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No More Excuses: Refusing to Condone Mere Carelessness or Negligence under the "Excusable Neglect" Standard in Federal Rule of Civil Procedure 60(b)(1)

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I. INTRODUCTION

Rule 60(b)[1] is an attempt to codify the equitable, common law practice of reforming judgments under special circumstances.[2] The rule, *inter alia*, authorizes a court to relieve a party from a default judgment for "excusable neglect."[3] This standard, however, is not defined in the rules, and courts have struggled with its meaning. Some circuits define the term liberally and often grant requests to vacate default judgments.[4] Others adopt a strict interpretation and consistently refuse to vacate default judgments resulting from mere carelessness or negligence.[5] Recently, in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*,[6] the Supreme Court clarified the term "excusable neglect" under one of the Bankruptcy Rules. Given the differing goals and policies of default judgments and bankruptcies, as well as the internal problems of the decision itself,

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1. Federal Rule of Civil Procedure 60(b) provides in pertinent part:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

F.R.C.P. 60(b).

2. Charles A. Wright, Arthur R. Miller and Mary K. Kane, 11 *Federal Practice and Procedure* § 2851 at 227 (West, 2d ed. 1995).

3. F.R.C.P. 60(b)(1) (authorizing a court to relieve a party for "mistake, inadvertence, surprise, or excusable neglect"). Although Rule 60(b) authorizes a court to relieve a party from any "final judgment, order, or proceeding[,]" this Note focuses only on the interpretation of "excusable neglect" in the context of default judgments.

4. See, for example, *Meadows v. Dominican Republic*, 817 F.2d 517, 521-22 (9th Cir. 1987) (stating that circuit law is te vacate default judgments except upon a showing of culpable conduct, prejudice to the non-moving party, or the lack of a meritorious defense); *Gross v. Stereo Component Systems, Inc.*, 700 F.2d 120, 124 (3rd Cir. 1983) (vacating a default judgment because neither the party nor its counsel had engaged in willful conduct).

5. See, for example, *Pelican Production Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990) (stating that carelessness by a party or her counsel does not afford a basis for relief from a default judgment); *Hough v. Local 134, Intl. Brotherhood of Electric Workers*, 867 F.2d 1018, 1022 (7th Cir. 1989) (stating that neither ignorance nor carelesness will provide grounds for relief under Rule 60(b)(1)); *Suthorland v. ITT Contintental Baking Co., Inc.*, 710 F.2d 473, 476-77 (8th Cir. 1983) (holding neither attorney incompetence nor carelessness is a basis for rolief under Rule 60(b)(1)); *Guess?, Inc. v. Chang*, 163 F.R.D. 505, 508 (N.D. Ill. 1995) (stating that attorney negligence can never afford a basis for relief under excusable neglect).

6. 507 U.S. 380 (1993). In *Pioneer*, the Supreme Court liberally defined "excusable neglect" in the context of Bankruptcy Rule 9006(b). See id. at 388.

however, the decision should not be extended to determinations of excusable neglect under Rule 60(b)(1).

Part II of this Note examines the history of Rule 60(b), analyzing the background and source of original Rule 60(b), as well as the subsequent amendments to the rule. In addition, Part II describes the construction and application of Rule 60(b), outlining the remedial nature of the rule and the competing policy concerns of finality of judgments versus the preference for deciding cases on the merits. Part III discusses the inconsistent interpretations of "excusable neglect" under Rule 60(b)(1) in cases concerning mere carelessness or negligence. This section explores why some circuits consistently vacate default judgments except upon a showing of culpable conduct or bad faith, while other circuits refuse to vacate default judgments occurring as a result of mere carelessness or negligence. Part IV examines both the majority approach in the *Pioneer* decision and the dissent's concerns, paying particular attention to internal inconsistencies in the majority opinion. Finally, Part V addresses the inapplicability of *Pioneer* to the determination of excusable neglect under Rule 60(b)(1). The Note concludes that courts should adopt a strict interpretation of "excusable neglect" and refuse to condone mere carelessness or negligence under Rule 60(b)(1).

II. HISTORY AND CONSTRUCTION OF RULE 60(b)

A. Source and Background of Rule 60(b)

Prior to the adoption of the Federal Rules of Civil Procedure, a court had the power to grant relief from a final judgment primarily during the term in which the judgment was entered.[7] Otherwise, relief was available only in limited circumstances,[8] through a process admittedly "shrouded in ancient lore and mystery."[9] The procedures were so inflexible that many courts established local rules extending

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7. Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2851 at 228 (cited in note 2).

8. Exceptions to the general rule were available through the use of the ancillary and equitable writs of bill of review, bill in the nature of a bill of review, coram nobis, coram vobis, and audita querela. These writs were designed to previde relief in limited situations after the term of court had expired. James W. Moore, 7 *Moore's Federal Practice* ¶ 60.09 at 60-65 (Matthew Bender, 2nd ed. 1996).

