

OCT 13 2016

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. AZ-15-1397-LJuF
	)	
EMMA NOEMI HOBBS,	)	Bk. No. 4:13-bk-06690-BMW
	)	
Debtor.	)	
_____	)	
	)	
EMMA NOEMI HOBBS,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
STATE OF ARIZONA,	)	
	)	
Appellee.	)	
_____	)	

Argued and Submitted on September 23, 2016  
at Phoenix, Arizona

Filed - October 13, 2016

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

Honorable Brenda Moody Whinery, Bankruptcy Judge, Presiding

Appearances: Gove L. Allen argued for Appellant Emma Noemi  
Hobbs; Kelly Elaine Gillilan-Gibson and Valerie  
Love Marciano argued for Appellee State of Arizona

Before: LAFFERTY, JURY, and FARIS, Bankruptcy Judges.

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\* 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 8024-1.

1 **I. INTRODUCTION**

2 Debtor objected to the State of Arizona's ("Arizona")  
3 amended proof of claim, which was based on a state court judgment  
4 ("Judgment") in favor of Arizona that included \$70,000 in civil  
5 penalties against Debtor and others. Debtor argued that the debt  
6 was discharged because Arizona had not filed a timely complaint  
7 to determine nondischargeability. The bankruptcy court overruled  
8 Debtor's objection, finding that the civil penalty was  
9 automatically nondischargeable under § 523(a)(7).<sup>1</sup> Several  
10 months later, Debtor moved for reconsideration of the bankruptcy  
11 court's order, asserting that the state court had not assessed a  
12 penalty against Debtor in her sole and separate capacity, that  
13 her state court attorney had been negligent, and that Arizona's  
14 attorney had made false representations to the state court. The  
15 bankruptcy court denied the motion as baseless.

16 The pleadings underlying the Judgment suggest that the civil  
17 penalties were intended to be assessed only against Debtor's  
18 marital community interest. Moreover, in the state court action,  
19 Arizona sought a penalty of \$10,000 per defendant. Nevertheless,  
20 the Judgment contains a finding that Debtor is liable for civil  
21 penalties and awards Arizona a total of \$70,000 without  
22 differentiating among the defendants. For the reasons explained  
23 below, the bankruptcy court correctly found that it lacked  
24 jurisdiction to look behind or modify the Judgment. Accordingly,

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25  
26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure. "Civil Rule" references are to the Federal Rules of  
Civil Procedure.

1 we AFFIRM.

2 **II. FACTUAL BACKGROUND**

3 In 2008, Arizona sued Appellant-Debtor Emma Hobbs and others  
4 in Pima County Superior Court for injunctive and other relief for  
5 violations of Arizona's Consumer Fraud Act ("CFA"). Mrs. Hobbs  
6 and her husband were both named as defendants in that lawsuit,  
7 individually and as a marital community. On January 27, 2010,  
8 the state court granted Arizona's motion for partial summary  
9 judgment, finding all defendants liable under the CFA.

10 Thereafter, Arizona moved for partial summary judgment seeking  
11 injunctive relief, restitution, civil penalties, and attorneys'  
12 fees, which the state court also granted. Both of Arizona's  
13 summary judgment motions defined "Defendants" as seven parties,  
14 not including Mrs. Hobbs, and stated that Mrs. Hobbs was a  
15 defendant for community property purposes. Arizona's second  
16 summary judgment motion requested "that each Defendant be  
17 assessed one civil penalty of \$10,000.00 for a total of  
18 \$70,000.00." On August 24, 2010, the state court entered the  
19 Judgment in favor of Arizona, which included \$70,000 in civil  
20 penalties under Ariz. Rev. Stat. § 44-1531.<sup>2</sup> Mrs. Hobbs did not  
21 move for reconsideration or appeal the Judgment.

22 Mrs. Hobbs filed an individual chapter 7 petition on  
23 April 24, 2013. Arizona filed a timely proof of claim that it

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24 <sup>2</sup> That statute provides:

25  
26 If a court finds that any person has wilfully violated  
27 § 44-1522, the attorney general upon petition to the  
28 court may recover from the person on behalf of the  
state a civil penalty of not more than ten thousand  
dollars per violation.

