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

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	NV-12-1643-KiCoD
)		NV-13-1049-KiCoD
SUSAN GOODMAN,)		(Consolidated)
)		
Debtor.)	Bk. No.	08-19036-MN
_____)		
)		
RANDOLPH H. GOLDBERG,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M ¹	
)		
SUSAN GOODMAN,)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 19, 2013,
at Las Vegas, Nevada

Filed - September 5, 2013

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Mike K. Nakagawa, Bankruptcy Judge, Presiding

Appearances: Christopher Burke argued for appellant Randolph H. Goldberg; Jeffrey P. Aylward argued for appellee Susan Goodman.

Before: KIRSCHER, COLLINS² and DUNN, Bankruptcy Judges.

¹ 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.

² Hon. Daniel P. Collins, Bankruptcy Judge for the District of Arizona, sitting by designation.

1 Appellant, Randolph Goldberg, Esq. ("Goldberg"), appeals the
2 bankruptcy court's order imposing sanctions with respect to his
3 representation of debtor, Susan Goodman ("Debtor"). Goldberg also
4 appeals the related order awarding Debtor her attorney's fees. We
5 AFFIRM.

6 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

7 A. Events leading to the motion for sanctions

8 Goldberg runs a high-volume consumer bankruptcy practice in
9 Las Vegas, Nevada, conducting approximately 250 consultations each
10 week. After seeing a TV ad for Goldberg's bankruptcy services,
11 Debtor met with Goldberg in May 2008, returning to his office in
12 August 2008 to retain him. Goldberg filed Debtor's chapter 13³
13 petition on August 12, 2008, and the matter was assigned to
14 chapter 13 trustee, Rick Yarnall ("Trustee").

15 Debtor's petition did not include the required certificate
16 showing her completion of credit counseling, resulting in a notice
17 of Incomplete and/or Deficient Filing sent to both Goldberg and
18 Debtor on August 13, 2008. On August 19, 2008, Goldberg filed the
19 required certificate on behalf of Debtor ("CC Certificate"),
20 indicating that she had completed credit counseling on August 11,
21 2008, at 5:29 p.m. EST.

22 Significant disagreement exists between the parties regarding
23 what was discussed, what actions were taken, and what documents
24 were signed at their initial meeting in May ("Meeting 1") and at
25 their subsequent meeting (the "Retaining Meeting") in August. At

26
27 ³ Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Meeting 1, Debtor, accompanied by her former husband, Lonnie
2 Goodman ("Lonnie"), appeared at Goldberg's office with various
3 bills and receipts. Debtor testified that after she arrived, she
4 went into a room and completed a small packet given to her by a
5 woman at the front desk, requesting detailed information about her
6 debts and creditors. After she completed the packet, Debtor
7 testified that she and Lonnie met briefly with Goldberg. Goldberg
8 discussed her debts, told her not to pay anyone for three months,
9 and that the charge for representing her would be \$700 – a reduced
10 amount from the initial quote, because she had referred some
11 clients to him. Debtor testified that she did not pay any money
12 to Goldberg or sign a retainer agreement or any other documents at
13 Meeting 1.

14 Debtor testified her second meeting with Goldberg, the
15 Retaining Meeting, was in early or mid-August. She walked into
16 Goldberg's office, paid the woman and asked to speak to Goldberg
17 about a "loan remodification" – something she had just learned
18 about. Debtor testified she was unable to sign any documents at
19 this meeting because Goldberg was in a foul mood and threw her
20 out. Although at some points in her testimony Debtor stated she
21 had not signed any documents, Debtor also testified she signed a
22 couple of pages when she was given the packet at Meeting 1.
23 Additionally, Debtor could not describe precisely what was in the
24 packet, but testified she was certain it did not contain an IRS
25 Power of Attorney Form 2848 ("2848 POA").⁴ Debtor was also

26

27 ⁴ IRS Form 2848, Power of Attorney and Declaration of
28 Representative, is used to authorize another individual to
(continued...)

1 certain she had not completed a credit counseling class either
2 online or by telephone. Further, Debtor testified the Retaining
3 Meeting was the last time she had contact with Goldberg; all
4 dealings thereafter were with his staff.⁵

5
6 _____
7 ⁴(...continued)

8 represent you before the IRS. The 2848 POA (Rev. December 1997)
9 admitted by the bankruptcy court states, in relevant part:

10 **Acts authorized.** The representatives are authorized to
11 receive and inspect confidential tax information and to
12 perform any and all acts that I(we) can perform with respect
13 to the tax matters described on line 3, for example, the
14 authority to sign any agreements, consents, or other
15 documents. The authority does not include the power to
16 receive refund checks (see line 6 below), the power to
17 substitute another representative unless specifically added
18 below, or the power to sign certain returns.

19 The instructions for IRS Form 2848 (Rev. June 2008) admitted
20 by the bankruptcy court provide:

21 **Authorizing your representative.**

22 Write a statement on line 5 that you are authorizing your
23 representative to sign your income tax pursuant to
24 Regulations section 1.6012-1(a)(5) by reason of [enter the
25 specific reason listed under (a), (b), or (c) under Authority
26 to Sign your Return].

27 **Authority to sign your return.**

28 Regulations section 1.6012-1(a)(5) permits another person to
sign a return for you only in the following circumstances:

- 29 (a) Disease or injury,
- 30 (b) Continuous absence from the United States (including
31 Puerto Rico), for a period of at least 60 days prior to the
32 date required by law for filing the return, or
- 33 (c) Specific permission is requested of and granted by the
34 IRS for other good cause.

35 Authority to sign your income tax return may be granted to
36 (1) your representative or (2) an agent (a person other than
37 your representative).

38 ⁵ Debtor testified that after Goldberg yelled at her at the
Retaining Meeting, she refused to go back to his office because
she was too embarrassed. Instead, she sent Lonnie. Lonnie
testified that he visited Goldberg's office between ten and
fifteen times. Lonnie testified that he never signed Debtor's
name on any documents, nor did he authorize Goldberg or anyone in
Goldberg's office to do anything on behalf of Debtor.

1 Because Lonnie accompanied Debtor each time she went to
2 Goldberg's office, he was present at both Meeting 1 and the
3 Retaining Meeting. Lonnie testified that the first meeting was in
4 May, and that he reviewed each page of the questionnaire filled
5 out by Debtor. Lonnie further stated that the packet did not
6 contain a 2848 POA form, or a form authorizing any request for a
7 credit report, or any document allowing another party to sign
8 documents on Debtor's behalf. Lonnie stated that the
9 questionnaire was the only thing Debtor signed.

10 At a later hearing, Lonnie testified he was "absolutely
11 positive" the first meeting occurred on August 11th, not May or
12 June, and the second meeting was in October when Goldberg informed
13 Debtor it would cost an additional \$1,000 for a loan modification.
14 Lonnie testified the packet was given to Debtor at the Retaining
15 Meeting, not Meeting 1, and that he and Debtor were alone in a
16 conference room when Debtor completed it. Lonnie also testified
17 that no one asked them questions while working on a computer, nor
18 were they ever in front of a computer.

19 When asked about his meetings with Debtor, Goldberg could not
20 remember any specifics due to his 250 consultations a week, and he
21 admitted that he had no personal knowledge of Debtor signing the
22 disputed documents. Nonetheless, Goldberg thought Meeting 1
23 occurred in May or June 2008, and that Debtor would have filled
24 out a consultation sheet with general information at that time.
25 Goldberg stated that the Retaining Meeting was on August 11,
26 although again, he stated it was impossible for him to remember
27 his meeting with Debtor, because he "meet[s] with so many of
28 them." Hr'g Tr. (Aug. 24, 2009) 149:6-7.

1 Despite his inability to remember specifics of the meetings,
2 Goldberg testified he was certain of a few things based on his
3 standard office procedures. Goldberg was confident that he only
4 discussed the retainer agreement with Debtor at Meeting 1.
5 Goldberg explained that his \$5,000 fee is disclosed in the packet,
6 but that he tells clients to bring in only the retainer portion.
7 If he told them to bring in the entire \$5,000 fee, "they would go
8 somewhere else." Id. at 177:25-178:1. Goldberg also testified
9 that Debtor would not have received the packet until after she had
10 retained him; thus, not at Meeting 1. According to Goldberg, the
11 only time a client got a packet was after payment of the retainer
12 and after they have brought in the requested documents. "Until
13 they get the appropriate documents and money, no one gets a packet
14 ever." Id. at 179:12-13. Goldberg testified that on the same day
15 a client retains and pays his fee, the client sits in a conference
16 room and fills out all documents, signing where appropriate. This
17 was the standard operating procedure for his office and it never
18 deviated. Goldberg also stated that usually one or two people at
19 the front desk oversaw the client to make sure all documents were
20 signed, and, unless he expressly authorized differently, clients
21 were required to sign all forms.

22 Elizabeth Allen ("Allen"), Goldberg's legal assistant for two
23 years, testified that she handled all chapter 13 clients. Allen
24 testified that she recalled Debtor signing all documents in the
25 packet. On cross-examination, however, Allen admitted she did not
26 have a master list for what documents were in the packet, that she
27 did not know the exact number of pages in the packet as they were
28 not numbered, and that no procedure or protocol existed for

1 confirming that every page was signed. Allen further testified
2 that Adam Parmelee ("Parmelee"), Goldberg's paralegal/office
3 administrator for ten years, was not present when Debtor signed
4 the Tax Affidavit.⁶

5 When Parmelee testified, he shared Goldberg's difficulty
6 remembering specific meetings with Debtor. "I can't recall. I
7 mean, I met with her a couple of times" Hr'g Tr. (Oct. 5,
8 2009) 16:11. "Maybe one or two" Id. at 16:17. Contrary
9 to Allen's testimony that Parmelee did not witness Debtor sign the
10 Tax Affidavit, Parmelee testified that it was his signature and
11 notary stamp on the document.