9. F.R.C.P. 60(b) advisory committee's note to 1946 amendment.

the term of court for a specified time from the entry of final judgment, to allow sufficient time for requests for relief.[10]

In response to this inflexible situation, the Supreme Court's Advisory Committee formulated Rule 60(b).[11] In the rule's original form, the committee stated that the only basis for relief was "mistake, inadvertence, surprise or excusable neglect."[12] The rule also contained a provision that it "[did] not limit the power of a court . . . to entertain an action to relieve a party from a judgment, order, or proceeding."[13] This provision preserved the old ancillary and equitable remedies and allowed a court to grant relief on grounds other than those specifically listed in the rule.[14]

Since 1937, Rule 60(b) has been amended three separate times.[15] The primary changes abolished the old ancillary and equitable remedies,[16] enlarged the stated grounds for relief,[17] and eliminated the qualifying pronoun "his" from the rule so as to include the mistake, inadvertence, surprise or excusable neglect of others as a basis for relief.[18] The rule, as it now reads, contains six clauses and lists fourteen grounds on which a party may base a motion for relief.[19]

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10. Moore, 7 *Moore's Federal Practice* ¶ 60.09 at 60-66 (cited in note 8).

11. Id.

12. Rule 60(b), as originally promulgated, read in pertinent part as follows: "On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order or proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect." F.R.C.P. 60(b) as adopted in 1937. The original source for the rule was § 473 of the California Code of Civil Procedure, which read, in part, as follows: "The court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect." Moore, 7 *Moore's Federal Practice* ¶ 60.10[5] at 60-71 (cited in note 8).

13. F.R.C.P. 60(b) as adopted in 1937.

14. See Moore, 7 *Moore's Federal Practice* ¶ 60.09 at 60-68 (cited in note 8) (asserting that original Rule 60(b) preserved the common law and equitable ancillary remedies); James Wm. Moore and Elizabeth B. A. Rogers, *Federal Relief from Civil Judgments*, 55 Yale L. J. 623, 633 (1946) (stating that the rule preserved ancillary actions); Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2851 at 228 (cited in note 2) (stating that the old ancillary remedies were still available).

15. Rule 60 was amended December 27, 1946, effective March 19, 1948; December 29, 1948, effective October 20, 1949; and March 2, 1987, effective August 1, 1987. F.R.C.P. 60.

16. F.R.C.P. 60(b) as adopted in 1946. See, for example, *Bankers Mortgage Co. v. United States*, 423 F.2d 73, 78 (5th Cir. 1970) (stating that the rule specifically abolished ancillary writs and remedies); *West Va. Oil & Gas Co., Inc. v. George E. Breece Lumber*, 213 F.2d 702, 705 (5th Cir. 1954) (asserting that the rule abolished common law writs); *In re Brown*, 68 F.R.D. 172, 174 (D.D.C. 1975) (stating that the rule expressly abolished ancillary and equitable remedies). See also Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2851 at 229 (cited in note 2) (explaining that the amended rule expressly abolished the old ancillary and equitable remedies).

17. The 1946 Amendment to Rule 60(b)(1) enlarged the stated grounds for relief to include, for example, fraud and newly discovered evidence that was previously undiscoverable. Moore, 7 *Moore's Federal Practice* ¶ 60.15[8] at 60-114 to 60-115 (cited in note 8).

18. F.R.C.P. 60(b) advisory committee's note to the 1946 amendment.

19. See note 1.

B. Construction and Application of Rule 60(b)

When formulating Rule 60(b), the drafters took into account such factors as the desirability of this type of remedy, the need for finality, the preference for deciding cases on the merits, and the desire that justice be accomplished.[20] While, in the drafters' view, the adopted rule struck a proper balance with regard to these often-competing concerns,[21] courts were left with little guidance as to how to apply the rule so as to best effectuate the drafters' intent. Since original Rule 60(b) had been modeled after Section 473 of the California Code of Civil Procedure,[22] early decisions looked to California cases for guidance.[23]

California courts interpreting Section 473 of the California Code had recognized it as being remedial in nature and requiring a liberal construction.[24] Accordingly, courts granted relief from default judgments in cases in which the party seeking relief from a judgment relied upon another party's promises to defend his interests;[25] in which a party with a substantial defense inadvertently allowed a default;[26] and in which counsel did not file an answer as a result of his firm's overwhelming business and the absence of one of its members.[27] California courts did not excuse all conduct, however, and denied relief, in cases in which the defendant failed to appear because of negligence of counsel;[28] in which counsel claimed to be in poor health

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20. See Moore, 7 *Moore's Federal Practice* ¶ 60.09 at 60-65 (cited in note 8) (discussing the factors the Advisory Committee took into account when formulating the rule).

21. See Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2581 at 227 (cited in note 2) (explaining the drafters' attempt to strike a proper balance among competing policy concerns).

22. See noto 12 and accompanying text. When a statute is adopted in substantially the same language as a statute from another jurisdiction, courts generally construe the adopted provisions according to their construction in the other jurisdiction at the time the new statute was adopted. *Metropolitan Railroad Co. v. Moore*, 121 U.S. 558, 572 (1887).

23. Moore, 7 *Moore's Federal Practice* ¶ 60.10[7] at 60-75 (cited in note 8); Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2852 at 232-33 (cited in note 2).

24. See, for example, *Nicoll v. Weldon*, 130 Cal. 666, 63 P. 63, 64 (1900) (asserting that § 473 of the California Code of Civil Procedure is remedial in nature and should be construed liberally so as to decide cases on the merits); *Meldo v. Reynolds*, 129 Cal. 308, 61 P. 932, 933 (1900) (stating that § 473 is remedial in nature and should be liberally construed); *Williams v. McQueen*, 89 Cal. App. 659, 265 P. 339, 340 (1928) (holding that § 473 of the California Code of Civil Procedure is remedial in nature and should be liberally construed).