1 later amended, asserting a claim of \$635,014.60 based on the  
2 Judgment. The claim included the \$70,000 in civil penalties  
3 awarded to Arizona and designated those penalties as  
4 nondischargeable under § 523(a)(7). That section excepts from  
5 discharge (subject to exceptions that are not applicable here) a  
6 debt for a "fine, penalty, or forfeiture payable to and for the  
7 benefit of a governmental unit, [that] is not compensation for  
8 actual pecuniary loss[.]" § 523(a)(7).

9 Mrs. Hobbs objected to Arizona's claim, arguing that the  
10 entire claim was dischargeable because Arizona had not filed a  
11 timely complaint objecting to dischargeability of the penalty  
12 portion. Mrs. Hobbs also asserted that she was not involved in  
13 the actions giving rise to the consumer fraud claim and that the  
14 Judgment should have been entered against her only to the extent  
15 necessary to bind the marital community. Mrs. Hobbs pointed out  
16 that she had listed on her bankruptcy schedules a negligence  
17 claim against her state court counsel for allowing the Judgment  
18 to be entered against her.<sup>3</sup>

19 At the hearing on the claim objection, the bankruptcy court  
20 found that it lacked the ability to set aside the Judgment and  
21 that the civil penalties were automatically excepted from  
22 discharge under § 523(a)(7). Thereafter, on January 18, 2015,  
23 the bankruptcy court entered an order overruling Mrs. Hobbs'  
24 objection to Arizona's claim.

25 Seven months later, on August 22, 2015, Mrs. Hobbs, through  
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27 <sup>3</sup> Mrs. Hobbs also argued that the claim was unsecured  
28 because she owns no property. Arizona conceded that point.

1 new counsel, moved for rehearing. Mrs. Hobbs did not contest the  
2 bankruptcy court's conclusion that the penalties were  
3 nondischargeable under § 523(a)(7). Instead, Mrs. Hobbs again  
4 contended that she was not liable for the penalties because she  
5 was not personally involved in the conduct giving rise to the  
6 consumer fraud claim, and that the attorneys involved in the  
7 original hearing on her objection to Arizona's claim were grossly  
8 negligent or dishonest in not pointing out to the bankruptcy  
9 court that the Judgment was not against Mrs. Hobbs in her "sole  
10 and separate property capacity." Mrs. Hobbs also argued that the  
11 Judgment was not entitled to preclusive effect.<sup>4</sup>

12 After a hearing, the bankruptcy court denied Mrs. Hobbs'  
13 motion for rehearing, finding that Mrs. Hobbs had not established  
14 any grounds for relief under Civil Rule 60(b) (applicable in  
15 bankruptcy via Rule 9024). The bankruptcy court determined that  
16 Mrs. Hobbs had not shown that the court's initial interpretation  
17 of the Judgment was incorrect, and that the Judgment was entitled  
18 to be given full faith and credit. Mrs. Hobbs timely appealed.

### 19 **III. JURISDICTION**

20 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
21 §§ 1334 and 157(b)(2)(B) and (I). We have jurisdiction under  
22

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23 <sup>4</sup> Mrs. Hobbs' counsel uses the terms "collateral estoppel"  
24 and "res judicata" in his briefing in the bankruptcy court and  
25 before this Panel. We refer to these doctrines as "issue  
26 preclusion" and "claim preclusion," respectively, to conform to  
27 the Restatement (Second) of Judgments and United States Supreme  
28 Court usage. See Migra v. Warren City School Dist. Bd. of Educ.,  
465 U.S. 75, 77 n.1 (1984); Robi v. Five Platters, Inc., 838 F.2d  
318, 321 n.2 (9th Cir. 1988); The Alary Corp. v. Sims  
(In re Associated Vintage Group, Inc.), 283 B.R. 549, 554-55 (9th  
Cir. BAP 2002).

1 28 U.S.C. § 158.

2 **IV. ISSUE**

3 Did the bankruptcy court abuse its discretion in denying  
4 Mrs. Hobbs' motion for rehearing of the order overruling her  
5 objection to Arizona's claim?

6 **V. STANDARD OF REVIEW**

7 We review denials of motions for relief under Civil  
8 Rule 60(b) for abuse of discretion. See United States v.  
9 Stonehill, 660 F.3d 415, 443 (9th Cir. 2011). Accordingly, we  
10 reverse only where the bankruptcy court applied an incorrect  
11 legal rule or where its application of the law to the facts was  
12 illogical, implausible, or without support in inferences that may  
13 be drawn from the record. Ahanchian v. Xenon Pictures, Inc.,  
14 624 F.3d 1253, 1258 (9th Cir. 2010) (citing United States v.  
15 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc)).