12 Debtor's § 341(a) meeting of creditors, held in September
13 2008, was attended by Debtor, an IRS agent and Parmelee. Debtor
14 testified she was surprised Parmelee appeared instead of Goldberg,
15 because Parmelee was not a lawyer and she had paid for a lawyer.
16 Debtor also testified she did not see Goldberg on the day of her
17 § 341(a) meeting, and when she inquired about Goldberg, Parmelee
18 told her Goldberg had the day off.

19 Goldberg admitted that Parmelee was not an attorney, and that
20 Parmelee attended Debtor's § 341(a) meeting. However, Goldberg
21 indicated that it was common practice to hold several § 341(a)
22 meetings concurrently in different rooms to help expedite the
23 process when things were "backed up." Id. at 155:23. Both
24 Goldberg and Parmelee testified that the trustees were aware of
25 and approved this practice, and, because Goldberg's office

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27 ⁶ The "Tax Affidavit" is a form Goldberg has clients sign
28 when they claim they are not required to file a federal income tax
return for a certain year, because their income was insufficient
to trigger the filing requirements of I.R.C. § 6012.

1 sometimes conducted over one hundred § 341(a) meetings in a day,
2 this practice was necessary. Goldberg stated that on the day of
3 Debtor's § 341(a) meeting, he was with Trustee in an adjacent
4 room, but was available if needed. Goldberg testified that if he
5 sent someone else from his office to a § 341(a) meeting, that
6 person would only serve as a representative taking notes, not as
7 counsel providing legal advice. Goldberg explained that Parmelee
8 acted with Goldberg's express authority, and that Parmelee did not
9 give legal advice.

10 Parmelee's testimony regarding Debtor's § 341(a) meeting was
11 not so certain. Parmelee believed Goldberg was there, but he did
12 not recall. "[T]o the best of my knowledge, he [Goldberg] could
13 have been in another room doing other - other cases. I don't
14 recall." Hr'g Tr. (Oct. 5, 2009) 25:6-7. In any event, Parmelee
15 was certain no problems arose at Debtor's meeting requiring
16 Goldberg's assistance. When Parmelee was asked if he was
17 authorized by Goldberg to go to § 341(a) meetings in Goldberg's
18 absence, Parmelee responded "No. We would try to find somebody
19 else to cover them." Id. at 26:2.

20 Although the parties agreed on who attended the § 341(a)
21 meeting, disagreement existed as to what was said and what
22 happened during the meeting and thereafter. According to Debtor's
23 testimony, following an injury she suffered several years before,
24 the IRS had told her she was "purged" and no longer needed to file
25 federal income tax returns. Consequently, she had not filed
26 returns for several years. Because of her understanding, Debtor
27 testified that she was confused when the IRS agent told her at the
28 § 341(a) meeting that she may owe money based on some gambling

1 winnings and that she needed to file tax returns. Debtor
2 testified she advised the IRS agent that she was "purged" and did
3 not have to file, and that Parmelee told her not to worry because
4 he would take care of it. Debtor testified that her tax return
5 issue was left unresolved after the § 341(a) meeting. On cross-
6 examination, Goldberg's attorney introduced Debtor's § 341(a)
7 meeting transcript. Reading from the transcript, Debtor had
8 responded "ok" after the IRS agent stated that returns from the
9 priority tax years were required, and that the agent would give
10 Parmelee Debtor's tax transcripts so that Goldberg's office could
11 prepare and file the required returns.

12 Because of this exchange at the § 341(a) meeting, Goldberg
13 contended Debtor had notice that tax returns for years 2004-2007
14 would be required, and that Debtor had authorized the preparation
15 of those returns. Goldberg also testified that tax returns were
16 required if clients wanted their plans confirmed.

17 Following her § 341(a) meeting, Debtor testified that she
18 tried to reach Parmelee in October 2008 regarding the status of
19 her case, but claimed that she was not able to speak with him at
20 that time because Goldberg's office "kept shoving [her] off to
21 Elizabeth [Allen]." Hr'g Tr. (Aug. 24, 2009) 34:4. Consequently,
22 since no one contacted her, Debtor sent Lonnie to Goldberg's
23 office "to find out where we stood about modification, where we
24 stood with the [IRS]" Id. at 34:13-14.

25 As for the loan modification, Debtor testified that she
26 eventually discussed the issue with Allen, but she was worried
27 because she was now three months behind on her mortgage. Debtor
28 ultimately decided to contact the lender herself. A company

1 representative told Debtor that he could walk her through a
2 modification. On November 4, 2008, Debtor attempted to file the
3 modification documents with the court, but they were rejected
4 because she had an attorney of record. About a week later, on
5 November 10, 2008, Debtor's Plan #4 was confirmed.

6 Debtor testified that although she knew Plan #4 had been
7 filed, she had not received a copy to review or approve
8 beforehand. Debtor stated that when she eventually did receive a
9 copy of her confirmed Plan #4, she discovered it included "bills
10 on there that were from ten years ago." Id. at 39:17. Moreover,
11 under Plan #4 she was to repay \$160,000, even though Debtor
12 believed she owed only \$38,000 to \$40,000 according to her own
13 paperwork and receipts. Debtor testified that she attempted to
14 advise Goldberg's office that many of the claims listed were not
15 valid, but Parmelee told her "you have the proof of burden. We
16 don't handle that. You got to prove it yourself." Id. at
17 39:20-21. Given Parmelee's response, Debtor testified that she
18 contacted about three or four creditors. According to Debtor,
19 those creditors advised her they had no knowledge of her because
20 the debts were ten years old, and, they agreed to confirm, in
21 writing, that she did not owe them anything. Debtor further
22 testified that she stopped making payments under Plan #4 in either
23 March or April 2009, because she "didn't want to contribute money
24 to something I didn't understand. I felt it was being handled
25 wrong. Money was going in the wrong places. I was being lied to.
26 I didn't want to be a part of that." Id. at 42:15-18.

27 Meanwhile, Debtor was still trying to get the loan
28 modification. Although she had completed the required paperwork

1 herself and had tried, unsuccessfully, to file it, Goldberg
2 refused to file it for her until she paid him an additional \$500.
3 According to Debtor, she felt forced to pay the \$500. After
4 receiving the additional payment from Debtor, Goldberg filed a
5 Motion to Refinance and the related Loan Modification Agreement
6 documents, together with a notice of hearing for December 18,
7 2008. This motion, as well as an amended proposed order filed on
8 January 7, 2009, were both denied because the order referred to
9 personal rather than real property, included an altered LR 9021
10 certification, and was "too sloppily drafted." Debtor testified
11 that she learned of Goldberg's incorrect filing "[b]ecause I got
12 copies of the paperwork that it was rejected. My - the mortgage
13 company, the one that was working with me, told me he couldn't
14 believe it." Id. at 44:6-8.

15 On January 20, 2009, the bankruptcy court granted the Motion
16 to Refinance, authorizing Debtor to proceed with the terms of the
17 Loan Modification Agreement and vacating the prior order denying
18 approval.

19 Referring to her multiple problems with Goldberg, Debtor sent
20 Trustee a letter on January 22, 2009, notifying him she wanted to
21 terminate Goldberg as her attorney. Debtor also sent Goldberg a
22 letter notifying him she no longer wanted him to represent her,
23 citing malpractice, unprofessionalism and forgery of federal
24 documents. Debtor also requested a refund of all fees, and stated
25 that she would pursue litigation if Goldberg did not return her
26 money.

27 **B. The motion for sanctions**

28 On January 30, 2009, Debtor, proceeding pro se, moved for

1 sanctions against Goldberg ("Sanctions Motion"). Debtor asserted
2 that Goldberg, or one of Goldberg's employees, forged her
3 signature on the tax returns filed on her behalf with the IRS for
4 the years 2004, 2005, 2006 and 2007 ("Tax Returns"). Debtor also
5 alleged that Goldberg acted unprofessionally towards her. In
6 particular, Debtor alleged that Goldberg embarrassed her in front
7 of his staff, refused to communicate with her and misled her
8 regarding the cost of her bankruptcy and related services.
9 Further, Debtor asserted that Goldberg lied to her on more than
10 one occasion and committed malpractice.

11 Goldberg opposed the Sanctions Motion, contending that he
12 prepared, signed and filed the Tax Returns after the IRS agent
13 reported at the § 341(a) meeting that Debtor had gambling winnings
14 and was required to file. Goldberg also stated that Debtor had
15 instructed his staff to sign the returns. Goldberg characterized
16 Debtor's complaints as a result of his inability to "perform an
17 impossible task" of allowing her to discharge her debts and still
18 maintain her lifestyle. In a later affidavit filed by Goldberg on
19 March 11, 2009, he stated that Debtor's signed 2848 POA authorized
20 him to sign Debtor's name on the Tax Returns.

21 In Debtor's reply, she again denied authorizing Goldberg to
22 prepare, file or sign the Tax Returns. Debtor also stated that
23 she had now discovered the CC Certificate filed with the court,
24 which she did not recognize. Debtor denied ever calling the
25 service or completing the counseling online, and claimed that the
26 CC Certificate was fraudulent.