25. *Sofuye v. Pieters-Wheeler Seed Co.*, 62 Cal. App. 198, 216 P. 990 (1923).

26. *Staley v. O'Day*, 22 Cal. App. 149, 133 P. 620 (1913).

27. *Carbondale Machine Co. v. Eyraud*, 94 Cal. App. 356, 271 P. 349 (1928).

28. *United States v. Duesdieker*, 118 Cal. App. 723, 5 P.2d 916 (1931).

and under extreme pressure at work;[29] and in which an attorney negligently believed that an amended complaint had been filed by mail.[30] Federal judges looked to these opinions for guidance when rendering their own decisions in early cases applying Rule 60(b).[31]

With the passage of time, the body of federal precedent interpreting Rule 60(b) began to grow and California case law became much less significant.[32] Even as federal judges became increasingly comfortable construing Rule 60(b), however, certain provisions within the rule continued to pose problems. One of the more significant is 60(b)(1), which authorizes a court to relieve a party from a judgment for "excusable neglect."[33] This term is not defined in the rules, and courts have struggled with its meaning.

III. INCONSISTENT INTERPRETATIONS OF "EXCUSABLE NEGLECT" UNDER RULE 60(b)(1)

A. The Liberal Standard: Circuits that Vacate Default Judgments Except Upon a Showing of Culpable Conduct or Bad Faith

Although the circuits all agree that a court should deny relief under Rule 60(b)(1) in cases in which a party's affirmative strategic decision resulted in a default judgment,[34] the courts are otherwise divided over the appropriate scope of "excusable neglect." Several circuits take the stance that a court should vacate a default judgment

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29. *Berendsen v. Babdaty*, 62 Cal. App. 185, 216 P. 385 (1923).

30. *Doyle v. Rice Ranch Oil Co.*, 28 Cal. App. 2d 18, 81 P.2d 980 (1938).

31. See, for example, *United States v. Mutual Construction Corp.*, 3 F.R.D. 227, 227-28 (E.D. Pa. 1943) (looking to *Williams*, 265 P. at 339, in granting relief when counsel in New York, as a result of his full-time assignment as Special Assistant to the Attorney General of the United States, failed to obtain counsel in Pennsylvania to file an answer); *Ledwith v. Storkan*, 2 F.R.D. 539, 542-43 (D. Neb. 1942) (referring to California case law holding that the pressure of other business is inadequate to show excusable neglect as the basis for denying relief when counsel claimed his failure to file an answer was caused by other business and his absence from the jurisdiction).

32. Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2852 at 233 (cited in note 2).

33. F.R.C.P. 60(b)(1) (authorizing a court to relieve a party from a judgment for "mistake, inadvertence, surprise, or excusable neglect").

34. See, for example, *United States v. Erdoss*, 440 F.2d 1221, 1223 (2nd Cir. 1971) (denying relief when a party made a strategic decision to default); *Lloyd v. Carnation Co.*, 101 F.R.D. 346, 348 (M.D.N.C. 1984) (stating that the rule was not designed to relieve a party from a strategic decision that in hindsight appeared improvident); *United States v. 1,550.44 Acres of Land*, 369 F. Supp. 1078, 1079 (D.N.D. 1974) (asserting that excusable neglect does not include counsel's affirmative tactical decisions).

except upon a showing of willful or culpable conduct or bad faith on the part of the movant.[35] These courts focus primarily on the policy preferences of deciding cases on the merits and construing Rule 60(b)(1) liberally so as to accomplish justice.[36]

Recently, in *American Alliance Insurance Co. v. Eagle Insurance Co.*,[37] the Second Circuit vacated a default judgment that resulted from a filing error committed by a clerk for in-house counsel. In reaching its decision, the court focused on whether the default was the result of "willful" conduct.[38] Although the lawyer had not discovered the misfiling for two months, the court stated that, because the act was merely one of carelessness or negligence, the harsh application of a default judgment was inappropriate.[39] A default judgment, according to the court, should be entered only in the event of either deliberate conduct or bad faith, neither of which was present here.[40] Although the court acknowledged the need for expediting litigation, it asserted that public policy favored deciding cases on the merits whenever possible.[41]

The Third Circuit used an almost identical standard in vacating a default judgment in *Gross v. Stereo Component Systems*.[42] In

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35. The Second, Third, Sixth, and Ninth Circuits consistently follow such an approach. See notes 4, 37-64 and accompanying text. Although the courts may consider other factors such as whether the defendant has a meritorious defense and whether the non-defaulting party would be prejudiced if the default were set aside, ultimately the nature of the defaulting party's conduct determines the result. See notes 38, 47, 50, 55 and accompanying text.

36. See, for example, *Meadows*, 817 F.2d at 521 (stating that Rule 60(b) is remedial in nature and should be applied liberally so as to decide cases on the merits when possible); *Wagstaff-EL v. Carlton Press Co.*, 913 F.2d 56, 57-58 (2nd Cir. 1990) (vacating default judgment after weighing all relevant factors); *United Coin Meter Co. v. Seaboard Coastline Railroad*, 705 F.2d 839, 846 (6th Cir. 1983) (stating that federal courts favor trial on the merits); *Farnese v. Bagnasco*, 687 F.2d 761, 764 (3rd Cir. 1982) (stating doubts should be resolved in favor of deciding cases on the merits).

