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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-16-1149-FPaKi
)		
THE DISCIPLINARY PROCEEDING)	Bk. No.	2:15-mp-00111-ES
OF PHILIP E. KOEBEL.)		
)		
_____)		
)		
PHILIP E. KOEBEL,)	MEMORANDUM*	
)		
Appellant.)		
_____)		

Argued and Submitted on November 17, 2016
at Pasadena, California

Filed - December 2, 2016

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

Honorable Erithe Smith, Richard Neiter, and Julia Brand,
Bankruptcy Judges, Presiding

Appearances: Appellant Philip E. Koebel argued pro se.

Before: FARIS, PAPPAS,** and KIRSCHER, Bankruptcy Judges.

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, see Fed. R. App. P. 32.1, it has no precedential value, see 9th Cir. BAP Rule 8024-1.

** The Honorable Jim D. Pappas, United States Bankruptcy Judge for the District of Idaho, sitting by designation.

1 October 4, 2007.

2 Two days before the eviction date, Mr. Cuevas filed his
3 chapter 7 petition to stay the eviction while he sought to vacate
4 the state court orders. Ms. Dibble obtained relief from the
5 automatic stay to continue litigating against Mr. Cuevas.

6 Initially, the chapter 7 trustee deferred to Ms. Dibble's
7 efforts to liquidate the Property. But when Ms. Dibble failed to
8 evict Mr. Cuevas from the Property, collect rent, or liquidate
9 the Property, the chapter 7 trustee successfully moved the
10 probate court to remove Ms. Dibble and appoint Stevan Chandler as
11 trustee of the Mother's Trust.

12 Meanwhile, Mr. Cuevas was busy initiating litigation in his
13 bankruptcy case. He filed three motions to dismiss the Chapter 7
14 Case, a motion to convert, an objection to a claim by the
15 Franchise Tax Board, and an adversary proceeding against the
16 chapter 7 trustee seeking a declaration that Mr. Cuevas' interest
17 in the Mother's Trust was not the property of the bankruptcy
18 estate; all were unsuccessful.

19 The chapter 7 trustee objected to Mr. Cuevas' claimed
20 homestead exemption. He argued that Mr. Cuevas only had an
21 interest in the Mother's Trust - not the Property itself - and
22 could not claim a homestead exemption in the Property. The court
23 sustained the objection and disallowed the homestead exemption.

24 The probate trustee succeeded in transferring title to the
25 Property into the Mother's Trust. He initiated an unlawful
26 detainer action against Mr. Cuevas, with trial set for January
27 2015.

28

1 **B. The chapter 13 case**

2 While the Chapter 7 Case was pending, Mr. Cuevas filed a
3 chapter 13 petition on December 1, 2014 (the "Chapter 13 Case"),
4 which stayed the unlawful detainer action.³ On his schedules, he
5 claimed a homestead exemption in the Property in the amount of
6 \$175,000 despite the bankruptcy court's order sustaining the
7 chapter 7 trustee's objection to exemption in the Chapter 7 Case.
8 He listed his debts as \$21,334.40, his monthly income as
9 \$1,074.01, and monthly expenses as \$975. Additionally, he stated
10 that the Property was protected by the court's order in the
11 Chapter 7 Case that precluded Ms. Dibble from evicting or
12 ejecting Mr. Cuevas absent further order from the court granting
13 relief from stay.

14 Mr. Cuevas' chapter 13 plan proposed monthly payments of \$99
15 for sixty months. The plan "assume[d] \$195,000 from distribution
16 of [the Mother's Trust]/[Chapter 7 Case] less \$175,000
17 homestead." Mr. Cuevas stated elsewhere in the plan that the
18 calculations assumed a \$195,000 distribution from the Chapter 7
19 Case. These assertions were disingenuous at best; as we note
20 above, Mr. Cuevas was vigorously attempting to thwart the
21 Chapter 7 Case. He also filed a motion to continue the automatic
22 stay and asserted that he was entitled to a homestead exemption
23 in the Property.

24 **C. The orders to show cause and sanctions**

25 On December 23, 2014, the court in the Chapter 13 Case sua
26

27 ³ Mr. Cuevas had received a discharge in the Chapter 7 Case
28 on May 30, 2014, but the case remained open.