27 In a later discovery motion, Debtor requested several items,
28 including copies of all records pertaining to her bankruptcy case.

1 In her statement of facts, Debtor argued that none of the Tax
2 Returns identified a 2848 POA, but bore only her name signed by
3 Goldberg.

4 **C. The evidentiary hearings**

5 The bankruptcy court conducted four evidentiary hearings
6 related to the Sanctions Motion on March 16, August 24, October 5,
7 and December 15, 2009.

8 **1. Hearing #1**

9 The first evidentiary hearing was held on March 16, 2009.
10 The bankruptcy court first addressed Goldberg's motion to withdraw
11 as counsel of record. Finding no objection to the motion, the
12 court granted it. After discussing Debtor's desire to hire new
13 counsel and the difficulties it was presenting, the bankruptcy
14 court proceeded to discuss the Sanctions Motion. The court
15 decided to give both parties additional time for discovery and
16 preparation after Goldberg attempted to introduce documents
17 allegedly signed by Debtor to which Debtor objected, and Debtor
18 attempted to introduce witnesses without giving notice to
19 Goldberg.

20 Following the first hearing, Debtor filed another discovery
21 motion, requesting the original, signed 2848 POA. According to
22 Goldberg's response, all original documents were scanned and then
23 destroyed for the protection and privacy of the debtor.

24 **2. Hearing #2**

25 The second evidentiary hearing was held on August 24, 2009.
26 Because Debtor alleged her signature was forged on several
27 documents, most evidence and testimony related to when, where and
28 how documents were signed. Debtor first denied signing any

1 documents, claiming she had only completed a questionnaire when
2 she went to Goldberg's office. Subsequent testimony by Debtor
3 varied, however, as to whether she had signed a couple of
4 documents or no documents.

5 When asked about the packet she completed, Debtor could not
6 describe it with much detail, testifying only that it was a little
7 package requesting information about creditors. "It was a little
8 packet. It was more of a questionnaire, and I think you sign a
9 couple of pages. I don't remember." Hr'g Tr. (Aug. 24, 2009)
10 23:23-24.

11 Regarding the CC Certificate filed with the court, Debtor
12 denied ever completing a credit counseling course, and testified
13 that she did not personally contact, nor did she authorize anyone
14 at Goldberg's office to contact, the Consumer Credit Counseling
15 Service of Greater Atlanta.

16 As for the Tax Affidavit, Debtor testified the signature on
17 it was not hers, and that she had not authorized Goldberg, or
18 anyone in Goldberg's office, to complete or sign it. Debtor also
19 testified that Parmelee never witnessed her sign the Tax Affidavit
20 as he claimed. Although it bore Pamelee's notary stamp, Debtor
21 testified that she had not signed a notary book, that Parmelee had
22 never notarized her signature, that he never stamped or signed
23 anything in her presence, and that he never asked for her
24 identification.

25 With respect to the Tax Returns, Debtor testified that she
26 did not know she had to prepare or file any tax returns, and that
27 Goldberg had, without her consent, prepared and filed them,
28 forging her name and marking the returns as "self-prepared."

1 Debtor also denied signing the 2848 POA. Debtor stated that she
2 discovered Goldberg had prepared and filed the Tax Returns after
3 the § 341(a) meeting only because she received a notice from the
4 IRS informing her that she owed approximately \$800.

5 Although Debtor declared in her Sanctions Motion that she
6 went to Goldberg's office after learning of the Tax Returns and
7 that Allen had given her copies of the four returns, Debtor
8 testified to a different series of events at the hearing. Debtor
9 now stated that after finding out about the returns, she called
10 Goldberg's office, spoke to Allen, but Allen would not give her
11 copies or any information about them, telling Debtor she would get
12 back to her. Debtor testified that although the Tax Returns
13 prepared and filed by Goldberg showed a liability, she later
14 prepared and resubmitted the returns and actually owed nothing.

15 Goldberg was questioned extensively on both direct and cross-
16 examination. Goldberg testified that he was admitted to practice
17 law in Pennsylvania, New Jersey, Nevada and before the Federal Tax
18 Bar. Goldberg testified that since opening his practice in Nevada
19 in December 1996, he has prepared thousands of tax returns.
20 Goldberg testified that he held an LLM in taxation and agreed that
21 he had a "superior knowledge of federal tax issues." Id. at
22 100:4.

23 When Goldberg was asked if he had received complaints from
24 other clients, he testified that fifteen or twenty complaints had
25 been filed with the state bar since he started his practice. "You
26 can't make every client happy when you have 20,000 clients." Id.
27 at 164:9-10.

28 Several disputed documents were also discussed – the Tax

1 Affidavit, the 2848 POA and the Tax Returns. Goldberg stated that
2 before a plan can be confirmed, a client must produce the past
3 four years of tax returns, or a Tax Affidavit if the client claims
4 they do not have to file returns. Goldberg stated that trustees
5 will not approve a plan without either a debtor's tax returns or
6 the Tax Affidavit. Additionally, Goldberg stated that a Tax
7 Affidavit would be completed at the retainer meeting. Goldberg
8 agreed that Debtor initially believed she did not have to file tax
9 returns, which is why he had her sign the Tax Affidavit. Goldberg
10 testified that he became aware of Debtor's need to file returns at
11 the § 341(a) meeting.

12 Goldberg testified that he used the tax transcripts the IRS
13 agent gave to Parmelee at the § 341(a) meeting to complete
14 Debtor's Tax Returns. Therefore, he did not need or use Debtor's
15 Tax Affidavit to get her financial information. However, on
16 cross-examination, Goldberg changed his testimony, denying that he
17 used the information shown in the tax transcripts, and denying
18 that he ever stated this was the information he used to prepare
19 Debtor's Tax Returns.

20 When questioned about the Tax Returns, Goldberg testified
21 that he usually prepares and signs his client's returns with their
22 name. Goldberg estimated he has completed anywhere from
23 3,000-5,000 tax returns and personally signed his client's
24 signature on 30-50% of them. Goldberg admitted that he does not
25 identify himself as the tax preparer or do anything to indicate
26 that someone other than the client had prepared and signed the tax
27 return. Goldberg testified that he believed he could do so
28 because "I've had no issues with the IRS or anybody ever saying

1 anything, and it's been going on for 13 years with the IRS
2 directly. No one's ever said a word, and no clients ever
3 complained" Id. at 104:7-10. Goldberg opined that his
4 practice complied with federal law, and he did not know of any
5 additional measures required by federal law for legally signing a
6 client's return.

7 When asked why the Tax Returns he had prepared for Debtor
8 read "self-prepared," Goldberg stated that it did not make sense
9 to pay \$2,500 a year for professional taxation software, so he
10 used Quicken, which automatically indicates "self-prepared" on
11 each return because Quicken is meant to be used by individuals
12 preparing their own tax returns. Goldberg testified that although
13 he had tried many times to override this default, he had been
14 unsuccessful. When questioned about how the IRS would know that a
15 tax return marked self-prepared, and with a signature bearing the
16 name of the person identified on the tax return, had actually been
17 prepared and signed by someone else, Goldberg responded:

18 A. Only that I would have gave it to them [IRS] at a
19 confirmation hearing which is what we would do in
 every one of these cases.

20

21 Q. Have you ever told the IRS of this practice?

22 A. They know all about it.

23

24 Q. And how is it that you believe that these IRS tax
 agents know that you are signing your name to other
 people's tax returns?

25

26 A. I would tell them I signed the returns.

27

28 Q. It's your testimony that each and every time, each
 of the thousands and thousands of times, you've
 signed someone else's 1040 form . . . and given it

1 to an IRS agent at a confirmation hearing . . . that
2 you said to that IRS agent . . . here is a tax
return for my client which I signed for them.

3 A. No.

4

5 Q. Okay. Well, how do these agents find out?

6 A. If they ask, I say I signed them
7

8 Q. Well, how often does the IRS agent ask, hey, did
they actually sign their own self-prepared tax
document?

9 A. Over the years, they may have asked me. I don't
10 know. I mean, I've signed them. They know I've
signed them. I've never lied about signing them.
11

12 Q. So other than they should know, you can't offer us
any other way that any of these IRS agents should
13 know that it's your signature, not the person whose
1040 it was?

14 A. No.

15 Id. at 110:19-20; 126:12-13; 126:24-127:1, 127:12; 128:12-24;
16 128:25-129:1; 129:3-7; 130:4-7.

17 Goldberg testified that a signed 2848 POA provided the
18 requisite authority for him to sign a tax return for a client, or
19 the client could give him permission to sign. Goldberg revealed,
20 however, that he never requested nor received such permission in
21 writing. Contrary to Goldberg's claim in his opposition to the
22 Sanctions Motion that the 2848 POA allegedly signed by Debtor
23 authorized him to sign Debtor's name on her tax returns, Goldberg
24 now testified the 2848 POA was not the basis of his authority to
25 sign, but, rather, it was only used to obtain information about a
26 client from the IRS.

27 After reviewing the 2848 POA instructions on the stand,
28 Goldberg agreed that it allows a person to designate a signing

1 representative under only a very narrow set of circumstances, and,
2 then, only if specifically stated on the form. Goldberg testified
3 that he had no personal knowledge of whether Debtor fell within
4 the circumstances listed that would have allowed her to authorize
5 him to sign her Tax Returns, nor had he requested permission from
6 the IRS to sign them based on "other good cause." In any event,
7 Goldberg maintained that a client's oral authorization gives him
8 legal authority to sign the returns. "If I'm using my [2848 POA]
9 as authority to sign the returns, I'm not using that authority.
10 I'm using the client telling me to sign their returns"
11 Id. at 142:15-17. Goldberg testified repeatedly that Debtor had
12 requested he sign the returns and had given permission for him to
13 sign the returns.