37. 92 F.3d 57 (2nd Cir. 1996). Office custom was for the clerk to log the pleadings when received and then to assign the case to an attorney. In this particular case, however, the pleadings were accidentally removed from the clerk's desk before being logged and placed in a related case's file. Id. at 59.

38. The Second Circuit, in determining whether to vacate a default judgment, examines "(1) whether the default was willful; (2) whether [the] defendant has a meritorious defense; and (3) the level of prejudice that may occur to the non-defaulting party if relief is granted." Id. at 59 (quoting *Davis v. Musler*, 713 F.2d 907, 915 (2nd Cir. 1983)).

39. Id. at 61-62. The court did recognize, however, that the degree of the moving party's gross negligence or carelessness is a relevant factor in determining whether to extend relief. Id.

40. By subjectively examining the willfulness of the party's behavior, cases concerning excusable neglect are separated from those in which the neglect is inexcusable. Id. Here, although the conduct was grossly negligent, it was neither "willful, deliberate [n]or in bad faith." Id.

41. Id.

42. 700 F.2d 120 (3rd Cir. 1983).

Gross, the defendant claimed the default had resulted from a breakdown in communication between the defendant's general counsel in Boston and local counsel in Philadelphia.[43] The District Court refused to extend relief, stating that local counsel should have checked the public record or contacted the defendant to ascertain when the complaint had been served.[44] Because she had not, her failure to answer was not excusable neglect.[45] The Third Circuit, however, placed primary importance on the fact that local counsel had been "actively attempting to contact" the defendant's general counsel.[46] Consequently, the court failed to find evidence of willfulness or bad faith and granted the motion to set aside the judgment on the basis of excusable neglect.[47]

In contrast, in *Amernational Industries v. Action-Tungsram, Inc.*,[48] the Sixth Circuit focused not on whether the defendant had engaged in "willful conduct" that resulted in the entry of a default judgment, but instead on whether the defendant's "culpable conduct"[49] resulted in the default judgment.[50] According to the court, such an inquiry is warranted given the drastic nature of a default judgment and the desire to apply Rule 60(b) liberally.[51] While acknowledging that the defendant's repeated failures to comply with discovery requests and to pay court-imposed sanctions did not represent the conduct of a model litigant,[52] the court held that his conduct did not

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43. Id. at 121-22.
44. Id. at 122.
45. Id.
46. Id. at 124.
47. Id. The court also noted that the plaintiff would not be prejudiced by opening the default judgment and that it was unprepared to say that the defense was "facially unmeritorious." Id. at 123.
48. 925 F.2d 970 (6th Cir. 1991).
49. While the distinction between "willful conduct" and "culpable conduct" is not entirely clear, according to the court, for conduct to rise to the level of "culpable" for purposes of a motion to vacate a default judgment, the "conduct of a defendant must display either an intent to thwart judicial proceedings or a reckless disregard for the effect of its conduct on those proceedings." Id. at 978 (quoting *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 399 (6th Cir. 1987)).
50. Id. at 976. The court also considered whether the defendant had a meritorious defense and whether the plaintiff would be prejudiced if the judgment were vacated. Id.
51. Id.
52. The plaintiff had filed motions for default judgments three separate times: (1) in June 1987, for the defendant's failure to appear at two status conferences scheduled by the district court, (2) in March 1989, for the defendant's failure to pay court-imposed sanctions that had resulted from the June 1987 motion and for failure to produce documents, and (3) in June 1989, for the defendant's continued failure to produce documents. The district court granted this third motion for entry of a default judgment. Id. at 972-73.

rise to the level of culpability.[53] As a result, the Sixth Circuit vacated the default judgment and granted relief.[54]

The Ninth Circuit's application of the culpability standard is not nearly as forgiving. Although the Ninth Circuit courts also use a culpability analysis in determining whether to vacate a default judgment on the basis of excusable neglect,[55] its standard for assessing culpability is much stricter. For example, in *Associated Business Telephone System Corp. v. Cohn*,[56] a district court refused to vacate a default judgment, explaining that under Ninth Circuit law, conduct is considered culpable when a party receives actual or constructive notice of a filing and fails to respond, regardless of the surrounding circumstances.[57] Thus, if the moving party had actual or constructive notice of the filing, the party is penalized, and relief under Rule 60(b) is denied.[58] Since the plaintiff in *Associated Business Telephone System* had actual notice and failed to comply with numerous deadlines,[59] the court found the conduct culpable.[60] Although the court

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53. Id. at 978. The court considered relevant such factors as a flood and subsequent move that left the defendant's offices in disarray, the fact that the plaintiff had originally served the discovery request on an entity other than the defendant, and the district court's failure in two instances to provide the defendant with notice of significant events in the case. In the court's view, the combined effect of these factors and the defendant's lack of reckless disregard for the consequences of its actions constituted excusable neglect as contemplated under Rule 60(b)(1). Id. The Sixth Circuit Court of Appeals claimed the enormity of the damage award in the default judgment, $11,070,000 plus interest, attorney's fees and costs, strengthened this conclusion. Id.

