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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-13-1006-KiTaKu
)		
DISCIPLINARY PROCEEDING)	MP No.	2:11-00179-TD
OF BRUCE M. GREENFIELD,)		
_____)		
)		
BRUCE M. GREENFIELD,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M ¹	
)		
PETER C. ANDERSON, UNITED)		
STATES TRUSTEE, REGION 16,)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument
on September 19, 2013,²

Filed - October 1, 2013

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

Hons. Thomas B. Donovan, Erithe A. Smith and Sandra R. Klein,
Bankruptcy Judges, presiding

Appearances: Appellant Bruce M. Greenfield pro se on brief;
Ramona D. Elliott, P. Matthew Sutko, Cameron M.
Gulden, Peter C. Anderson, Jennifer L. Braun and
Katherine C. Bunker on brief for appellee Peter C.
Anderson, United States Trustee.

Before: KIRSCHER, TAYLOR and KURTZ, 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 On August 2, 2013, the Panel unanimously determined that
this appeal was suitable for submission on the briefs and record
without oral argument pursuant to Fed. R. Bankr. P. 8012.

1 Appellant, Bruce M. Greenfield ("Greenfield"),³ appeals an
2 order from the bankruptcy court denying his motion under Civil
3 Rule 60(b) to vacate a disciplinary order entered against him. We
4 AFFIRM.

5 We begin by noting the severe deficiencies in Greenfield's
6 appellate brief and excerpts of the record. His brief fails to
7 include a table of contents, a table of cases, a statement of the
8 basis of appellate jurisdiction, a statement of the issues
9 presented on appeal, a statement of the facts or the case, any
10 argument, citations to relevant authorities or the record, and a
11 conclusion. These deficiencies are severe violations of
12 Rule 8010(b)(1)(A), (B), (C), (D), (E) and (F).⁴ For these
13 reasons, we have the authority to strike Greenfield's brief and
14 dismiss his appeal for failing to comply with the rules of
15 appellate briefing. See N/S Corp. v. Liberty Mut. Ins. Co.,
16 127 F.3d 1145, 1146 (9th Cir. 1997). Greenfield's excerpts of the
17 record are also woefully inadequate, consisting only of his motion
18 to vacate, the first page of the nine-page related order, and the
19 letter from his physician filed in support of his motion. Many
20 necessary documents are missing in violation of Rule 8009(b).

21 The United States Trustee ("Trustee") provided in his
22 response brief a proper accounting of the facts and complete
23 excerpts of the record, consisting of over 1,400 pages.

24
25 ³ Mr. Greenfield, Bar No. 80122, was admitted to the
26 California bar in 1978.

27 ⁴ 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. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 Therefore, considering that we have a complete record and the
2 severity of this matter, we exercise our discretion to review the
3 merits of this appeal, keeping in mind that we can affirm on any
4 basis supported by the record. Shanks v. Dressel, 540 F.3d 1082,
5 1086 (9th Cir. 2008).

6 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

7 A. Authority for disciplinary proceedings

8 The Bankruptcy Court for the Central District of California
9 provides a process for the discipline of attorneys appearing
10 before it. Fourth Amended General Order 96-05 authorizes
11 bankruptcy judges in the district to recommend that disciplinary
12 proceedings be commenced against an attorney. Upon a judge's
13 recommendation, otherwise known as a "referral," the Clerk of
14 Court then randomly selects three other bankruptcy judges in the
15 district to serve on a panel for a disciplinary proceeding, and
16 notice of the proceeding is sent to the attorney and the United
17 States Trustee.

18 The panel may solicit information about the attorney from
19 other bankruptcy judges in the district, and must set and provide
20 notice of a hearing date. The attorney then has the opportunity
21 to file a response and may appear at the disciplinary hearing and
22 present evidence to refute any of the allegations. The United
23 States Trustee may also appear and participate in the presentation
24 of evidence.

25 After the hearing, the disciplinary panel rules by majority
26 vote. The panel is authorized to issue an order of discipline and
27 a memorandum of decision. The order of discipline becomes final
28 14 days after entry or, if a motion for rehearing is filed,

1 14 days after entry of the order disposing of that motion.