1 sponte issued an order to show cause that directed Mr. Cuevas to
2 show cause why the Chapter 13 Case should not be dismissed
3 because he was already a debtor in the concurrent Chapter 7 Case.
4 Mr. Cuevas responded that successive bankruptcy cases were
5 permissible and that he had filed the Chapter 13 Case in good
6 faith. He withdrew his motion to continue the automatic stay.

7 The bankruptcy court disagreed with Mr. Cuevas, saying that
8 there was little or no post-chapter-7 debt to deal with in the
9 Chapter 13 Case, no prospect of Mr. Cuevas receiving a discharge,
10 and no real source of income or assets available to permit
11 Mr. Cuevas to pay any debts. As such, there was no legitimate
12 bankruptcy purpose behind the filing of the Chapter 13 Case. The
13 court stated that the assumptions underlying the chapter 13 plan
14 ignored the bankruptcy court's rulings regarding the relief from
15 stay and homestead exemption in the Chapter 7 Case. The court
16 dismissed the Chapter 13 Case and barred Mr. Cuevas from filing a
17 new bankruptcy case for a period of two years.

18 On January 16, 2015, the bankruptcy court issued an order
19 directing Mr. Koebel to appear and show cause why he should not
20 be sanctioned ("Sanctions OSC"). It said that Mr. Koebel's
21 filing of Mr. Cuevas' chapter 13 petition and the various
22 positions Mr. Koebel took in the Chapter 13 Case tended to
23 demonstrate that sanctions were warranted.

24 Additionally, the probate trustee filed a motion for
25 attorneys' fees against Mr. Koebel under Rule 9011.

26 In the meantime, Mr. Cuevas and Mr. Koebel appealed the
27 dismissal order and the Sanctions OSC to the BAP. The BAP
28 dismissed the appeal of the Sanctions OSC as interlocutory. It

1 also granted Mr. Cuevas a limited remand of the appeal of the
2 dismissal order to seek relief from the bankruptcy court.

3 On remand, Mr. Cuevas filed a motion to "correct" the
4 dismissal order. The bankruptcy court issued a detailed
5 memorandum decision disposing of the motion to correct, the
6 Sanctions OSC, and the probate trustee's motion for fees. The
7 court determined that Mr. Cuevas only filed the Chapter 13 Case
8 to delay his eviction and increase the costs of litigation. The
9 court described as "nonsense" Mr. Cuevas' explanations as to why
10 he needed to pursue chapter 13 relief. The court said that his
11 theories about his ability to fund his chapter 13 plan were
12 shams.

13 Regarding the Sanctions OSC, the bankruptcy court sanctioned
14 Mr. Koebel under its inherent powers and Rule 9011. It said:

15 There is clear and convincing evidence that
16 Mr. Koebel did in fact operate in bad faith, and
17 additionally and alternatively engaged in willful
18 misconduct, by filing this chapter 13 case for the
19 purpose of delaying and obstructing the Probate Trustee
20 and the Chapter 7 Trustee, including staying the
21 unlawful detainer trial and needlessly increasing the
22 costs of litigation. The debtor had no genuine need,
23 let alone any ability, to reorganize his finances in
24 chapter 13. Moreover, after filing the petition
25 Mr. Koebel continued to engage in further bad faith and
26 willful misconduct as described above, including false
27 and misleading representations to this court, and
28 frivolous and wasteful litigation.

23 The bankruptcy court sanctioned Mr. Koebel as follows:

24 (1) an award of \$15,346.30 in attorneys' fees and costs paid to
25 the probate trustee; (2) an award of \$2,110.60 in attorneys' fees
26 and costs paid to the chapter 7 trustee; and (3) referral to the
27 Central District of California bankruptcy disciplinary panel,
28 with a recommendation to refer Mr. Koebel to the California state

1 bar, suspend him from practice for six months or longer, and
2 subject him to a probationary period of practice for four and a
3 half years. The court reasoned that Mr. Koebel's subjective bad
4 faith and objectively unreasonable conduct concerning the
5 chapter 13 petition and the opposition to the dismissal of the
6 Chapter 13 Case constituted ample ground for the imposition of
7 sanctions under Rule 9011 and the court's inherent powers.

8 Mr. Cuevas and Mr. Koebel appealed the bankruptcy court's
9 dismissal order and the sanctions order against Mr. Koebel, BAP
10 nos. CC-15-1032-KuKiTa and CC-15-1353-KuKiTa (the "Related
11 Appeals"). On October 5, 2016, while the present appeal was
12 pending, the BAP affirmed the bankruptcy court in the Related
13 Appeals, holding that the appellants did not offer any argument
14 justifying reversal of the dismissal order and did not
15 specifically and distinctly challenge the sanctions order.