54. Id. at 978-79.

55. In determining whether to vacate a default judgment, the Ninth Circuit examines (1) whether the defendant's culpable conduct led to the default, (2) whether the defendant lacks a meritorious defense, and (3) whether the plaintiff would be prejudiced if the default were set aside. *Meadows*, 817 F.2d at 521. If any of these inquiries elicits an affirmative response, the analysis ceases, and the motion to vacate is denied. See, for example, id. (holding that if the default judgment is the result of culpable conduct, the court need not consider whether the defendant possesses a meritorious defense or whether the plaintiff would be prejudiced); *Benny v. Pipes*, 799 F.2d 489, 494 (9th Cir. 1986) (stating that the existence of culpable conduct halts the analysis and the motion to vacate is denied); *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 815 (9th Cir. 1984) (asserting that the existence of culpable conduct on the part of the defendant renders additional analysis unnecessary).

56. 1995 WL 607545 (N.D. Cal.).

57. Id. at 3. See also *Meadows*, 817 F.2d at 521 (stating defendant's conduct is culpable when he receives actual or constructive notice of a filing and fails to respond).

58. *Associated Business Telephone System*, 1995 WL 607545 at 3.

59. Plaintiff failed to comply with deadlines for filing an amended complaint, a third-amended complaint, and a memorandum of opposition to defendants' motion to dismiss. Id. at 1-2. In addition, after plaintiff indicated it would be changing counsel, the court requested that plaintiff notify the court once new counsel had been obtained. The plaintiff never complied. Id.

60. The plaintiff attempted to justify its behavior by claiming it believed a settlement agreement had been reached between the parties and that defendants would communicate this fact to the court, rendering plaintiff's appearance and memorandum unnecessary. Id. at 4.

acknowledged that Rule 60(b) should be liberally construed so as to decide cases on the merits whenever possible,[61] the court argued that a failure to respond in the face of actual or constructive notice raises questions concerning a party's good faith and leads to an inexcusable waste of the court's time and resources.[62] Consequently, the district court refused to extend relief, claiming such intentional and culpable behavior is inexcusable under Rule 60(b)(1).[63]

The courts that examine the willfulness or culpability of a party's actions to determine whether to vacate a default judgment must assume that they are furthering the purpose behind Rule 60(b)(1) and the intent of the drafters.[64] This assumption is questionable given the circumstances under which Rule 60(b) was adopted, the plain meaning of "excusable neglect" and other public policies the American legal system has traditionally advanced.[65] Such factors have not escaped the circuits that take a more narrow approach toward excusable neglect and refuse to vacate default judgments that occur as a result of carelessness or negligence.

B. The Strict Standard: Circuits that Refuse to Vacate Default Judgments Resulting from Mere Carelessness or Negligence

Not all circuits agree that courts should liberally construe excusable neglect so as to include errors occurring as a result of mere carelessness or negligence.[66] Instead, some circuits define the term narrowly and expressly reject requests to vacate default judgments that result from mere carelessness or negligence. In *C.K.S. Engineers,*

Under Ninth Circuit precedent, however, a failure to respond is penalized regardless of the circumstances. Id. at 3.

61. Id.

62. Id. at 6.

63. Id.

64. While these courts do not generally make such an assertion directly, they do claim to construe Rule 60(b)(1) in the manner in which it was intended, so as to best provide justice. See, for example, *American Alliance Insurance Co.*, 92 F.3d at 61 (holding that, because Rule 60(b)(1) "expressly contemplates that some types of 'neglect' are 'excusable,' " the court must inquire into the wilfullness of a party's default); *United Coin Meter*, 705 F.2d at 844-45 (quoting *Blois v. Friday*, 612 F.2d 938, 940 (5th Cir. 1980)) ("A district court must apply Rule 60(b) 'equitably and liberally . . . to achieve substantial justice.' ").

65. Most notably, other goals include ensuring finality of judgments, promoting judicial efficiency, deterring inappropriate behavior and holding clients accountable for the sins of their agents. See Part V.

66. The Fifth, Seventh, Eighth, and Tenth Circuits consistently follow such an approach. See notes 5, 67-85 and accompanying text.

Inc. v. White Mountain Gypsum Co.,[67] the Seventh Circuit refused to vacate a default judgment that resulted from a breakdown in attorney-client communications and a failure to obtain new counsel.[68] While acknowledging the well-established preference for deciding cases on the merits,[69] the court stated that Rule 60(b)(1) relief from a default judgment is an extraordinary remedy that should be extended only on a showing of exceptional circumstances.[70] A party is incapable of making such a showing when he has "willfully chosen not to conduct [her] litigation with a degree of diligence and expediency prescribed by the trial court."[71] Consequently, careless or negligent behavior on the part of an attorney or litigant can never be a basis for relief under the Seventh Circuit's interpretation of the excusable neglect standard in Rule 60(b)(1).[72]

The Fifth Circuit uses a virtually identical standard for excusable neglect under Rule 60(b)(1) and refuses to set aside default judgments occurring as a result of negligence or carelessness.[73] This position derives from the view that Rule 60(b)(1) affords extraordinary relief that courts should only extend upon a showing of exceptional

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67. 726 F.2d 1202 (7th Cir. 1984).