14 Goldberg was also unable to specify when someone in his
15 office had last updated the 2848 POA used by his office. Goldberg
16 admitted that he did not pay attention to the revision date on the
17 forms, and that he had not heard of any update or revision to the
18 2848 POA. He admitted that the 2848 POA allegedly signed by
19 Debtor was the December 1997 version, but other evidence showed
20 that the form had undergone revision many times between 1997 and
21 2008, the time of Debtor's bankruptcy. Goldberg testified
22 "[w]hether it was revised or not, it still works." Id. at 124:5.
23 Goldberg speculated that changes in the form only enhanced his
24 powers as a tax preparer and licensed agent with the IRS.

25 When asked why he had not produced the original document
26 during discovery, Goldberg testified that he did not have the
27 original copy of Debtor's 2848 POA because it had been scanned and
28 shredded. Nonetheless, Goldberg admitted that he had not

1 personally shredded the document, nor had anyone in his office
2 confirmed that the document had actually been shredded.

3 Unlike the 2848 POA, however, Goldberg testified that most
4 client documents were not shredded. Usually a client's file held
5 fifteen to twenty-five other wet-signed original documents.
6 Goldberg described these files as "cover-your-butt" files,
7 containing such documents as the retainer agreement, the tax
8 affidavit, the bankruptcy questionnaire, the B-22, the notice of
9 filing, assignment of interest, and other documents necessary to
10 protect Goldberg in case the "clients don't give you all the
11 information or mislead you or forget things" Id. at
12 133:15-16.

13 When asked why the 2848 POA was shredded when other sensitive
14 documents were not, Goldberg explained that his office had
15 experienced break-ins, so destroying the original 2848 POAs
16 prevented thieves from accessing a client's private tax
17 information. Goldberg testified that unlike other documents that
18 might contain a client's social security number, "a [2848 POA] is
19 a different story, signatures, CAF numbers." Id. at 132:8-9.

20 After hearing extensive witness testimony and statements from
21 counsel wishing to introduce more testimony, the bankruptcy court
22 decided to continue the matter to October 5, 2009.

23 **3. Hearing #3**

24 The third evidentiary hearing on the Sanctions Motion was
25 held on October 5, 2009. Goldberg and three of Goldberg's
26 employees testified: Parmelee, Allen, and Jennifer Rigdon
27 ("Rigdon"), an associate attorney in Goldberg's office. Ilene and
28 Lawrence Pondel ("Pondels"), former clients of Goldberg's, also

1 testified. Narrah Newark ("Newark"), a local bankruptcy attorney
2 of seven years, testified as to her opinion of Goldberg's handling
3 of Debtor's case. Antonia Klekoda-Baker ("Klekoda-Baker"), a
4 document examiner and expert witness for Goldberg, testified as to
5 the authenticity of Debtor's signature on various documents.

6 Parmelee testified that he met with clients and gave advice,
7 but not legal advice. Parmelee stated that he is the only notary
8 in Goldberg's office, having notarized approximately 1,000
9 signatures, but admitted that he did not keep a notary book.
10 Although Parmelee knew that state law required him to keep a
11 notary book, he felt he was exempt because he only notarized for
12 Goldberg's clients.

13 In response to the disputed documents, Parmelee thought
14 Debtor had completed her credit counseling at Goldberg's office
15 because staff completed it for each client while he or she was
16 present. Although Parmelee stated that office staff always
17 completed the counseling requirement in the same way, he admitted
18 Goldberg's office did not have a written procedure. Parmelee also
19 testified that he witnessed Debtor sign the Tax Affidavit, and
20 that it was his signature and notary stamp on the document. Yet,
21 Parmelee later stated that "[t]o the best of my knowledge," Debtor
22 signed and he notarized the Tax Affidavit. Hr'g Tr. (Oct. 5,
23 2009) 27:22. Parmelee also testified that he did not maintain the
24 originals of documents he notarized; they were either shredded or
25 given to whomever needed them.

26 As for the credit counseling, Goldberg testified that while a
27 client could do it at home, 99% of his clients completed the
28 credit counseling at his office. Goldberg stated, "It's not a

1 class. It's not a credit counseling. It is just in - inputting
2 information of a financial and personal matter; it usually
3 take [sic] about eight to ten minutes" Id. at 195:10-11,
4 195:25-196:1. Because his staff knew how to do it very quickly,
5 Goldberg testified that to save time a staff member would input
6 the information, stating that the client might not even realize
7 they are taking a credit counseling course. Goldberg also
8 testified it was his understanding that Allen did the credit
9 counseling with Debtor. Although Goldberg had testified that
10 clients would have to participate in the credit counseling because
11 of the significant personal information required, he later, in his
12 post-hearing brief, asserted that his office obtained sufficient
13 personal information to complete the credit counseling without
14 Debtor's presence based on her completed questionnaire included in
15 the packet during the May 2008 visit.

16 Mrs. Pondel testified that she thought Parmelee was an
17 attorney, and that her reference to him as her attorney was never
18 corrected. Mrs. Pondel also testified that Parmelee gave her
19 legal advice, and that she met with Goldberg only once, even
20 though she repeatedly asked to see him. On cross-examination,
21 Mrs. Pondel admitted Parmelee never gave her a business card
22 identifying himself as an attorney. She further admitted that her
23 bankruptcy was dismissed for failure to make payments, and that
24 she did not file a complaint against Goldberg until after she
25 spoke with Debtor, whom she had met outside the courthouse.

26 Mr. Pondel testified that he met with Goldberg three times
27 and met with Parmelee fifteen to twenty times. He testified that
28 Parmelee had never directed any questions to Goldberg, that

1 Parmelee had given him legal advice, and that his belief Parmelee
2 was an attorney had also never been corrected. Mr. Pondel also
3 testified that he did not attend a credit counseling course online
4 or otherwise, and when he later asked Parmelee about his
5 certificate, Parmelee did not give a specific answer, just telling
6 the Pondels they needed it. On cross-examination, Mr. Pondel
7 admitted he had never received any business card, letterhead,
8 receipt, or legal document indicating Parmelee was an attorney.

9 Rigdon, Goldberg's associate, testified that she had met with
10 the Pondels a couple of times and had represented them at their
11 § 341(a) meeting. She had never heard the Pondels express
12 dissatisfaction with Goldberg. Rigdon also testified that
13 Parmelee did not expressly or impliedly hold himself out as an
14 attorney, nor did Mr. Pondel ever refer to Parmelee as an
15 attorney. On cross-examination, Rigdon admitted she did not know
16 the number of times the Pondels had met with Parmelee without her
17 being present.

18 Newark testified that from the documents she had reviewed,
19 nothing appeared out of the ordinary, and Goldberg appeared to be
20 following standard procedure for a bankruptcy attorney. On
21 cross-examination, Newark stated that although her clients
22 complete their credit counseling online in her office, it was done
23 without assistance from her staff. She also testified that her
24 office did not engage in any tax work.

25 Klekoda-Baker, Goldberg's expert witness, testified that she
26 believed Debtor's signature on the copy of the 2848 POA was
27 authentic because it matched the "known" signature that appeared
28 on Debtor's Grant Bargain and Sale Deed she had obtained from the

1 Clark County Assessor's website. However, on cross-examination,
2 Klekoda-Baker testified that although she examined originals with
3 wet signatures for almost every document, she had no original 2848
4 POA to examine. On re-direct, Klekoda-Baker testified that she
5 found no signs of forgery or cut-and-paste on any of the documents
6 she examined. Klekoda-Baker additionally testified that the
7 signature on the 2007 Tax Return was not Debtor's. As to the Tax
8 Affidavit, Klekoda-Baker testified that she did not have any known
9 signatures to substantiate conclusively whether it was Debtor's
10 signature.

11 **4. Hearing #4**

12 The final evidentiary hearing on the Sanctions Motion was
13 held on December 15, 2009. William Leaver ("Leaver"), Debtor's
14 expert document examiner, testified that the signature on the 2848
15 POA was most likely manipulated either by computer or cut-and-
16 paste, as several line-quality faults existed that indicated
17 either simulation or tracing, as well as a gap in the signature
18 line. Furthermore, Leaver testified that Debtor's signature on
19 the Tax Affidavit may not have been authentic because of a
20 variance between that signature and all of the known signatures
21 Leaver examined.

22 After hearing testimony, the bankruptcy court took the matter
23 under advisement, requesting post-hearing briefing from the
24 parties.

25 **D. Memorandum Decision and Order on Sanctions Motions**

26 The bankruptcy court entered its Memorandum Decision on the
27 Sanctions Motion ("Sanctions Decision") and related order
28 ("Sanctions Order") on December 4, 2012. The court found that

1 none of Goldberg's witnesses could establish that Debtor completed
2 the credit counseling in Goldberg's office. Further, although
3 Goldberg and his staff asserted that a client's credit counseling
4 could not be completed by his staff without the client's input,
5 the court found that other evidence showed that his staff had
6 sufficient client information to complete it and obtain the
7 certificate without the client's involvement. Consequently, the
8 court concluded that Goldberg or his staff impersonated Debtor,
9 improperly obtained her CC Certificate, and filed it in bad faith.
10 The court found that such conduct violated Rule 9011, several
11 ethical rules, and possibly criminal statutes.