16 An appeal from an order denying a Civil Rule 60 motion that  
17 was filed more than 14 days after the underlying order or  
18 judgment raises only the merits of the order denying the motion  
19 and does not raise the merits of the underlying judgment or  
20 order. See Maraziti v. Thorpe, 52 F.3d 252, 254 (9th Cir. 1995).

21 **VI. DISCUSSION**

22 **A. Standard on Motion for Rehearing**

23 Mrs. Hobbs moved for rehearing under § 105(a), Rule 3008,  
24 and Civil Rule 60(b)(6).<sup>5</sup> Rule 3008 permits a party in interest

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25  
26 <sup>5</sup> Pursuant to § 105(a), the bankruptcy court may  
27 reconsider, modify, or vacate its previous orders, but such  
28 relief is sought by motion under Rule 9024. Meyer v. Lenox  
(In re Lenox), 902 F.2d 737, 739-40 (9th Cir. 1990). In other

(continued...)

1 to move for reconsideration of an order allowing or disallowing a  
2 claim against the estate. Under Civil Rule 60(b), the court may  
3 relieve a party from a final judgment, order, or proceeding for  
4 any of six enumerated reasons, including the ground invoked by  
5 Mrs. Hobbs here: "any other reason that justifies relief." Civil  
6 Rule 60(b)(6).<sup>6</sup>

7  
8 **B. Mrs. Hobbs did not demonstrate that relief was warranted  
under Civil Rule 60(b)(6).**

9 In ruling on the initial objection, the bankruptcy court  
10 concluded that the Judgment was clear on its face in establishing  
11 that Mrs. Hobbs was liable for the \$70,000 in civil penalties.  
12 The Judgment provides, in relevant part:

13 By Minute Entry filed January 28, 2010, the Court  
14 granted the State's Motion for Partial Summary Judgment  
as to Liability against Defendants . . . Emma Hobbs  
15 . . . . By Minute Entry filed July 16, 2010, the Court  
16 granted the State's Motion for Partial Summary Judgment  
for Injunctive Relief, Restitution, Civil Penalties and  
Attorney's Fees against Defendants.

17 . . . .

18 2. Defendants[] wilfully violated A.R.S. § 44-1552  
19 and are liable for civil penalties pursuant to A.R.S.  
§ 44-1531.

20  
21 <sup>5</sup>(...continued)  
22 words, § 105(a) does not provide an independent ground for  
relief.

23 <sup>6</sup> The other enumerated grounds for relief under Civil  
24 Rule 60(b) are (1) mistake, inadvertence, surprise, or excusable  
25 neglect; (2) newly discovered evidence that, with reasonable  
26 diligence, could not have been discovered in time to move for a  
27 new trial under Rule 59(b); (3) fraud (whether previously called  
intrinsic or extrinsic), misrepresentation, or misconduct by an  
28 opposing party; (4) the judgment is void; and (5) the judgment  
has been satisfied, released or discharged; it is based on an  
earlier judgment that has been reversed or vacated; or applying  
it prospectively is no longer equitable.

1 . . . .

2 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED  
3 that Claude Thomas Kennedy, Martina J. Alsemgeest,  
4 Donald W. Kennedy, Granite Hobbs, Emma Hobbs, Kennedy  
5 Motorhome Services, LLC, Kennedy's Financial Services,  
6 LLC, Kenneth W. Griffith and Banker's First of Tucson,  
7 LLC be and hereby are permanently enjoined, directly or  
8 indirectly, from engaging in any fraudulent, deceptive  
9 or illegal acts or practices in violation A.R.S.  
10 § 44 1522; and it is further

11 ORDERED, ADJUDGED, AND DECREED that Defendants  
12 Claude Thomas Kennedy, Martina J. Alsemgeest, Donald W.  
13 Kennedy, Granite Hobbs, Emma Hobbs, Kennedy Motorhome  
14 Services, LLC, Kennedy's Financial Services, LLC,  
15 Kenneth W. Griffith and Banker's First of Tucson, LLC  
16 be and hereby are permanently enjoined directly or  
17 indirectly from engaging in the advertisement and/or  
18 sale of Financial Services to or from Arizona now and  
19 in the future; and it is further

20 ORDERED, ADJUDGED, AND DECREED that Defendants,  
21 joint and severally, pay \$494,364.00 in restitution to  
22 the Arizona Attorney General's Office pursuant to  
23 A.R.S. § 44-1528(2); and it is further

24 ORDERED, ADJUDGED, AND DECREED that the Plaintiff  
25 be awarded \$70,000.00 in civil penalties pursuant to  
26 A.R.S. § 44-1531[.]