68. Id. at 1207-08. Defendants and their original counsel had communicated only two or three times over the course of a year, and at least one of these conversations was limited to a discussion regarding the defendants' bill. Id. at 1207. Shortly after defendants' original counsel obtained permission from the district court to withdraw from the case, defendants failed to respond to plaintiff's interrogatories, despito the court's having granted them an extension. Id. Consequently, the court entered a default judgment. Id. Defendants argued they failed to meet this deadline as a result of lack of access to an attorney and lack of funds to hire one. Id. The court was not persuaded, however, since one of the defendants had actually retained counsel and the other bad made no attempt to communicate his perceived problems to the court. Id. at 1207-08 The circuit court found this behavior irresponsible and negligent and refused to extend relief under Rule 60(b)(1). Id. at 1209.

69. Id. at 1205.

70. Although a default judgment is a harsh sanction to be used only in extreme cases, the court stated that no reason exists for applying Rule 60(b) more liberally to default judgments than to other types of judgments. Id.

71. Id.

72. Id. at 1206. Relief in the Seventh Circuit is only available under Rule 60(b)(1) when the default judgment occurred as a result of events not "within the meaningful control of the defanlting party, or its attorney." Id. See also *Carr v. Pouillous, S.A.*, 947 F. Supp. 393, 399 (C.D. Ill. 1996) (quoting *Zuelzke Tool & Engineering Co., Ine. v. Anderson Die Castings, Inc.*, 925 F.2d 226, 229 (7th Cir. 1991)) ("[W]here a party willfully, albeit through ignorance or carelessness, abdicates its responsibilities, relief from judgment under Rule 60(b) is not warranted.").

73. See, for example, *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990) (stating carelessness or negligence is not sufficient to warrant relief under Rule 60(b)(1)); *United States v. Real Property Located at 165 Adelle St., Jackson, Mississippi*, 850 F. Supp. 534, 538 (S.D. Miss. 1994) (stating that neglect by counsel is not enough to warrant setting aside default judgment).

circumstances.[74] According to Fifth Circuit precedent, such a standard is necessitated by the need for finality of judgments and the policy of holding clients accountable for the sins of their counsel in civil litigation.[75] As a result, courts in the Fifth Circuit have denied relief under Rule 60(b)(1) when a moving party failed to institute internal procedural safeguards in the course of business so as to prevent having defaults taken against it;[76] when a movant failed to open certified mail containing service of process for three days before the start of a two-week company-wide vacation;[77] and when counsel told his client to entrust a matter to him and then failed to comply with local rules and deadlines.[78]

In *Pelican Production Corp. v. Marino*,[79] the Tenth Circuit held that carelessness by a party or its counsel is not excusable neglect under Rule 60(b)(1)[80] and refused to vacate a default judgment occurring as a result of the plaintiff attorney's failure to respond to a motion to dismiss and a motion for summary judgment.[81] Although the plaintiff claimed it was unaware of the default judgment for almost a month because of a breakdown in attorney-client communication,[82] the court was unsympathetic.[83] In the court's view, although default judgments are generally disfavored, the preference for deciding cases on their merits must be weighed against considerations of justice, expediency, and other social goals.[84] Thus, in a case in which the moving party failed to comply with the court's

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74. To make such a showing, a party must have acted with constant diligence toward her case. *Pryor v. United States Postal Svc.*, 769 F.2d 281, 286-87 (5th Cir. 1985).

75. See, for example, id. at 288 (stating that the need for finality of judgments and the policy of holding clients accountable for the mistakes of counsel preclude vacating default judgment on the basis of attorney negligence); *165 Adele St.*, 850 F. Supp. at 538 (asserting neglect by counsel is insufficient to justify vacating a default judgment because of the need for finality and the policy of charging attorney errors to the client in civil litigation).

76. *Davis v. Safeway Stores, Inc.*, 532 F.2d 489 (5th Cir. 1976).

77. *CJC Holdings, Inc. v. Wright & Lato*, 979 F.2d 60 (5th Cir. 1992).

78. *Pryor*, 769 F.2d at 289.

79. 893 F.2d 1143 (10th Cir. 1990).

80. Id. at 1146.

81. Id. at 1148. The court entered a default judgment on April 10, 1986, almost four months after the suit was initiated, when plaintiff failed to respond to motions to dismiss and for summary judgment. Id. at 1144.

82. On May 5, 1986, an attorney appeared on the plaintiff's behalf at a status conference, explaining that plaintiff's former counsel had failed to respond to defendant's motions because he was in the process of closing his law practice to start an oil company. Plaintiff also argued it had never received notice from its prior attorney that the court had granted the motion to dismiss or entered a default judgment. Id. at 1144-55.

83. According to the ceurt, no unfairness results either from holding a client accountable for the mistakes of its attorney or from refusing to grant a motion to set aside a default judgment when the moving party has failed to comply with procedural rules. Id. at 1147.

84. Id. at 1146.

procedural requirements without good cause, relief under Rule 60(b)(1) was unavailable.[85]

These decisions set forth compelling reasons for refusing to vacate a default judgment that occurs as a result of carelessness or negligence on the basis of excusable neglect. Nevertheless, the law remains unsettled in this area and the Supreme Court has yet to clarify the meaning of "excusable neglect" under Rule 60(b)(1). In *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, however, the Supreme Court did resolve the dispute among the circuits regarding the term's use in the context of Bankruptcy Rule 9006(b).[86] Nevertheless, given the differing goals and policies of bankruptcies and default judgments, as well as the internal problems of the *Pioneer* decision, this decision should not be extended to Rule 60(b)(1).