12 The court rejected Goldberg's assertion that Rule 9011(b) was
13 not implicated by his conduct since he was given no "safe harbor."
14 The court noted that Rule 9011(c)(1)(A) provides an exception to
15 the 21-day safe-harbor rule if "the conduct alleged is the filing
16 of a petition." The court determined that Goldberg was not
17 entitled to the safe-harbor rule because he knew at the time of
18 filing Debtor's petition that relief under chapter 13 would be
19 impossible because Debtor had not personally completed credit
20 counseling as required by § 109(h). The court also found that
21 Goldberg filed Debtor's petition as-is in order to cut corners, to
22 avoid delay, to begin collecting his fee, and to move on to the
23 next paying client.

24 In addition to violating Rule 9011, the court found
25 Goldberg's conduct violated several provisions of the Nevada Rules
26 of Professional Conduct ("NRPC"). Goldberg had violated NRPC 3.3
27 when he filed the CC Certificate that he, or someone in his
28 office, obtained by impersonating Debtor and by using her personal

1 information. The court noted that although Debtor had informed
2 Goldberg that she had not personally completed credit counseling,
3 Goldberg failed to withdraw the CC Certificate. Goldberg's
4 conduct had also violated NRPC 8.4, as well as several criminal
5 statutes.⁷ In particular, by impersonating Debtor to obtain the
6 CC Certificate, and then filing and refusing to withdraw the
7 fraudulent document with the court, Goldberg had likely violated,
8 and continued to violate, 18 U.S.C. §§ 157, 1519 and 1028.
9 Consequently, the court referred the matter to the United States
10 Attorney for the District of Nevada.

11 Regarding the Tax Returns, the court found that Goldberg had
12 signed them without authority to do so. The court concluded this
13 after finding (1) Debtor's testimony more credible than that of
14 Goldberg and Allen, (2) the original 2848 POA was never produced,
15 and (3) substantial questions existed as to whether the signature
16 on the scanned copy of the 2848 POA was actually Debtor's.
17 Accordingly, the court determined that Goldberg's unauthorized
18 signature on the Tax Returns and false representation to the IRS

19

20

21

22 ⁷ NRPC 3.3 provides that "[a] lawyer shall not knowingly make
23 a false statement of fact or law to a tribunal or fail to correct
a false statement of material fact or law previously made to the
tribunal by the lawyer."

24

25 NRPC 8.4 provides, in relevant part: "It is professional
26 misconduct for a lawyer to: (a) Violate or attempt to violate the
Rules of Professional Conduct, knowingly assist or induce another
27 to do so, or do so through the acts of another; (b) Commit a
criminal act that reflects adversely on the lawyer's honesty,
trustworthiness or fitness as a lawyer in other respects;
28 (c) Engage in conduct involving dishonesty, fraud, deceit or
misrepresentation; (d) Engage in conduct that is prejudicial to
the administration of justice[.]"

1 that the Tax Returns were self-prepared violated NRPC 3.3, 4.1⁸
2 and 8.4 and subjected Goldberg to possible discipline. Because
3 Goldberg's conduct may have also violated 26 U.S.C. §§ 7206 and
4 7207, the court referred Goldberg to the United States Attorney
5 for the District of Nevada.

6 The court also found that Goldberg, or someone in his office,
7 signed Debtor's Tax Affidavit rather than Debtor. Neither expert
8 witness could confirm the authenticity of the signature. Further,
9 testimony of Goldberg's witnesses, Parmelee and Allen, conflicted.
10 Third, Debtor's purported signature on the document could not be
11 corroborated by a properly logged entry in a notary book. As a
12 result, the court concluded that Goldberg's conduct had violated
13 NRPC 4.1, 8.4 and 5.3 and was subject to discipline.

14 Based on the above, the bankruptcy court imposed the
15 following sanctions: Goldberg was suspended for a period of six
16 months from filing any new bankruptcy cases in the district;
17 Goldberg had to provide a copy of the court's decision to every
18 prospective chapter 13 client for five years; Goldberg had to
19 return to Debtor all funds paid in connection with her case; and
20 Debtor was entitled to payment by Goldberg of all reasonable
21 attorney's fees and costs incurred prosecuting the Sanctions
22 Motion. Considering Goldberg's conduct and practices in
23 connection with this case, the court also referred Goldberg for
24 investigation to the United States Attorney for the District of

25
26 ⁸ NRPC 4.1 provides: "In the course of representing a client
27 a lawyer shall not knowingly: (a) Make a false statement of
28 material fact or law to a third person; or (b) Fail to disclose a
material fact to a third person when disclosure is necessary to
avoid assisting a criminal or fraudulent act by a client, unless
disclosure is prohibited by Rule 1.6."

1 Nevada, the Nevada Secretary of State, the Nevada Attorney
2 General, the Clark County District Attorney, the State Bar of
3 Nevada, and the Office of the United States Trustee.

4 Goldberg timely appealed the Sanctions Order.

5 After Debtor's attorneys submitted briefs and time records
6 for their fees, to which Goldberg objected, the bankruptcy court
7 entered an order awarding Debtor approximately \$45,000 in
8 attorney's fees and costs ("Fee Order") on January 24, 2013.

9 Goldberg timely appealed the Fee Order.

10 The appeals were consolidated on February 20, 2013.

11 II. JURISDICTION

12 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
13 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

14 III. ISSUES

- 15 1. Did the bankruptcy court abuse its discretion when it entered
16 the Sanctions Order?
- 17 2. Did the bankruptcy court abuse its discretion when it entered
18 the Fee Order?

19 IV. STANDARDS OF REVIEW

20 We review all aspects of an award of sanctions for an abuse
21 of discretion. Price v. Lehtinen (In re Lehtinen), 332 B.R. 404,
22 411 (9th Cir. BAP 2005), aff'd, 564 F.3d 1052 (9th Cir. 2009);
23 In re Nguyen, 447 B.R. 268, 276 (9th Cir. BAP 2011)(en banc). A
24 bankruptcy court abuses its discretion if it applied the wrong
25 legal standard or its findings were illogical, implausible or
26 without support in the record. TrafficSchool.com, Inc. v. Edriver
27 Inc., 653 F.3d 820, 832 (9th Cir. 2011).

28 The appellate court must give great deference to the trial

1 court's findings of fact under this standard. A reviewing court
2 is not entitled to reverse a finding, even though convinced that
3 had it been sitting as the trier of fact it would have weighed the
4 evidence differently. Anderson v. City of Bessemer City, N.C.,
5 470 U.S. 564, 573 (1985). Even greater deference must be afforded
6 to the trial court's factual findings where credibility
7 determinations are at issue, "for only the trial judge can be
8 aware of the variations in demeanor and tone of voice that bear so
9 heavily on the listener's understanding of and belief in what is
10 said." Id. See also Rule 8013.

11 **V. DISCUSSION**

12 **A. The bankruptcy court did not abuse its discretion when it**
13 **entered the Sanctions Order.**

14 **1. The bankruptcy court had proper jurisdiction over the**
15 **case and Goldberg despite the faulty CC Certificate.**

16 Goldberg contends that, because the bankruptcy court had
17 determined Debtor had not taken the credit counseling course,
18 thereby requiring the dismissal of her case, the court lacked
19 jurisdiction to impose sanctions. Goldberg asserts that § 109(h)⁹
20 is jurisdictional, and a debtor's non-compliance with the statute
21 strips the bankruptcy court of jurisdiction. We disagree.

22 Compliance with the credit counseling requirements of
23 § 109(h) is a matter of eligibility rather than jurisdiction.
24 Mendez v. Salven (In re Mendez), 367 B.R. 109, 117-18 (9th Cir.

25 ⁹ Section 109(h) provides that "an individual may not be a
26 debtor . . . unless such individual has, during the 180-day period
27 ending on the date of filing of the petition by such individual,
28 received from an approved nonprofit budget and credit counseling
agency . . . an individual or group briefing (including a briefing
conducted by telephone or on the Internet) that outlined the
opportunities for available credit counseling and assisted such
individual in performing a related budget analysis."

1 BAP 2007)(compliance with § 109(h) is an eligibility requirement,
2 not a jurisdictional requirement).¹⁰ In Mendez, we held that a
3 bankruptcy court has jurisdiction over a case commenced by a
4 debtor who has not complied with the strict requirement of
5 § 109(h). Id. at 118. See also In re Parker, 351 B.R. 790, 796
6 (Bankr. N.D. Ga. 2006)(once a petition is filed, the bankruptcy
7 court has authority to determine debtor's eligibility and retains
8 jurisdiction even over cases commenced by an ineligible debtor).
9 Accordingly, the bankruptcy court did not lack jurisdiction over
10 Debtor or Goldberg, who filed Debtor's petition and related
11 documents and subjected himself to the court's jurisdiction and
12 authority.

13 Similarly, Goldberg contends the bankruptcy court should have
14 struck Debtor's case for lack of jurisdiction based on the same
15 rationale of her non-compliance with § 109(h). In other words,
16 Goldberg asserts that because consumer credit counseling is a
17 prerequisite to eligibility, Debtor's failure to comply with the
18 requirement rendered her case "void ab initio," as if it never had
19 been commenced. As we noted above, § 109(h) is not jurisdictional
20 and the filing of a petition, even by an ineligible debtor,
21 nevertheless commences a bankruptcy case and provides the court
22 with jurisdiction. In addition, for Goldberg to assert that
23 Debtor failed to comply with § 109(h), not only must he admit the
24 fraudulent nature of the CC Certificate filed on Debtor's behalf,
25 Goldberg must also admit he filed false papers with the court, in

26
27 ¹⁰ Sections 109(h)(2) and 109(h)(3) provide debtors with some
28 exceptions from the counseling requirement upon approval from the
court. However, none of the exceptions are applicable to this
case.