27 Judgment, August 24, 2010, Pima County Superior Court Case No.  
28 C2007 7274.

29 We find no error in the bankruptcy court's interpretation of  
30 the Judgment that the civil penalties are against all defendants,  
31 including Mrs. Hobbs. The state court determined that  
32 "Defendants[] wilfully violated A.R.S. § 44-1552 and are liable  
33 for civil penalties pursuant to A.R.S. § 44-1531." Mrs. Hobbs is  
34 included as a named defendant in the lawsuit in her individual  
35 capacity, and despite the wording of Arizona's summary judgment  
36 motions, nothing in the Judgment suggests that Mrs. Hobbs'  
37 liability was limited to the marital community.

38 On appeal, Mrs. Hobbs contends that (1) the bankruptcy court

1 improperly applied the Rooker-Feldman doctrine in concluding that  
2 it had no power to look behind the Judgment; (2) the bankruptcy  
3 court should have reviewed the record of the Superior Court case  
4 to determine whether Mrs. Hobbs was liable for the civil  
5 penalties; (3) the requirements for the application of issue  
6 preclusion in determining that Mrs. Hobbs was liable were not  
7 satisfied; and (4) the bankruptcy court erroneously denied the  
8 motion for rehearing because Arizona's claim is based on a "false  
9 debt." Because the first issue is dispositive, we need not  
10 extensively analyze the remaining issues.

11 **1. Full Faith and Credit and the Rooker-Feldman doctrine**  
12 **precluded the bankruptcy court from looking behind the**  
13 **Judgment.**

14 Federal courts are bound by 28 U.S.C. § 1738 to give full  
15 faith and credit to state court judgments. Robi v. Five  
16 Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988).<sup>7</sup>

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17 <sup>7</sup> 28 U.S.C. § 1738 provides:

18 The Acts of the legislature of any State, Territory, or  
19 Possession of the United States, or copies thereof,  
20 shall be authenticated by affixing the seal of such  
21 State, Territory or Possession thereto.

22 The records and judicial proceedings of any court of  
23 any such State, Territory or Possession, or copies  
24 thereof, shall be proved or admitted in other courts  
25 within the United States and its Territories and  
26 Possessions by the attestation of the clerk and seal of  
27 the court annexed, if a seal exists, together with a  
28 certificate of a judge of the court that the said  
attestation is in proper form.

Such Acts, records and judicial proceedings or copies  
thereof, so authenticated, shall have the same full  
faith and credit in every court within the United

(continued...)

1 Additionally, the Rooker-Feldman doctrine bars a lower federal  
2 court, including a bankruptcy court, from reviewing a state  
3 court's final decision. See Worldwide Church of God v. McNair,  
4 805 F.2d 888, 890 (9th Cir. 1986) (citing Rooker v. Fidelity  
5 Trust Co., 263 U.S. 413, 415-16 (1923); District of Columbia  
6 Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983)).

7 However, the Rooker-Feldman doctrine  
8 is confined to cases of the kind from which the  
9 doctrine acquired its name: cases brought by  
10 state-court losers complaining of injuries caused by  
11 state-court judgments rendered before the district  
12 court proceedings commenced and inviting district court  
13 review and rejection of those judgments. Rooker-  
Feldman does not otherwise override or supplant  
preclusion doctrine or augment the circumscribed  
doctrines that allow federal courts to stay or dismiss  
proceedings in deference to state-court actions.

14 Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284  
15 (2005).

16 Accordingly, the Rooker-Feldman doctrine does not ordinarily  
17 preclude a bankruptcy court from examining the record in a state  
18 court case to determine whether issue preclusion applies to  
19 establish the elements of a nondischargeability claim. See Lopez  
20 v. Emergency Serv. Restoration, Inc. (In re Lopez), 367 B.R. 99,  
21 103 (9th Cir. BAP 2007). This is because dischargeability is  
22 ordinarily a separate federal question over which the bankruptcy  
23 court has exclusive jurisdiction. Id. (citing Brown v. Felsen,  
24 442 U.S. 127, 138 (1979)). "[A] nondischargeability claim is an

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26 <sup>7</sup>(...continued)

27 States and its Territories and Possessions as they have  
28 by law or usage in the courts of such State, Territory  
or Possession from which they are taken.