IV. THE SUPREME COURT'S INTERPRETATION OF "EXCUSABLE NEGLECT" UNDER BANKRUPTCY RULE 9006(b)

In a five to four opinion, a sharply divided Court affirmed the Sixth Circuit's decision adopting a liberal balancing test for excusable neglect under Bankruptcy Rule 9006(b)(1).[87] While the dissent and the majority drastically disagreed over the proper scope to afford the term, both opinions focused on the plain meaning of Bankruptcy Rule 9006(b)(1), the intent of Congress, and the policy behind Chapter 11 bankruptcy proceedings in general.[88]

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85. Id. at 1146-47.

86. 507 U.S. 380 (1993).

87. Id. Bankruptcy Rule 9006(b) provides in pertinent part "when an act is required or allowed to be done at or within a specified period by these rules or by a notice ... the court for cause shown may at any time in its discretion ... permit the act to be done where the failure to act was the result of excusable neglect." F.R.B.P. 9006(b)(1). The Court "conclude[d] that the determination [of excusable neglect under Rule 9006(b)] is at bottem an equitable one" and that, as the Court of Appeals held, all relevant circumstances must be considered, including "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer*, 507 U.S. at 395.

88. See Beth Anne Harrill, Note, *Equitable Standards of Excusable Neglect: A Critical Analysis of* Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 11 Bankr. Dev. J. 181, 196 (1994-1995) (explaining that both the majority and the dissent in *Pioneer* focused on the same facters, yet reached different results).

A. Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership

Pioneer filed a Chapter 11 bankruptcy petition and schedules designating its creditors.[89] These schedules, however, listed as unliquidated, contingent, or disputed the claims of Brunswick and two of its related entities, and failed to list at all the claims of another of Brunswick's related entities (collectively referred to as "Brunswick").[90] Under relevant bankruptcy law, since Brunswick's claims were disputed and unlisted, it was required to file proofs of claim in order to participate in the distribution of Pioneer's estate.[91] After receiving notice of the meeting of the creditors,[92] Brunswick hired an attorney who assured Brunswick that the situation was not urgent because the court had yet to set the deadline by which time proofs of claim must be filed.[93] By the time counsel discovered that the letter had, in fact, provided notice of the deadline, Brunswick's proofs of claim were twenty days late.[94] Counsel submitted the claims along with a motion requesting that the court permit the late filing on the basis of excusable neglect pursuant to Bankruptcy Rule 9006(b)(1).[95]

In affirming the Sixth Circuit decision requiring a liberal reading of "excusable neglect" under Bankruptcy Rule 9006(b),[96] the majority relied primarily on three factors.[97] First, the Court cited *Webster's*

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89. *Pioneer*, 507 U.S. at 383.

90. Id.; David A. Riggi, *The Supreme Court, in a Bankruptcy Law Decision, Stretches the "Elastic Concept" of "Excusable Neglect"*, 1 Nev. Law. 20, 20 (May 1993). Combined, the four claims were in excess of $6,000,000. Id.

91. Bankruptcy Rule 3003(c) requires a proof of claim to be filed whenever a claim is disputed, contingent, unliquidated or unlisted on the debtor's schedule. F.R.B.P. 3003(c)(2). The creditor is required to file such proof of claim by the deadline established by the courts. F.R.B.P. 3003(c)(3).

92. In bankruptcy, a meeting of the creditors is the time at which "a trustee may be elected and the debtor examined under oath." *Black's Law Dictionary* 369 (West, 6th ed. 1990) (defining "creditors' meeting").

93. Once Brunswick obtained counsel, Brunswick provided him with a full copy of the case file. Subsequently, both Brunswick and counsel attended a second meeting of the creditors, but counsel was still unaware the letter had provided notice of the deadline for filing proofs of claim. *Pioneer*, 507 U.S. at 384.

94. Id.

95. See note 87. Brunswick's counsel argued that the deadline occurred at a time when he was withdrawing from his firm and "experiencing 'a major and significant disruption' in his professional life." *Pioneer*, 507 U.S. at 384 (quoting the Appellate Opinion).

96. Prior to *Pioneer*, the circuits were split on the appropriate interpretation of "excusable neglect" under Bankruptcy Rule 9006(b). Some circuits required the movant to show that the delay in filing was caused by circumstances beyond its control. Others applied a liberal balancing test. Id. at 387.

97. The Court made clear, however, that it gave little weight to the fact that Brunswick's counsel had been experiencing a major upheaval in his professional life at the time of the

Ninth New Collegiate Dictionary for the plain meaning of "neglect."[98] The Court found that the definition establishes the ordinary meaning of "neglect" and indicates that, because of a lack of evidence to the contrary, Congress intended courts to accept late filings caused by mistake, carelessness, inadvertence, or circumstances beyond the party's control.[99] According to the Court, only after a party establishes its own neglect must a court apply a liberal balancing test to determine if the conduct is excusable.[100] Second, the Court asserted that the policies underlying both Chapter 11 and the Bankruptcy Rules require a flexible understanding of "excusable neglect."[101] Finally, the Court relied on interpretations of "excusable neglect" under Federal Rules of Civil Procedure 6(b), 13(f), and 60(b)(1) to arrive at a liberal interpretation of the term.[102] As the dissent pointedly makes clear, however, each of these factors is problematic on its own, and in sum, they create a "solution" that would be both undesirable and unsettling if courts were to apply it in non-bankruptcy situations.