1 willful violation of a variety of court rules and rules of
2 professional conduct. Goldberg would thus admit to violations
3 against the bankruptcy court, while asserting that the bankruptcy
4 court had no duty or authority to regulate such conduct. We
5 reject such a notion.

6 Goldberg next argues confirmation of Debtor's Plan #4 made
7 the credit counseling issue moot. Here, Goldberg appears to argue
8 that his conduct with respect to Debtor's CC Certificate could not
9 provide the basis for sanctions against him, assuming the issue
10 became moot upon confirmation. We too reject this argument. The
11 status of Debtor's plan cannot provide an excuse or shield for
12 Goldberg's conduct and ethical violations.

13 Goldberg also contends that Debtor waived and ratified any
14 failure to take the credit counseling class. His argument is
15 misguided. Goldberg's conduct with respect to the CC Certificate
16 is not the only basis upon which the bankruptcy court imposed
17 sanctions. Even if it were, we note Goldberg's ironically polar
18 opposite positions as they relate to § 109(h) compliance, arguing
19 on one hand that it is mandatory and jurisdictional, while also
20 arguing judicial discretion to waive the credit counseling
21 requirement is appropriate in certain circumstances.

22 Goldberg next argues that the bankruptcy court erred in even
23 deciding the credit counseling issue because it was not part of
24 Debtor's Sanctions Motion. We disagree. According to Debtor, who
25 was appearing pro se, she was not aware of the CC Certificate at
26 the time she filed her Sanctions Motion, and, thus, could not have
27 raised the issue. When Debtor became aware of the document, she
28 promptly brought it to both the court's and Goldberg's attention

1 in her response to Goldberg's opposition to the Sanctions Motion.
2 Thus, Goldberg had sufficient notice and time to prepare a
3 defense, which he did. During the four evidentiary hearings
4 conducted over the course of six months, each party called, or had
5 the opportunity to call, witnesses to testify about the
6 CC Certificate. Additionally, both parties offered post-hearing
7 briefing wherein Goldberg was provided an opportunity to respond
8 to Debtor's allegations. Goldberg was therefore given sufficient
9 notice, and the inclusion of the issue of the CC Certificate was
10 appropriate and not unfairly prejudicial.¹¹ Further, as we noted
11 above, Goldberg's conduct surrounding the CC Certificate is not
12 the only basis upon which the bankruptcy court issued sanctions.

13 Finally, Goldberg argues that Debtor's voluntary actions
14 judicially and equitably estopped her from seeking sanctions
15 against him. We fail to see where Goldberg raised this argument
16 before the bankruptcy court. By failing to demonstrate that he
17 properly presented this argument to the bankruptcy court, he has
18 waived the argument, and we need not address the merits here. See
19 Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth),
20 455 B.R. 904, 919 (9th Cir. BAP 2011)(citing Golden v. Chi. Title
21 Ins. Co. (In re Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002);
22 Branam v. Crowder (In re Branam), 226 B.R. 45, 55 (9th Cir. BAP
23 1998), aff'd, 205 F.3d 1350 (9th Cir. 1999)(unpublished table
24

25 ¹¹ Goldberg also argues that even if the bankruptcy court had
26 jurisdiction, it erred in entering a final judgment, because
27 bankruptcy judges are prohibited from entering a final judgment in
28 core proceedings, citing Stern v. Marshall, 131 S.Ct. 2594 (2011).
Stern is not applicable to this case because the issues on appeal
do not involve a state law matter unrelated to the bankruptcy case
asserted as a compulsory counterclaim.

1 decision)). In any event, we reject any inference by Goldberg
2 that Debtor's actions precluded the bankruptcy court from taking
3 disciplinary action against him.

4 **2. The bankruptcy court was authorized to sanction Goldberg.**

5 **a. The bankruptcy court did not err when determining**
6 **its authority to sanction Goldberg.**

7 **i. Rule 9011**

8 Goldberg argues the bankruptcy court erred in determining
9 that he had violated Rule 9011, because the rule does not apply to
10 a client against her own attorney. To the contrary, Rule 9011 is
11 appropriately used to protect other parties, as well as debtors,
12 from the misconduct of a debtor's attorney. Cohn v. U.S. Trustee
13 (In re Ostas), 158 B.R. 312, 319-20 (N.D.N.Y. 1993)(rejecting the
14 argument of debtors' counsel that Rule 9011 was only intended to
15 protect opposing parties, not the attorney's own clients).

16 Generally, Rule 9011 is directed at papers signed by
17 litigants and/or attorneys and filed with the court.
18 Rule 9011(b)(3) provides that "by presenting to the court . . . a
19 paper . . . an attorney . . . is certifying that to the best of
20 the person's knowledge, information, and belief, formed after a
21 reasonable inquiry . . . the allegations or factual contentions
22 have evidentiary support." Rule 9011(b) "provides for the
23 imposition of sanctions when a filing is frivolous, legally
24 unreasonable, or without factual foundation, or is brought for an
25 improper purpose." Simpson v. Lear Astronics Corp., 77 F.3d 1170,
26 1177 (9th Cir. 1996)(citing Warren v. Guelker, 29 F.3d 1386, 1388
27 (9th Cir. 1994)). The Rule 9011 "safe harbor" exception does not
28 apply when, as in this case, the violation involves the petition,

1 since the filing of the petition has immediate serious
2 consequences to creditors, including the imposition of the
3 automatic stay.

4 The bankruptcy court found Goldberg violated Rule 9011 and
5 was subject to sanctions for filing the fraudulent CC Certificate.
6 Specifically, the court found that either Goldberg, or one of his
7 staff, impersonated Debtor and improperly obtained her
8 CC Certificate. Despite knowing that Debtor had not obtained it
9 as required under § 109(h), Goldberg nevertheless filed the
10 document. Accordingly, such filing had been done in bad faith.

11 We conclude that it was not an abuse of discretion for the
12 bankruptcy court to determine that Goldberg's actions were
13 frivolous, satisfying one of the alternate elements necessary
14 under Rule 9011 for the imposition of sanctions. The word
15 "frivolous," when used in connection with sanctions, denotes a
16 filing that is both baseless – lacks factual foundation – and made
17 without a reasonable and competent inquiry. Townsend v. Holman
18 Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990). An
19 attorney has a duty to conduct a reasonable factual investigation
20 as well as to perform adequate legal research that confirms his
21 position is warranted by existing law (or by a good faith argument
22 for a modification or extension of existing law). Christian v.
23 Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002). "An attorney's
24 signature on a complaint is tantamount to a warranty that the
25 complaint is well grounded in fact and 'existing law' (or proposes
26 a good faith extension of the existing law)" Id. Thus,
27 a finding that no reasonable inquiry was made into either the
28 facts or the law is tantamount to a finding of frivolousness.

1 Townsend, 929 F.2d at 1362.

2 Goldberg's filing of the CC Certificate was frivolous because
3 he failed to show that he made any reasonable inquiry into either
4 the facts or the law. Even when Debtor notified him about the
5 questionable CC Certificate, nothing in the record suggests that
6 Goldberg made any attempt to inquire about, or address, the issue.
7 He did not contact Debtor, he did not conduct an audit of his
8 records and he did not inquire with his staff or implement any
9 changes to his office procedures. Additionally, Goldberg did not
10 attempt to withdraw the CC Certificate or have Debtor complete the
11 counseling and obtain a new certificate. Under no circumstances
12 would Goldberg's lack of inquiry and action be deemed reasonable.

13 The Ninth Circuit has held that an attorney's inquiry as to
14 facts contained in signed documents submitted to a court must be
15 measured "objectively against a reasonableness standard, which
16 consists of a competent attorney admitted to practice before the
17 involved court." Valley Nat'l Bank of Ariz. v. Needler
18 (In re Grantham Bros.), 922 F.2d 1438, 1441 (9th Cir. 1991).

19 Goldberg's filing of the CC Certificate was frivolous because his
20 inquiry as to facts contained in it and submitted to the court was
21 not reasonable as objectively compared to a competent attorney
22 admitted to practice before the same court. Although Goldberg
23 argued that Debtor either signed the disputed document or, in the
24 alternative, knew about and ratified his conduct, Goldberg
25 provided no evidence to support his assertions. His witnesses
26 gave conflicting, evasive and continually changing testimony.
27 Goldberg also failed to show a reasonable inquiry as to the
28 authenticity of the documents he filed or that his conduct was

1 reasonable when compared to other bankruptcy attorneys. Although
2 Goldberg called Newark, another bankruptcy lawyer, as a witness,
3 she did not opine on the reasonableness of Goldberg's conduct.
4 Rather, she testified that her office protocol and procedures were
5 different than Goldberg's regarding credit counseling and tax
6 returns. Newark stated that although debtors complete their
7 credit counseling requirement at her office, debtors complete it
8 alone, without assistance from her staff.

9 The bankruptcy court's determination that Goldberg violated
10 Rule 9011, and that it had authority under Rule 9011 to impose
11 sanctions, was not erroneous. Nonetheless, even if the court
12 could not sanction Goldberg under Rule 9011, it had ample other
13 authority upon which it could rely to impose sanctions.