1 independent federal claim as to which the effect of a prior state  
2 court judgment is governed by principles of preclusion." Id.  
3 (citing Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991); Brown,  
4 442 U.S. at 132).

5 However, when determining nondischargeability under  
6 § 523(a)(7), the bankruptcy court's review is limited to  
7 determining the nature of the debt, not the debtor's conduct or  
8 the correctness of the judgment. Colorado v. Jensen  
9 (In re Jensen), 395 B.R. 472, 488 (Bankr. D. Colo. 2008).

10 [A] governmental unit that has obtained a judgment may  
11 tender to the bankruptcy court a copy of the judgment  
12 and rest its case under § 523(a)(7). The bankruptcy  
13 court then has to examine that judgment to determine  
14 whether the obligation evidenced in it is in the nature  
15 of a "fine, penalty, or forfeiture," whether the debt  
16 is payable to and for the benefit of the government,  
17 and whether it represents something other than  
18 compensation for actual pecuniary losses. Of course,  
19 the bankruptcy court is not precluded from examining  
20 the true nature of the debt rather than any label that  
21 may be attached to it in the judgment. **But nothing in  
22 this line of inquiry requires or even allows the  
23 bankruptcy court to determine whether the debtor did in  
24 fact violate a law, giving rise to the imposition of a  
25 fine, penalty or forfeiture. The validity and amount  
26 of the debt, including whether the debtor committed a  
27 violation of the law, are no longer relevant.**

28 Id. (citation omitted) (emphasis added).

Because the bankruptcy court looks only to the nature of the  
obligation represented by the judgment, any attack on the  
underlying finding of culpability is prohibited by the Rooker-  
Feldman doctrine. See Arizona v. Ott (In re Ott), 218 B.R. 118,  
125 (Bankr. W.D. Wash. 1998).

Here, the bankruptcy court determined that the civil  
penalties met the criteria for nondischargeability under  
§ 523(a)(7). Mrs. Hobbs does not challenge that determination.

1 Instead, she seeks to attack the underlying finding of liability,  
2 which is specifically prohibited under Rooker-Feldman.

3 **2. The doctrine of issue preclusion did not require the**  
4 **bankruptcy court to review the record in the state**  
5 **court litigation.**

6 Mrs. Hobbs argues that the bankruptcy court incorrectly  
7 applied issue preclusion in determining that the civil penalties  
8 were nondischargeable. This argument reflects a misunderstanding  
9 of the bankruptcy court's ruling and the applicable law.

10 The bankruptcy court did not apply issue preclusion in  
11 determining that the civil penalties were nondischargeable. As  
12 explained above, the bankruptcy court was required only to  
13 examine the Judgment to determine whether the civil penalties at  
14 issue represented a debt for a "fine, penalty, or forfeiture  
15 payable to and for the benefit of a governmental unit, [that] is  
16 not compensation for actual pecuniary loss[.]" § 523(a)(7).  
17 Once the bankruptcy court made that determination, no further  
18 analysis was required. See In re Jensen, 395 B.R. at 488.

19 **3. Mrs. Hobbs' remaining arguments are foreclosed by the**  
20 **Rooker-Feldman doctrine.**

21 The rest of Mrs. Hobbs' arguments focus on the  
22 inconsistencies between Arizona's motions and the Judgment.  
23 However, as noted, the bankruptcy court was required to give full  
24 faith and credit to the Judgment, which clearly imposes civil  
25 penalties against Mrs. Hobbs individually. Any error in the  
26 underlying state court findings should have been addressed in a  
27 motion for reconsideration or an appeal to the appropriate state  
28 tribunal; the bankruptcy court was without jurisdiction to alter  
the Judgment.

1 **C. The Judgment is not consistent with the evidence presented**  
2 **or arguments made to the state court.**

3 And one last point.

4 For the reasons noted above, we have concluded that, under  
5 the Rooker-Feldman doctrine, the bankruptcy court's decision was  
6 correct. However, we also note here, as we noted during  
7 Arizona's presentation at oral argument of this matter, that the  
8 Judgment is not consistent with the evidence or the arguments  
9 presented by the Arizona attorney general's office. We raise the  
10 point explicitly, if briefly, in the hope that Arizona's  
11 attorneys will move the state court to correct their error.

