have a
16 transcript of that hearing and thus we ordered Stephen to provide
17 the necessary transcripts for review by January 23, 2013. No
18 transcripts were ever filed. Therefore, the Panel assumes that
19 Stephen did not believe there is anything in the transcripts that
20 would help his position on appeal, and summary affirmance of the
21 bankruptcy court's denial of the IFP Motion is appropriate.
22 Gionis v. Wayne (In re Gionis), 170 B.R. 675, 680-81 (9th Cir.
23 BAP 1994); see Explanatory Note to 9th Cir. BAP R. 8006-1;

24 _____
25 ¹³(...continued)
26 dismissal. Van Zandt v. Mbunda (In re Mbunda), 484 B.R. 344, 359
27 (B.A.P. 9th Cir. 2012) ("An appellant, however, must show
28 prejudice to support a due process claim.") (citing Rosson v.
Fitzgerald (In re Rosson), 545 F.3d 764, 776 (9th Cir. 2008)).
And Stephen has neither identified nor argued for the existence
of any prejudice flowing from the dismissal of his case.

1 Ehrenberg v. Cal. State Univ., Fullerton Found. (In re Beachport
2 Entm't), 396 F.3d 1083, 1087 (9th Cir. 2005); Morrissey v.
3 Stuteville (In re Morrissey), 349 F.3d 1187, 1190-91 (9th Cir.
4 2003).¹⁴

5 Regarding the bankruptcy court's denial of the Motion for
6 Counsel, "a civil litigant, including an incarcerated prisoner,
7 is presumed to have no constitutional entitlement to
8 court-ordered counsel unless his case carries the risk of
9 affecting his physical liberty." Hernandez v. Whiting, 881 F.2d
10 768, 770-71 (9th Cir 1989) (citing Lassiter v. Dept. of Social
11 Servs., 452 U.S. 18, 25-27 (1985)); see Davis v. Central Bank
12 (In re Davis), 23 B.R. 773, 776 (9th Cir. BAP 1982). Stephen's
13 physical liberty was not implicated in any way by his bankruptcy
14 case. Stephen's argument as to mandatory appointment of counsel
15 is without merit.

16 Stephen's sole remaining argument addresses May's alleged
17 misconduct during the meeting of creditors. Even assuming
18 Stephen's allegation is true, his lack of appearance at the
19 meeting of creditors had no bearing on the dismissal of his case.
20 The bankruptcy court denied the Motion to Dismiss based on
21 Stephen's failure to appear at the meeting as moot, thus, never
22 reaching the substantive issue. Accordingly, May's alleged
23 interference with Stephen's appearance is irrelevant to the
24 issues related to this appeal.

26 ¹⁴This Panel warned Stephen that failure to provide the
27 required transcripts could cause his appeal to be dismissed or
28 result in summary affirmance of the bankruptcy court's decision
in its Order re Transcript.

CONCLUSION

For all of the reasons set forth above, we AFFIRM the bankruptcy court's order dismissing Stephen's case.

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