2 **B. The disciplinary referral against Greenfield**

3 On August 30, 2011, by way of a referral to the Clerk of
4 Court, the Hon. Victoria S. Kaufman, Bankruptcy Judge for the
5 Central District of California, recommended that a disciplinary
6 proceeding be commenced against Greenfield. In support,
7 Judge Kaufman offered pleadings filed by Trustee in a chapter 7
8 case in which Greenfield had represented the debtor, Leonard
9 Greenfield & Assoc. CPA, an entity owned by Greenfield's father.
10 In that case, Greenfield had filed an appearance for the initial
11 pro se debtor on the filing date of the petition just after the
12 bankruptcy judge was assigned to the case. In less than a month,
13 the debtor, through Greenfield, filed a motion to convert the case
14 to chapter 11. Trustee's pleadings included his response to an
15 OSC (entered by Judge Kaufman on May 20, 2011) for why the case
16 should not be dismissed with a 180-day bar and Trustee's request
17 for the initiation of disciplinary proceedings, and Trustee's
18 supplemental response, filed on June 9 and on July 15, 2011,
19 respectively.

20 According to the referral, upon consideration of Trustee's
21 responsive pleadings and her own observations, Judge Kaufman
22 determined: "Greenfield is not sufficiently competent or qualified
23 to represent debtors in chapter 11 bankruptcy cases. He does not
24 possess sufficient experience and is not familiar with the
25 Bankruptcy Code, the Bankruptcy Rules and the Local Rules
26 applicable in chapter 11 bankruptcy cases." The referral also
27 noted that other judges had denied Greenfield's employment in
28 representing chapter 11 debtors, and that his conduct in prior

1 chapter 11 bankruptcy cases (and others) had resulted in
2 disgorgement of compensation and imposition of sanctions against
3 him. For example, in March 2010, the Hon. Maureen A. Tighe
4 ordered Greenfield to disgorge fees of \$2,500 to a client. In
5 December 2007, Judge Tighe imposed sanctions of approximately
6 \$78,000 jointly and severally against Greenfield and his clients
7 for improper litigation tactics. That matter was referred to the
8 state bar disciplinary committee. In September 2004, the
9 Hon. Alan M. Ahart ordered two sanctions for contempt against
10 Greenfield, awarding \$3,317 to opposing counsel for Greenfield's
11 harassment of her in a case and ordering a sanction of \$9,200.19
12 against Greenfield under Rule 9011 in another case for the
13 opposing parties' attorney's fees. Greenfield's appeal of the
14 contempt orders was deemed "frivolous" by this Panel, and counsel
15 was awarded sanctions for double costs of \$658.88.⁵

16 In Trustee's pleadings, it was also shown that Greenfield had
17 exhibited a pattern of filing multiple pleadings in bad faith and
18 for improper purposes in several cases, causing unjustified delay
19 and unduly burdening the bankruptcy system. For example, in the
20 chapter 11 case In re 21st Century Props., Inc.

21 (1:09-bk-27480-GM), an entity for which Greenfield was bankruptcy
22 counsel, president and CEO, Greenfield had filed numerous motions,
23 which were noticed to be heard months after being filed, and then

24
25 ⁵ According to a pleading filed by Trustee on March 7, 2012,
26 Greenfield has failed to comply with any disgorgement and
27 sanctions orders issued against him, including a January 19, 2012
28 sanction for \$1,000 issued against Greenfield by the Hon. Peter H.
Carroll for his repeated failure to file documents electronically
in violation of LBR 5005-4. Judge Carroll also suspended
Greenfield from practice in the Central District until he obtained
an ECF log-in and password.

1 filed numerous continuances of these motions, without court
2 permission and for no legitimate reason. Trustee also had reason
3 to believe that Greenfield had forged certain clients' signatures
4 on various documents filed with the court. Finally, Trustee noted
5 that of the nine chapter 11 cases Greenfield had filed since 1999,
6 no plan had been confirmed in any of them.

7 Judge Kaufman's referral also detailed Greenfield's pattern
8 over the past three years of concealing his identity as counsel in
9 cases until a judge was assigned, so he then could determine if
10 the particular case was being assigned to a judge who had
11 sanctioned him in the past. To accomplish this, clients were
12 advised to file in pro se, despite Greenfield's preparation of the
13 bankruptcy documents. To conceal his existence, Greenfield would
14 insert the typewritten words "Debtor not represented by attorney"
15 in the attorney signature space on his clients' petitions. If the
16 assigned judge had sanctioned him, Greenfield would advise his
17 clients to allow the case to be dismissed, against their better
18 interests, so he could refile and obtain the assignment of a
19 different judge. If the assigned judge had not sanctioned him,
20 Greenfield would immediately file, often on the same day, a
21 substitution of attorney and become counsel of record. This
22 latter scenario occurred in Greenfield's father's bankruptcy case
23 before Judge Kaufman.