16 On November 3, 2016, Mr. Koebel and Mr. Cuevas appealed the
17 judgment in the Related Appeals to the Ninth Circuit Court of
18 Appeals.

19 **D. The disciplinary proceeding**

20 Following Mr. Koebel's referral to the disciplinary panel,
21 Mr. Koebel argued that sanctions were not warranted because:
22 (1) he filed the Chapter 13 Case in good faith; (2) additional
23 funds from the Chapter 7 Case may be used to increase the
24 percentage distribution to creditors; (3) the claimed homestead
25 exemption was proper; (4) Mr. Cuevas was the future beneficiary
26 of the Mother's Trust and was entitled to the homestead
27 exemption; (5) the Chapter 13 Case was not filed in bad faith
28 when it followed the Chapter 7 Case; (6) the proposed chapter 13

1 plan and the need for discharge were not shams; and
2 (7) Mr. Koebel's positions were meritorious and he did not make
3 any false or misleading statements.

4 On January 20, 2016, a three-judge panel of bankruptcy
5 judges from the Central District of California held a hearing
6 regarding the suggested disciplinary action against Mr. Koebel.
7 See United States Bankruptcy Court for the Central District of
8 California Fourth Amended General Order 96-05. By order
9 ("Disciplinary Order") entered May 17, 2016, the disciplinary
10 panel held that: (1) Mr. Koebel shall be suspended from filing
11 any new case or proceeding before the United States Bankruptcy
12 Court for the Central District of California for a period of
13 180 days from the entry of the order, followed by a probation
14 period of four and a half years; (2) as a condition to filing any
15 new case following the suspension period, Mr. Koebel shall file a
16 declaration confirming that he has paid the outstanding sanctions
17 against him; (3) if the court sanctions Mr. Koebel in an amount
18 of \$1,000 or greater during the suspension or probation periods,
19 Mr. Koebel shall be suspended from all practice before the
20 bankruptcy court for the remainder of the suspension and
21 probation periods; (4) the Office of the United States Trustee
22 shall monitor Mr. Koebel's compliance; and (5) Mr. Koebel shall
23 complete four hours of legal ethics training.

24 Mr. Koebel timely appealed the Disciplinary Order.

25 **JURISDICTION**

26 The bankruptcy disciplinary panel had jurisdiction pursuant
27 to 28 U.S.C. §§ 1334 and 157(b)(1) and (2)(A). See
28 In re Brooks-Hamilton, 400 B.R. 238, 244-45 (9th Cir. BAP 2009).

1 We have jurisdiction under 28 U.S.C. § 158. See
2 In re Disciplinary Proceeding of Greenfield, BAP
3 No. CC-13-1006-KiTaKu, 2013 WL 5525738, at *7 (9th Cir. BAP
4 Oct. 1, 2013); In re Brooks-Hamilton, 400 B.R. at 245.

5 **ISSUE**

6 Whether the bankruptcy disciplinary panel erred in
7 disciplining Mr. Koebel by suspending him for 180 days and
8 placing him on probation for four and a half years.

9 **STANDARD OF REVIEW**

10 We review sanctions and the terms of a disciplinary order
11 for abuse of discretion. Similarly, the bankruptcy court's
12 choice of sanction is reviewed for abuse of discretion.
13 In re Nguyen, 447 B.R. 268, 276 (9th Cir. BAP 2011) (citations
14 omitted). Accordingly, we reverse only where the bankruptcy
15 court applied an incorrect legal rule or where its application of
16 the law to the facts was illogical, implausible, or without
17 support in inferences that may be drawn from the record. United
18 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

19 **DISCUSSION**

20 **A. Mr. Koebel's brief on appeal is woefully deficient and fails**
21 **to comply with the applicable rules.**

22 Mr. Koebel's opening brief is facially deficient and flouts
23 even the most basic rules for appellate briefs.

24 It does not contain a statement of issues on appeal, table
25 of contents, table of authorities, jurisdictional statement,
26 factual background, or even a discussion of the disciplinary
27 board's asserted errors. See Rule 8014(a). Instead of actually
28 bothering to state any relevant argument on appeal, Mr. Koebel

1 directs us to review dozens of documents in his excerpts of
2 record with the cavalier claim that he incorporates them all by
3 reference. He even purports to incorporate by reference over
4 twenty documents (and the entire excerpt of record filed in the
5 Related Appeals) and “any and all arguments already raised **and**
6 **those not yet raised.**” (Emphasis added.)