14 **ii. Inherent authority and § 105**

15 Bankruptcy courts have broad authority to run their
16 courtrooms and to supervise the attorneys appearing before them.
17 See Smyth v. Oakland (In re Brooks-Hamilton), 400 B.R. 238, 246
18 (9th Cir. BAP 2009)(citing Chambers v. NASCO, Inc., 501 U.S. 32,
19 43, 47 (1991)). Section 105(a) empowers bankruptcy courts to take
20 any action or make any determination necessary or appropriate to
21 enforce or implement court orders or rules, or to prevent an abuse
22 of process. Section 105(a) also authorizes a bankruptcy court to
23 impose penalties, including suspension of an attorney.
24 In re Brooks-Hamilton, 400 B.R. at 248. In Peugeot v. U.S.
25 Trustee (In re Crayton), 192 B.R. 970, 976 n.6 (9th Cir. BAP
26 1996), the Panel states that § 105(a) "arguably empowers a
27 bankruptcy court to discipline attorneys who appear before it,
28 given that incompetent attorneys frustrate the [Bankruptcy Code's]

1 purpose of prompt administration of the estate and equitable
2 distribution of assets."

3 To satisfy due process, a bankruptcy court must determine
4 that the party to be sanctioned was provided sufficient notice of
5 the potential sanctions before imposing sanctions under § 105(a).
6 Miller v. Cardinale (In re Deville), 280 B.R. 483, 496-97 (9th
7 Cir. BAP 2004). "Generally, the notice regarding sanctions must
8 specify the authority for the sanction, as well as the
9 sanctionable conduct." Id. at 496. Although Debtor's Sanctions
10 Motion did not specifically mention § 105(a), it satisfied the due
11 process standard under § 105(a) because it informed Goldberg that
12 sanctions were pursued for actions indicating that he acted in
13 "bad faith, vexatiously, wantonly, for oppressive reasons, or for
14 other improper purposes." Schwartz-Tallard v. Am. Serv. Co.
15 (In re Schwartz-Tallard), 473 B.R. 340, 351 (9th Cir. BAP 2012).

16 Alternatively, the bankruptcy court could have imposed
17 sanctions under its inherent authority. "A bankruptcy court's
18 inherent power allows it to sanction 'bad faith' or 'willful
19 misconduct,' even in the absence of express statutory authority to
20 do so." Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058
21 (9th Cir. 2009). This inherent authority extends even to allow a
22 bankruptcy court to suspend or disbar an attorney. Id. at 1059.
23 Here, however, statutory authority existed under § 105(a) as well
24 as the Local Rules for the District of Nevada. The NRPC applies
25 to all attorneys admitted to practice before a court within the
26 district. Local Rule IA 10-7. Local Rule IA 4-1 provides that
27 "[t]he court may, after notice and opportunity to be heard, impose
28 any and all sanctions on an attorney . . . who, without just

1 cause: . . . (C) Fails to comply with these rules." Clearly, the
2 bankruptcy court had authority under the Local Rules to sanction
3 Goldberg for his conduct which violated the NRPC.

4 Given Goldberg's conduct in this case, we conclude that the
5 bankruptcy court had authority under any of the above sources to
6 issue its Sanctions Order against him.

7 **b. The bankruptcy court did not err when determining**
8 **the types of sanctions it imposed.**

9 Goldberg argues the six-months suspension was too severe of a
10 sanction. Goldberg also argues the bankruptcy court abused its
11 discretion by ordering him to give prospective clients its opinion
12 for five years into the future. We conclude that the sanctions
13 imposed by the bankruptcy court were fair, supported by the
14 evidence and reasonable. See In re Nguyen, 447 B.R. at 276.

15 Rule 9011(c)(2) provides that a "sanction imposed for
16 violation of this rule shall be limited to what is sufficient to
17 deter repetition of such conduct or comparable conduct by others
18 similarly situated," and that such sanctions may include "some or
19 all of the reasonable attorneys' fees and other expenses incurred
20 as a direct result of the violation." Dressler v. Seeley Co.
21 (In re Silberkraus), 336 F.3d 864, 871 (9th Cir. BAP 2003).

22 The American Bar Association Standards include a
23 non-exhaustive list of potential disciplinary sanctions along with
24 a list of relevant factors to be used when determining the
25 reasonableness of such sanctions. In In re Crayton, we adopted
26 the ABA Standards, determining that they "promote[d] the thorough,
27 rational consideration of relevant factors, and help[ed] to
28 achieve consistency when imposing attorney discipline." 192 B.R.

1 at 980. We modified our position in In re Nguyen, noting that
2 requiring explicit consideration of each ABA Standard in
3 determining the reasonableness of sanctions was too restrictive.
4 447 B.R. at 277. While a lack of findings by the bankruptcy court
5 as to each of the factors is not reversible error, in reviewing
6 attorney disciplinary sanctions on appeal, we must determine
7 whether (1) the proceeding was fair, (2) the evidence supports the
8 findings, and (3) the penalty imposed was reasonable.

9 **i. Fairness of the disciplinary proceeding**

10 Goldberg had sufficient notice and time to prepare a defense.
11 As discussed above, both parties were given ample time to prepare,
12 present testimony and introduce evidence. In addition, each party
13 provided post-hearing briefing wherein Goldberg was provided an
14 opportunity to respond to Debtor's allegations. Accordingly, we
15 conclude the disciplinary proceeding was fair.

16 **ii. Evidentiary Support**

17 The bankruptcy court articulated extensive evidentiary
18 findings justifying its Sanctions Order. As for the Tax Returns,
19 Goldberg readily admitted to a variety of ethical and rule
20 violations. Goldberg admitted signing his clients' names to filed
21 tax returns. Although he believed his practices complied with
22 federal law, he was unable to cite any specific authority allowing
23 him to sign. Rather, Goldberg rationalized his conduct on the
24 basis that he had done it so often and had received no complaints
25 from either clients or the IRS. Contrary to Goldberg's
26 assertions, the instructions for the 2848 POA clearly show that
27 his practices violate federal law. Consequently, the bankruptcy
28 court determined Goldberg's unauthorized signature on the Tax

1 Returns and false representations to the IRS that the Tax Returns
2 were self-prepared violated Rule 9011 and NRPC §§ 3.3 and 8.4 and
3 subjected him to possible discipline. The record supports this
4 determination.

5 With respect to the 2848 POA, the bankruptcy court found
6 Debtor's testimony to be more credible than that of Goldberg and
7 Allen. Further, the record showed that Goldberg had failed to
8 produce the original 2848 POA, and the authenticity of Debtor's
9 signature on the scanned copy was in question.

10 Regarding the CC Certificate, the court found that no witness
11 could establish Debtor had completed the credit counseling in
12 Goldberg's office. The court noted the inconsistent witness
13 testimonies, Goldberg's admission that his staff routinely and
14 quickly completed the counseling with Debtors, and Goldberg's
15 admission that information Debtor provided in her initial packet
16 gave him sufficient information to complete her credit counseling
17 without her present. As such, the record supports the bankruptcy
18 court's finding that Goldberg, or his staff, impersonated Debtor,
19 improperly obtained Debtor's CC Certificate and then filed it with
20 the court in bad faith. The record also supports the bankruptcy
21 court's finding that Goldberg, or someone in his office, signed
22 the Tax Affidavit rather than Debtor.

23 **iii. Reasonableness**

24 The bankruptcy court has broad authority when issuing and
25 determining sanctions. Within the express limitations of Rule
26 9011(c), the bankruptcy court has considerable discretion in
27 determining the amount of the award. Miller v. Cardinale
28 (In re DeVille), 361 F.3d 539, 553 (9th Cir. 2004). See also

1 Orton v. Hoffman (In re Kayne), 453 B.R. 372, 386 (9th Cir. BAP
2 2011)(a bankruptcy court has wide discretion in determining the
3 amount of a sanctions award). Although Rule 9011(c) states that
4 sanctions should be limited to what is sufficient to deter
5 repetition of such conduct, it also states that payment of some or
6 all of the reasonable attorneys' fees and expenses incurred as a
7 direct result of the violation may be appropriate. Rule
8 9011(c)(2). An appropriate deterrence penalty may be greater than
9 the amount of compensatory damages. Fjeldsted v. Lien
10 (In re Fjeldsted), 293 B.R. 12, 28 (9th Cir. BAP 2003).

11 The Local Rules also grant considerable leeway in fashioning
12 sanctions for violations of the NRPC. Local Rule IA 10-7(a)
13 provides that "[a]ny attorney who violates these standards of
14 conduct may be disbarred, suspended from practice before this
15 court for a definite time, reprimanded or subjected to such other
16 discipline as the court deems proper."

17 Additionally, the court may consider aggravating and
18 mitigating circumstances in deciding the type and severity of the
19 sanction imposed. Aggravating factors justifying an increase in
20 the degree of discipline imposed include: (1) dishonest or selfish
21 motive; (2) a pattern of misconduct; (3) multiple offenses;
22 (4) refusal to acknowledge wrongful nature of conduct; and
23 (5) substantial experience in the practice of law. In re Nguyen,
24 447 B.R. at 277. See also In re Seare, 2013 WL 2321664, at *54
25 (Bankr. D. Nev. 2013).