24 **C. The disciplinary proceeding and the panel's decision**

25 On September 29, 2011, the Clerk of Court issued and served
26 an order notifying Greenfield that a disciplinary proceeding had
27
28

1 been initiated against him.⁶ Attached to the notice were Judge
2 Kaufman's referral and Trustee's supporting documents offered in
3 the response and supplemental response to the OSC.

4 On October 24, 2011, the bankruptcy court issued a notice
5 advising Greenfield that the disciplinary proceeding had been set
6 for December 12, 2011.⁷ The notice informed Greenfield that he
7 could appear with counsel and/or present evidence. The notice
8 further informed him that the Federal Rules of Evidence applied
9 and that an official record of the proceedings would be maintained
10 as though it were a contested matter. Greenfield was required to
11 file any written statements or declarations in response to the
12 disciplinary charges as least seven days prior to the hearing.

13 At Greenfield's request, the disciplinary panel continued the
14 hearing until February 13, 2012, and then again until March 19,
15 2012. The panel also extended the time for him to file any
16 written response until March 12, 2012. The last notice of
17 continued hearing relating to the March 19 hearing, which was
18 issued on February 9, 2012, advised Greenfield that "[n]o further
19 continuances or delay tactics [would] be accepted." Four days
20 after issuance of that notice, by a letter dated February 10,
21 2012, Greenfield reported to the panel that he was suffering from
22 a long-term medical condition relating to his ear. He again
23 requested a continuance of the February 13 hearing. However, by
24 then the panel had already granted his request for a continuance

25
26 ⁶ The disciplinary panel consisted of the Hon. Thomas B.
27 Donovan, the Hon. Erithe A. Smith and the Hon. Sandra R. Klein.

28 ⁷ An amended notice was issued three days later, changing the
hearing time from 9:00 a.m. to 9:30 a.m.

1 of that hearing, which it reset for March 19, 2012.

2 On February 9, 2012, the disciplinary panel issued a request
3 to all bankruptcy judges in the Central District to file and serve
4 information regarding Greenfield's conduct, along with supporting
5 evidence, by March 1, 2012. Greenfield was given until March 12
6 to respond to any judicial submissions.

7 On February 21, 2012, Greenfield filed a third request for
8 continuance, contending that the March 12 briefing deadline placed
9 him under an undue burden to file timely responses due to an
10 alleged improper mailing address that was used by the court.
11 Specifically, Greenfield stated that "since Respondent is actually
12 in suite 403 - according to the lease with the landlord - and the
13 court's mailing list indicates suite 404 and suite 405 - which as
14 a result of this situation - results in a lengthy delay in receipt
15 of mail - and may only provide Respondent with 3 to 5 days; after
16 service of Additional Information by 3/1/12 - to timely respond
17 thereto to each by 3/12/12." Notably, Greenfield's pleading
18 making this assertion indicated his Suite number as 404, as had
19 all previous (and subsequent) pleadings he filed. On March 1,
20 2012, the panel entered an order denying the third request for
21 continuance. The order also reminded Greenfield that his written
22 response to the allegations in the referral remained due on
23 March 12, 2012. The March 1 order, and all further correspondence
24 from the court, was also sent to Greenfield's home address.

25 On March 2, 2012, Greenfield filed a "Notice of 'Inactive'
26 Status of Respondent Bruce Greenfield," in which he requested an
27 additional 90-day continuance of the disciplinary hearing, because
28 he was seeking reconsideration of a California State Bar order

1 that placed him on inactive status. On March 5, 2012, the panel
2 denied this fourth request, noting that current deadlines remained
3 in effect and that the disciplinary hearing was going forward on
4 March 19, 2012.