7 Such a deficient brief - particularly when submitted by a
8 licensed attorney - demonstrates a lack of respect for the
9 judicial process and carelessness or indifference toward the
10 preparation of this appeal. We could strike the opening brief
11 and dismiss the appeal or summarily affirm. See Morrissey v.
12 Stuteville (In re Morrissey), 349 F.3d 1187, 1190 (9th Cir. 2003)
13 (holding that the BAP did not abuse its discretion in employing
14 summary affirmance as a sanction for appellant’s failure to
15 include a statement of appellate jurisdiction, an intelligible
16 statement of the issues presented, a statement of the case, and
17 citations to the authorities, statutes, and parts of the record
18 relied upon); N/S Corp. v. Liberty Mut. Ins. Co., 127 F.3d 1145,
19 1146 (9th Cir. 1997) (dismissing the appeal for failure to
20 include a statement of the standard of review and citations to
21 the record and for exceeding the page and word limit).

22 As discussed below, even considering the scant arguments
23 raised in the opening brief, we do not find any merit in
24 Mr. Koebel’s appeal.

25 **B. Mr. Koebel fails to identify or establish any error in the**
26 **Disciplinary Order.**

27 Our attempt to review the merits of Mr. Koebel’s appeal of
28 the disciplinary panel’s decision is futile, not only for the

1 reasons stated above, but because Mr. Koebel neglects to actually
2 argue any error.

3 Normally, “[i]n reviewing attorney disciplinary sanctions we
4 determine whether (1) the disciplinary proceeding is fair,
5 (2) the evidence supports the findings, and (3) the penalty
6 imposed was reasonable.” In re Nguyen, 447 B.R. at 276.

7 Mr. Koebel does not address the Disciplinary Order in any
8 meaningful way, but instead focuses almost exclusively on why the
9 bankruptcy court should not have dismissed the Chapter 13 Case or
10 sanctioned him. However, the Panel has already decided those
11 issues in the Related Appeals when it affirmed the bankruptcy
12 court’s dismissal order and sanctions order. See Leslie Salt Co.
13 v. United States, 55 F.3d 1388, 1392 (9th Cir. 1995) (“Under law
14 of the case doctrine, however, one panel of an appellate court
15 will not reconsider matters resolved in a prior appeal to another
16 panel in the same case.”).

17 Mr. Koebel conceded at oral argument that his arguments in
18 this appeal were the same as those that the Panel rejected in the
19 Related Appeals and that the October 5 decision is binding in
20 this appeal. He admitted that he left himself “defenseless” by
21 neglecting to address the Disciplinary Order against him and
22 instead only focusing on the dismissal of the Chapter 13 Case.⁴

24 ⁴ Mr. Koebel implied at oral argument that he already knew
25 that the members of this Panel would rule against him because one
26 of the panel members was on the BAP panel that considered the
27 Related Appeals. As a member of this Panel informed Mr. Koebel,
28 the panel members consider each appeal on its own merits and
without any preconceived bias. But because Mr. Koebel chose to
leave himself “defenseless” and not address the Disciplinary

(continued...)

1 Mr. Koebel only refers to the disciplinary panel in one
2 sentence at the end of his opening brief. He does not point to
3 any error or offer any legal analysis of the Disciplinary Order.
4 We will not review arguments on appeal that are not distinctly
5 argued or supported by the record, nor will we comb through the
6 dozens of documents "incorporated by reference" to make
7 Mr. Koebel's arguments for him. See Christian Legal Soc. Chapter
8 of Univ. of Cal. v. Wu, 626 F.3d 483, 487 (9th Cir. 2010) (an
9 appellate court "won't consider matters on appeal that are not
10 specifically and distinctly argued in appellant's opening
11 brief").

12 If anything, Mr. Koebel's cavalier approach to this appeal
13 confirms that the disciplinary panel was right.

14 **CONCLUSION**

15 For the reasons set forth above, we find no error with the
16 Disciplinary Order. Accordingly, we AFFIRM.

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⁴(...continued)
28 Order, he virtually ensured that we would affirm the Disciplinary
Order.