26 The bankruptcy court was mindful this was not the first time
27 Goldberg had violated, or had been sanctioned for violating,
28 various rules, which included the same conduct of forging

1 signatures on credit counseling certificates and filing them with
2 the bankruptcy court. Goldberg was previously sanctioned in the
3 same judicial district by Bankruptcy Judge Bruce A. Markell in
4 In re Sanford, 403 B.R. 831 (Bankr. D. Nev. 2009), and
5 In re Pagaduan, 429 B.R. 752, 760 (Bankr. D. Nev. 2010), aff'd in
6 part, vacated in part, 447 B.R. 614 (D. Nev. 2011). In Pagaduan,
7 Judge Markell found that Goldberg, or someone in his office,
8 generated a credit counseling certificate by impersonating the
9 debtors. Id. at 760. The debtors had proof of being out of the
10 country on the day they allegedly completed the counseling. Id.
11 at 758. Goldberg unsuccessfully asserted, as he did in this case,
12 the debtors completed the counseling requirement without even
13 realizing it.

14 Although Goldberg has been reported and sanctioned for
15 previous violations, his unprofessional and, in some instances,
16 possibly criminal conduct apparently continued. Disciplinary
17 sanctions should, of course, be progressive. Notwithstanding
18 prior sanctions, Goldberg appeared to continue to engage in a
19 willful pattern of careless and unprofessional conduct. The
20 bankruptcy court found Goldberg refuses to accept responsibility
21 for his actions and that prior sanctions have not resulted in
22 deterring Goldberg's disregard for judicial rules and procedures.
23 Additionally, the court noted that Goldberg admitted to having
24 received fifteen to twenty prior bar complaints during the years
25 he had practiced in Nevada. Goldberg further testified that he
26 had been sued by a couple of clients since 1996 and had two or
27 three fee disputes. Consequently, and with "reluctan[ce]," the
28 bankruptcy court imposed the sanctions it did against Goldberg "in

1 an effort to deter future similar violations[.]" Mem. (Dec. 4,
2 2012) 40:25-41:1.

3 We conclude that the sanctions imposed in this case were
4 reasonable and consistent with the progressive nature of
5 discipline that was required in this case.¹²

6 **c. The bankruptcy court did not clearly err in its**
7 **finding of facts.**

8 Goldberg argues that the bankruptcy court erred in finding
9 that Debtor did not sign her Tax Affidavit and did not permit
10 Goldberg to sign her Tax Returns. Goldberg similarly argues the
11 bankruptcy court erred in believing Debtor's version of events.
12 We reject Goldberg's assertion.

13 The bankruptcy court expended considerable time with this
14 case. It conducted four evidentiary hearings resulting in eleven
15 witnesses testifying and forty-four exhibits admitted into
16 evidence. It also accepted and reviewed further briefing by both
17 parties prior to taking the matter under submission.

18 In its Sanctions Decision, the bankruptcy court thoughtfully
19 and thoroughly laid out the basis of its reasoning. Overall, the
20 court found Debtor's and Lonnie's testimony to be generally

21 ¹² Goldberg also argues that the bankruptcy court's three-year
22 delay in deciding these issues and use of outside sources has
23 prejudiced him. The only support Goldberg asserts here is that if
24 he were a menace to society, the court would have ruled earlier.
25 We conclude that the delay was not prejudicial, but merely gave
Goldberg additional time before having to pay the Fee Order, and
it allowed him to continue to conduct his profitable business.

26 Goldberg additionally argues that Parmelee's not keeping a
27 Notary log book was not part of Debtor's original motion, so
28 therefore he should not be sanctioned for Parmelee's acts or
omissions. Contrary to Goldberg's assertion, the Sanctions
Decision stated the lack of a notary log was "not a separate basis
for the Sanctions Motion."

1 consistent and credible, while it found Goldberg and his staff's
2 explanations and rationalizations to be conclusory, contradictory,
3 frequently evolving throughout the hearing and without evidentiary
4 support.

5 As for the 2848 POA, the court found that Goldberg's reason
6 for destroying it, the one document that expressly authorized him
7 to obtain tax information or to possibly file tax returns, while
8 keeping originals of other private documents in his "cover-your-
9 butt" folder "bizarre at best." Id. at 18 n.13. The court also
10 noted Goldberg's inconsistent references to the 2848 POA.
11 Initially, Goldberg asserted the 2848 POA was the basis of his
12 authority to sign the returns. Later, however, Goldberg indicated
13 that destruction of the original 2848 POA did not matter, because
14 the basis of his authority to sign returns was a client's oral
15 authorization, not the 2848. Goldberg also testified that he
16 never requested the client's written permission to sign tax
17 returns, which contradicted his assertion that he had a signed
18 2848 POA from the Debtor. The court also noted that Leaver,
19 Debtor's expert witness, testified that the copy of the 2848 POA
20 Goldberg provided was most likely manipulated either by computer
21 or cut-and-paste because there were line-quality faults that
22 indicated either simulation or tracing as well as a visible gap in
23 the signature line. Between the two expert document examiners,
24 the court found Leaver's testimony more persuasive and his
25 document examination more extensive than Goldberg's expert,
26 Klekoda-Baker.

27 In regards to the Tax Affidavit, the court noted the
28 conflicting testimony of Goldberg's employees. Parmelee testified

1 that he witnessed Debtor sign the Tax Affidavit. However, Allen
2 testified that Parmelee was not in the room when the Debtor signed
3 it. The court also noted that Goldberg's expert witness,
4 Klekoda-Baker, could not conclusively substantiate Debtor's
5 signature on the Tax Affidavit because she did not have any
6 "known" signatures with which to compare, although this did not
7 prevent her from forming the opinion that every other purported
8 signature of Debtor's was authentic, except for the signature on
9 her Tax Returns, which Goldberg admitted he signed. Similarly,
10 Parmelee testified he observed Debtor sign the Tax Affidavit and
11 notarized the document, yet he was unable to produce a notary
12 journal supporting his assertion because he does not maintain one.
13 The court also found that Parmelee had failed to ask Debtor for
14 her identification or to ask a witness to verify her identity.

15 We conclude that the bankruptcy court's findings are not
16 illogical, implausible or without support in the record. If the
17 bankruptcy court's "account of the evidence is plausible in light
18 of the record viewed in its entirety," we may not reverse, even if
19 we are convinced that, had we been in the position of fact finder,
20 we would have weighed the evidence differently. Anderson,
21 470 U.S. at 573-74. "Where there are two permissible views of the
22 evidence, the factfinder's choice between them cannot be clearly
23 erroneous." Id.

24 Accordingly, we AFFIRM the Sanctions Order.

25 **B. The bankruptcy court did not abuse its discretion when it**
26 **entered the Fee Order.**

27 Goldberg argues that the bankruptcy court erroneously awarded
28 Debtor her attorney fees. We disagree. Bankruptcy courts have

1 broad discretion when determining sanctions, and sanctions
2 involving the award of attorney fees are appropriate and
3 reasonable. The First Circuit Bankruptcy Appellate Panel affirmed
4 a bankruptcy court's order of sanctions in the amount of three
5 times the lawyer's fee, where the lawyer blamed the client for
6 inconsistent and inaccurate information on the schedules and
7 petitions. Lafayette v. Collins (In re Withrow), 405 B.R. 505,
8 514 (1st Cir. BAP 2009). Likewise, this Panel affirmed a \$20,000
9 sanction for the trustee's costs and fees in bringing a motion
10 under § 707(b)(4) and Rule 9011 after finding an "egregious"
11 failure to list a promissory note payable to the debtor on the
12 petition. In re Kayne, 453 B.R. at 385.

13 Goldberg objected to the attorney's fees requested by
14 Debtor's counsel on the grounds that the \$300 hourly rate charged
15 by both attorneys was unreasonable, and that the number of hours
16 billed by each attorney was excessive.¹³ In support, Goldberg
17 provided an affidavit of an experienced local bankruptcy attorney
18 who charges \$250 per hour. Goldberg argued that Debtor's
19 attorneys had less bankruptcy experience, and therefore should not
20 have charged \$300 per hour.

21 The bankruptcy court rejected Goldberg's assertion that
22 Debtor's counsel's hourly rate was excessive. First, the court
23 determined that lawyers have great discretion when determining an
24 hourly rate. Secondly, the court found that Goldberg's hourly
25
26
27

28 ¹³ Goldberg did not object to the award of costs.

1 rate was \$307.50 per hour,¹⁴ which was approximately the same
2 billable rate that Debtor's attorneys were charging. We also note
3 Goldberg testified that this is the same rate he charges his
4 clients for tax work.¹⁵ The court further found that Debtor's
5 counsel demonstrated the skill and ability required to properly
6 present the Sanctions Motion, and substantially achieved the
7 result sought by Debtor. Based on its findings, the court found
8 the rate charged by Debtor's counsel to be reasonable.

9 As to the number of hours charged, the bankruptcy court
10 carefully reviewed the statements provided by Debtor's counsel and
11 analyzed the reasonableness of the hours and costs requested by
12 each attorney. As shown in the Fee Order, the court rejected fees
13 for entries it found were duplicative, or lacked contemporaneity,
14 specificity or reliability. Consequently, the court reduced
15 counsels' fees accordingly: one attorney's fees were reduced by
16 \$26,190, the other's by \$2,050.

17 On this record, we conclude that the bankruptcy court's award
18 of attorney's fees was not illogical, implausible or without
19 support in the record, and we AFFIRM the Fee Order.

20 VI. CONCLUSION

21 For the foregoing reasons, we AFFIRM.
22
23

24
25 ¹⁴ The court divided Goldberg's customary charge by sixteen
26 hours – the number of hours Goldberg stated he spent on a typical
27 bankruptcy – arriving at an hourly fee of \$307.50 per hour.

28 ¹⁵ Given Goldberg's admitted lack of research and compliance
with tax issues, while still charging \$300 per hour, his assertion
that the same rate charged by Debtor's counsel was unreasonable
appears unfounded and without merit.