5 Meanwhile, the Hon. Geraldine Mund and Judge Ahart filed
6 responses to the disciplinary panel's information request on
7 February 16 and February 29, 2012, respectively. Coincidentally,
8 Judge Mund had filed a referral for a disciplinary action against
9 Greenfield on February 7, 2012, two days prior to the issuance of
10 the February 9 information request. In her attached referral,
11 Judge Mund expressed her concerns with Greenfield's conduct in his
12 own bankruptcy case, as well as the bankruptcy cases of his
13 related entities (in which he purported to be counsel). This
14 conduct included, among other things, several transfers of
15 fractionalized interests in a leased vehicle followed by a series
16 of bankruptcy filings to prevent repossession. Judge Mund also
17 noted the same concern with Greenfield's filing of cases for
18 entities as pro se to see which judge is assigned, then filing a
19 substitution of attorney naming himself as counsel after the
20 assignment of the bankruptcy judge. She further noted his pattern
21 of trying to convert each case from one chapter to another.
22 Judge Mund opined that Greenfield's conduct was "a massive abuse
23 of the bankruptcy system . . . actionable as to an attorney who
24 has represented clients in bankruptcy for at least the last ten
25 years."

26 In his response to the information request, Judge Ahart
27 provided more detail explaining the basis for the sanctions he
28 issued against Greenfield in 2004.

1 On March 8, 2012, three days after the disciplinary panel
2 denied his fourth continuance request, Greenfield filed a "Reply
3 to Notice of Appearance (Filed by Office of U.S. Trustee),"
4 wherein he contended that the disciplinary hearing should not go
5 forward as "there [was] no useful purpose for either: the
6 respondent or the panel (or judges which submitted additional
7 information); to participate at the hearing – unless Respondent is
8 permitted to propose a Chapter 13 payment plan[.]" (Emphasis in
9 original). He then filed a "Proposed Stipulation" the following
10 day, requesting yet another continuance of the March 19 hearing.
11 In that, Greenfield consented to an interim suspension from the
12 bankruptcy court until such time as his "inactive" status with the
13 state bar was vacated.

14 On March 9, 2012, the disciplinary panel entered two orders.
15 The first order found that Greenfield's March 8 pleading was
16 "neither correct nor persuasive" in its argument that the
17 disciplinary hearing served no purpose and confirmed that it would
18 proceed on March 19. The second order rejected Greenfield's
19 proposed stipulation.

20 The disciplinary hearing proceeded on March 19, 2012, at
21 10:00 a.m. Counsel for Trustee appeared. The panel adjourned
22 until 10:18 a.m., waiting for Greenfield to arrive. He did not
23 appear. He also did not file any responsive brief or evidence to
24 refute Judge Kaufman's referral or Trustee's further pleadings.
25 At the hearing, Trustee reiterated the laundry list of
26 Greenfield's misconduct, noting that Greenfield had failed to pay
27 outstanding sanctions of more than \$80,000 in the Central District
28 of California and \$20,000 in the Southern District. Trustee

1 recommended that Greenfield's right to practice law in the Central
2 District be suspended for five years. The panel took the matter
3 under advisement.

4 On June 27, 2012, the disciplinary panel entered its order of
5 discipline ("Disciplinary Order") and Memorandum. In its detailed
6 and well-supported twenty-five page decision, the panel found that
7 Greenfield: (1) had repeatedly failed to comply with court orders
8 or pay sanctions; (2) had repeatedly abused court procedures; and
9 (3) had abandoned clients. Based on those findings, the panel
10 concluded that Greenfield's conduct warranted discipline and
11 ordered that:

- 12 • Greenfield be suspended from the practice of law before
13 the Bankruptcy Court for the Central District for five
14 years;
- 14 • Greenfield comply with and demonstrate compliance with
15 all outstanding disgorgement and sanctions orders;
- 15 • in any future application for reinstatement Greenfield
16 include a declaration (a) explaining his actions in
17 these cited cases and (b) describing the remedial steps
18 taken by him to demonstrate that he has complied with
19 every outstanding order and to assure the court that he
20 will practice in a manner in compliance with the rules
and orders of the court; and
- that a copy of the Memorandum and Disciplinary Order be
filed with the California State Bar.

21 The Disciplinary Order and Memorandum were served on Greenfield at
22 his location of business (Suites 404 and 405) and his personal
23 residence. He did not file an appeal. The Disciplinary Order
24 became final 14 days after entry, on July 11, 2012.