12 Arizona filed two motions for summary judgment. The first  
13 sought a determination of liability, and the second sought the  
14 imposition of remedies. Both motions carefully defined the term  
15 "Defendant" to mean only seven of the named defendants, not  
16 including Mrs. Hobbs. Both motions stated that Mrs. Hobbs and  
17 another defendant were "defendants for community property  
18 purposes." The motions argued, and offered evidence, that the  
19 "Defendants" violated the CFA. Because Mrs. Hobbs was not one of  
20 the "Defendants," the motions did not argue or prove that she  
21 violated the CFA. According to the motions, Mrs. Hobbs' only  
22 involvement in the scheme is that her husband, who is one of the  
23 "Defendants," "acted on behalf of the marital community," that  
24 she "received money" from a company that was among the  
25 "Defendants," and that "Defendants' marital communities  
26 benefitted from Defendants' violation(s) of the CFA." Neither  
27 motion argued that this limited involvement subjected Mrs. Hobbs  
28 to personal liability for penalties.

1 The second motion makes the situation even more clear:

2 [T]he State respectfully requests that each Defendant  
3 be assessed one civil penalty of \$10,000.00 for a total  
of \$70,000.00.

4 Arizona again used the defined term "Defendants," which did not  
5 include Mrs. Hobbs. Simple arithmetic further confirms that  
6 Arizona sought penalties against only the seven "Defendants," not  
7 Mrs. Hobbs.

8 Unfortunately, Arizona's attorneys did not draft the  
9 proposed judgment which they presented to the state court with  
10 the same care and precision as the motions. The Judgment uses  
11 the term "Defendants" but does not include the definition  
12 provided in the motions. The Judgment grants \$70,000.00 in civil  
13 penalties but does not explain that the penalties apply to only  
14 seven of the defendants.

15 Put simply, Arizona's attorneys presented to the state court  
16 a judgment which their evidence and arguments do not support.

17 For the same reasons that compel us to affirm the decision  
18 of the bankruptcy court, i.e., the Rooker-Feldman doctrine's  
19 prohibition on federal courts acting as courts of appeal from  
20 state court judgments, neither this court, nor any other federal  
21 court, is empowered now to probe the basis for the obvious  
22 defects in the judgment presented to the state court. To be  
23 sure, on the spectrum of likely scenarios, we surmise that the  
24 disconnect between, on the one hand, the claims stated and the  
25 evidence presented by Arizona and, on the other, the form of  
26 judgment prepared by Arizona that was ultimately entered by the  
27 state court, is more likely the result of inadvertence and error  
28 than a blatant attempt to mislead the state court and improperly

1 disadvantage a party. Yet, to this debtor, the effect even of  
2 such inadvertence is just as ruinous as truly nefarious behavior  
3 would have been. And there is no question but that, as officers  
4 of the court, attorneys have a duty to correct mistakes such as  
5 the ones presented here.

6 Moreover, the Arizona Supreme Court has recognized that a  
7 government lawyer is a "shepherd of justice," "with enormous  
8 resources at her disposal," and thus bears a heightened  
9 responsibility to act ethically in all respects to avoid  
10 undermining the public trust or inflicting severe damage to our  
11 system of justice: "[T]his alone compels the responsible and  
12 ethical exercise of this power." In re Peasley, 90 P.3d 764,  
13 772-73 (Ariz. 2004) (en banc) (citation omitted); see generally  
14 In re City of Newark, 788 A.2d 776, 782 (N.J. Super. 2002)  
15 ("Undoubtedly, the need to dispel all appearances of impropriety  
16 becomes even more compelling and acute when the attorney is a  
17 government lawyer."); State ex rel. Neb. State Bar Ass'n v.  
18 Rhodes, 453 N.W.2d 73, 90 (Neb. 1990) ("the conduct of a  
19 government attorney is required to be more circumspect than that  
20 of a private lawyer because improper conduct on the part of such  
21 an attorney reflects upon the entire system of justice in terms  
22 of public trust").

23 This panel is powerless to correct this obvious error. But  
24 Arizona's attorneys can (and should) move the state court to  
25 correct the Judgment which they should never have presented.

## 26 **VII. CONCLUSION**

27 Because the bankruptcy court did not abuse its discretion in  
28 denying Mrs. Hobbs relief under Civil Rule 60(b), we AFFIRM.