25 **D. Greenfield's motion to vacate the Disciplinary Order**

26 On November 19, 2012, Greenfield moved to vacate the
27 Disciplinary Order under Civil Rule 60(b)(1) for "excusable
28 neglect." Greenfield contended that a medical condition

1 concerning his ear, which required surgery, had prevented him from
2 attending the March 19, 2012 hearing. Attached was a letter from
3 Greenfield's physician, dated March 22, 2012, stating that
4 Greenfield had "a chronic ear condition for almost 20 years," and
5 that he had "recently redeveloped the fluid problem in the left
6 ear during an upper respiratory infection." The physician stated
7 that Greenfield's symptoms of hearing loss, discomfort in the left
8 ear and dizziness left him "unable to attend court because of his
9 inability to drive." The physician did not specify which day
10 Greenfield was "unable to attend court." Greenfield also
11 contended that the delay between entry of the Disciplinary Order
12 and the filing of this motion was due to the closure of his office
13 on April 30, 2012, which caused him to be unaware of the panel's
14 decision until October 25, 2012.

15 Trustee opposed the motion to vacate, contending that
16 Greenfield had failed to establish excusable neglect to warrant
17 vacating the Disciplinary Order. Trustee disputed Greenfield's
18 "delay" contention, asserting that it could not be based on an
19 alleged non-receipt of the order due to his office closure, when a
20 copy of the order had also been sent to Greenfield's home.
21 Alternatively, argued Trustee, because Greenfield knew about the
22 disciplinary proceeding, he could have contacted the court or
23 checked the electronic docket to determine the result of the
24 hearing or whether any order had been entered.

25 Trustee also disputed Greenfield's argument that a medical
26 condition prevented him from attending the hearing as not
27 supported by evidence to justify his lack of response. The
28 physician's letter was not sworn and was inadmissible hearsay.

1 The letter was also dated after the March 19 hearing, and it
2 provided no specific dates or information regarding when
3 Greenfield allegedly was ill or what court hearing he allegedly
4 was unable to attend. Even if Greenfield's condition had
5 prevented him from attending the March 19 hearing, argued Trustee,
6 Greenfield provided no reasonable justification for why he failed
7 to file any written response before the hearing, when he had over
8 five months to do so.

9 Attached to Trustee's opposition was a copy of an email from
10 Greenfield to counsel for Trustee, dated March 19, 2012, 4:31 p.m.
11 Greenfield's email made no reference to any illness and provided
12 no explanation for why he had failed to appear at the disciplinary
13 hearing earlier that day.

14 **E. The disciplinary panel's decision on the motion to vacate**

15 The disciplinary panel entered an order on December 19, 2012,
16 denying Greenfield's motion to vacate ("Order"). The panel
17 concluded that the motion was not made "within a reasonable time"
18 and did not meet the standards for vacating an order under Civil
19 Rule 60(b) and (c) or Rule 9024. This timely appeal followed.

20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
22 and 157(b). We have jurisdiction under 28 U.S.C. § 158(b).

23 **III. ISSUE**

24 Did the bankruptcy court abuse its discretion in denying the
25 motion to vacate the Disciplinary Order?

26 **IV. STANDARD OF REVIEW**

27 We review the denial of a Civil Rule 60(b) motion for relief
28 from a final judgment or order for abuse of discretion.

1 Pilkington v. Cardinal Health, Inc. (In re Syncor ERISA Litig.),
2 516 F.3d 1095, 1099 (9th Cir. 2008); Alonso v. Summerville
3 (In re Summerville), 361 B.R. 133, 139 (9th Cir. BAP 2007). A
4 bankruptcy court abuses its discretion if it applied the wrong
5 legal standard or its findings were illogical, implausible or
6 without support in the record. TrafficSchool.com, Inc. v. Edriver
7 Inc., 653 F.3d 820, 832 (9th Cir. 2011).

8 **V. DISCUSSION**

9 In Greenfield's one-sentence brief, he asserts that the
10 disciplinary panel abused its discretion in denying the motion to
11 vacate for excusable neglect based upon the medical evidence he
12 provided in support. He also argues that the motion was filed
13 within a reasonable period of time after entry of the Disciplinary
14 Order. In other words, Greenfield disputes the disciplinary
15 panel's findings of fact. As such, we can reverse only if we
16 conclude that its findings were illogical, implausible or without
17 support in the record. TrafficSchool.com, Inc., 653 F.3d at 832.
18 We do not so conclude.

19 **A. Motions under Civil Rule 60(b)**

20 Civil Rule 60(b)(1), incorporated by Rule 9024, provides that
21 "[o]n motion and just terms, the court may relieve a party . . .
22 from a final . . . order . . . for . . . excusable neglect." To
23 determine whether neglect is excusable, the court reviews the four
24 factors set forth in Pioneer Inv. Servs. Co. v. Brunswick Assocs.
25 Ltd. P'ship, 507 U.S. 380, 395 (1993): "'(1) the danger of
26 prejudice to the opposing party; (2) the length of the delay and
27 its potential impact on the proceedings; (3) the reason for the
28 delay; and (4) whether the movant acted in good faith.'" Lemoque

1 v. United States, 587 F.3d 1188, 1192 (9th Cir. 2009)(quoting
2 Bateman v. USPS, 231 F.3d 1220, 1223-24 (citing Pioneer, 507 U.S.
3 at 395)). However, these factors are non-exclusive, and the trial
4 court can take "account of all relevant circumstances surrounding
5 the party's omission" in making an equitable determination.
6 Pioneer, 507 U.S. at 395.

7 Although not raised by Greenfield, we conclude that the
8 disciplinary panel applied the correct legal standard by
9 articulating and reviewing the factors set forth in Pioneer. The
10 panel examined the length and reasons for the delay and also found
11 that Greenfield had not acted in good faith. Prejudice to the
12 opposing party was not at issue, because the disciplinary
13 proceeding was initiated by the bankruptcy court.

14 **B. The disciplinary panel did not clearly err in finding that
15 Greenfield had failed to establish excusable neglect.**

16 It its well-reasoned decision, the disciplinary panel found
17 that Greenfield's motion to vacate was "neither persuasive nor
18 credible under the circumstances." Disciplinary Order (Dec. 19,
19 2012) 2:16.5-17.5. After carefully reciting the proceeding's
20 procedural history, the panel found that Greenfield's motion was
21 "just the latest in [a] series of delaying tactics[.]" Id. at
22 6:18. Rather than excusable neglect, the panel found that the
23 motion "support[ed] a finding of obstinance or willful disregard
24 by Greenfield of the court's General Order and the Panel's
25 implementing orders," (id. at 6:21-22) and that Greenfield was
26 "not acting in good faith" (id. at 6:22).

27 The disciplinary panel was not persuaded by Greenfield's
28 claim that his medical condition prevented him from filing a

1 written response or appearing at the March 19 hearing:

2 Greenfield reported his medical condition to the court on
3 February 10, 2012, after his third [continuance] request
4 was denied by the Panel. Then, for a variety of reasons,
5 he made several further requests to delay the March 19,
6 2012 hearing, none of which mentioned medical issues.
7 Greenfield filed four additional [continuance] requests
8 before the Panel's March 12, 2012 deadline for
9 Greenfield's substantive response to the charges. . . .
10 The Panel concludes that the primary reason for
11 Greenfield's requests was his hope for endless (or at
12 least extensive) extensions of the deadline for him to
13 file any response to the pending charges. This pattern
14 undermines, in the Panel's view, any plausible claim that
15 ear problems motivated Greenfield's attempts to delay the
16 March 19, 2012 hearing.

17

18 Greenfield disregarded several opportunities available to
19 him, during more than five months – from September 29,
20 2011 until March 12, 2012 – to file any evidence or
21 substantive response he wished to present as a
22 meritorious defense to the pending charges. Even in his
23 Motion, Greenfield offers no substantive response to the
24 disciplinary charges.

25 Id. at 6:24-7:1, 7:4-9, 8:3-8. The panel noted that the
26 physician's letter, which was dated three days after the March 19
27 hearing and stated only that Greenfield's "symptoms" rendered him
28 unable to attend court, was never corroborated with any evidence
that he actually had surgery to deal with the medical issue "on or
about March 19, 2012."⁸

22 ⁸ In his excerpts of the record, Greenfield included a copy
23 of an invoice from his ear physician. This document does not
24 appear to have been presented to the bankruptcy court. As such,
25 we generally will not consider it. Oyama v. Sheehan
26 (In re Sheehan), 253 F.3d 507, 512 n.5 (9th Cir. 2001)("Evidence
27 that was not before the lower court will not generally be
28 considered on appeal."); Kirschner v. Uniden Corp. of Am.,
842 F.2d 1074, 1077-78 (9th Cir. 1988)(court is concerned only
with the record before the trial court when it made its decision).
However, even if we did, the invoice actually cuts against
Greenfield. It shows that he received treatment, perhaps a
surgical procedure, on March 22, 2012, which was three days after

(continued...)

1 Ultimately, the panel concluded that the record did not
2 warrant granting Greenfield's motion to vacate:

3 [The motion] reveals an unmistakable pattern of seemingly
4 endless denial, avoidance, and delaying tactics based
5 upon spurious and ill-supported cause. It appears that
6 Greenfield's tactics were designed to generate an endless
7 string of delays to shield Greenfield from the need to
8 file a written response to serious charges filed and
9 served more than a year before in this disciplinary
10 proceeding.

11

12 The Panel believes that the charges were properly
13 evaluated after due notice and reasonable and ample
14 opportunity for Greenfield to present a meritorious
15 defense prior to the March 19 hearing. He did not do so.
16 His neglect or failure to provide such a defense in these
17 circumstances is not excusable.

18 Id. at 8:10-15, 8:20-24.

19 Based upon Greenfield's repeated requests for continuances,
20 only one of which mentioned any medical condition, his failure to
21 file any written response to the pending charges despite his
22 ability to file numerous other pleadings, and the lack of any
23 competent evidence of his medical condition, the panel properly
24 questioned the legitimacy of Greenfield's claim that his ear
25 condition prevented him from responding or appearing at the
26 March 19 hearing. Accordingly, we conclude that the disciplinary
27 panel did not clearly err in finding that Greenfield's motion
28 failed to establish excusable neglect under Civil Rule 60(b)(1).

29 ////

30 ///

31

32

33 ⁸(...continued)
34 the hearing and coincides with the date of the physician's letter.
35 This evidence undermines Greenfield's contention in his motion to
36 vacate that he had surgery "on or about March 19, 2012."

1 C. The disciplinary panel did not clearly err in finding that
2 the motion to vacate was not filed within a reasonable time.

3 A Civil Rule 60(b)(1) motion "must be made within a
4 reasonable time," and in any event "no more than a year after
5 entry of the judgment or order[.]" Civil Rule 60(c). "[A] court
6 may deny a Rule 60(b)(1) motion, even if it was filed within the
7 one-year period, if the moving party 'was guilty of laches or
8 unreasonable delay.'" Hidais v. Porter, 2010 WL 760561, at *1
9 (N.D. Cal. Mar. 4, 2010)(quoting Meadows v. Dom. Rep., 817 F.2d
10 517, 520-21 (9th Cir. 1987)). "'What constitutes 'reasonable
11 time' within the meaning of Rule 60(c)(1), depends upon the facts
12 of each case, taking into consideration the interest in finality,
13 the reason for delay, the practical ability of the litigant to
14 learn earlier of the grounds relied upon, and prejudice to the
15 other parties.'" Lemoqe, 587 F.3d at 1196 (quoting Ashford v.
16 Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981)(per curiam)).

17 Greenfield offers no supporting argument for why the
18 disciplinary panel erred in finding that filing the motion to
19 vacate five months after entry of the Disciplinary Order was not
20 reasonably timely. See Smith v. Marsh, 194 F.3d 1045, 1052 (9th
21 Cir. 1999)(issues not raised in appellant's opening brief are
22 deemed waived). Further, because we have already determined that
23 the motion was properly denied for failing to establish excusable
24 neglect, we need not address whether it was also properly denied
25 for not being reasonably timely.

26 Nonetheless, we see no error here. The record reflects that
27 Greenfield was promptly served with the Memorandum and
28 Disciplinary Order at both his place of business and personal

1 residence in June 2012, and that no documents were ever returned
2 to the court as undeliverable. Further, as a practicing
3 bankruptcy attorney in a court that maintains an electronic
4 docket, Greenfield was capable of checking the electronic docket
5 to determine the disposition, if any, of the disciplinary
6 proceeding. Therefore, his contention that he did not discover
7 the panel's ruling until October 25, 2012, for non-service lacks
8 merit and credibility. Lastly, because of Greenfield's long-
9 standing misconduct, the disciplinary panel had an interest in the
10 finality of the charges brought against him. A final decision in
11 this matter was necessary to prevent any further potential harm to
12 the public, other attorneys, and the court.

13 **VI. CONCLUSION**

14 Based on the foregoing reasons, we AFFIRM.
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