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deadline. In addition, the Court acknowledged the "peculiar and inconspicuous placement" of the deadline in the notice mailed to Brunswick. Id. at 398.

98. *Webster's* defines "neglect" as "to give little attention or respect" or "to leave undone or unattended to *esp[ecially] through carelessness*." *Pioneer*, 507 U.S. at 388 (emphasis in original) (quoting *Webster's Ninth New Collegiate Dictionary* 791 (Merriam-Webster, 1983)).

99. Id.

100. Whether the neglect is excusable turns on "all relevant circumstances surrounding the party's omission." Id. at 395.

101. The majority asserted the policy behind Chapter 11 is to "provide[ ] for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors." Id. at 389. To accomplish this goal, bankruptcy courts have extensive equitable powers to weigh the interests of all affected parties. The majority claimed, naturally, that "excusable neglect" under Rule 9006(b) also entails an equitable inquiry. Id.

102. Because Bankruptcy Rule 9006(b) was modeled after Federal Rule of Civil Procedure 6(b), the Court found case law interpreting Rule 6(b) relevant. Id. at 391-92. Rule 6(b) allows a court to enlarge the period for performing a specific act when the failure to perform the act within the original allotted time was the result of excusable neglect. F.R.C.P. 6(b). Courts of Appeals, according to the majority, have interpreted "excusable neglect" within Rule 6(b) to include inadvertence. *Pioneer*, 507 U.S. at 391-92. The Court also considered Federal Rule of Civil Procedure 13(f), which allows late counterclaims to be filed in circumstances of "oversight, inadvertence, or excusable neglect, or when justice requires." F.R.C.P. 13(f). Given the context in which "excusable neglect" is used in Rule 13(f), the Court found it "difficult indeed to imagine that 'excusable neglect' was intended to be limited. . . ." *Pioneer*, 507 U.S. at 392. Finally, the Court differentiated Federal Rule of Civil Procedure 60(b)(1) from 60(b)(6), which allows a court to vacate a judgment for "any other reason justifying relief from the operation of the judgment." F.R.C.P. 60(b)(6). The Court reasoned that, because a party must demonstrate extraordinary circumstances to justify relief under Rule 60(b)(6), a party who is partly at fault must necessarily seek relief under Rule 60(b)(1). *Pioneer*, 507 U.S. at 393.

The Court's reliance on Rule 60(b)(6) to interpret Rule 60(b)(1) may be misplaced, however. The drafters' intent for Rule 60(b)(1) to be moro restrictive is evidenced by the strict one year time limitation for bringing 60(b)(1) actions. Conversely, Rule 60(b)(6) requires only that actions be brought within a reasonable time period, a far more lenient standard.

B. Dissent's Concerns

The dissent in *Pioneer* strongly disagreed with the Court's adoption of a liberal balancing test to determine the existence of excusable neglect under Bankruptcy Rule 9006(b).[103] According to the dissent, a bankruptcy court should first determine whether the failure to meet a deadline was the result of excusable neglect.[104] Only if the behavior constitutes excusable neglect should the court consider the equities involved and decide whether to extend relief under Bankruptcy Rule 9006(b).[105] In support of its position, the dissent advanced four arguments.

First, the dissent argued the majority failed to follow recent precedent interpreting Federal Rule of Civil Procedure 6(b).[106] In *Lujan v. National Wildlife Federation*,[107] the Court had characterized the excusable neglect as the greatest obstacle of all and had focused only on the respondent's culpability and asserted cause for failing to file affidavits on time.[108] Nowhere in the *Lujan* opinion had the Court discussed the equities or the consequences of the respondent's failure to file in a timely fashion.[109]

Second, the dissent offered its own plain meaning of "excusable neglect" from *Black's Law Dictionary*.[110] The dissent argued that, while the definition from *Black's* correctly focuses on the cause of the failure to comply with a deadline and the culpability of the movant, the definition espoused by the majority considers the results or consequences of a party's acts.[111] According to the dissent, only its own

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103. *Pioneer*, 507 U.S. at 399 (O'Connor, J., dissenting).
104. Id. at 399-400 (O'Connor, J., dissenting).
105. Id. at 400 (O'Connor, J., dissenting).
106. Id. at 400-01 (O'Connor, J., dissenting).
107. 497 U.S. 871 (1990).
108. Id. at 897.
109. *Pioneer*, 507 U.S. at 401 (O'Connor, J., dissenting). See *Lujan*, 497 U.S. 871 (making an excusable neglect determination without discussing the equities or the consequences of the respondent's actions).
110. *Pioneer*, 507 U.S. at 402 (O'Connor, J., dissenting). According to *Black's*, "excusable neglect" is:

> [A] failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.

Black's Law Dictionary at 566 (cited in note 92). In a footnote, the majority criticized the dissent saying "[f]aced with a choice between our own precedent and Black's Law Dictionary, we adhere to the former." *Pioneer*, 507 U.S. at 396 n.14.
111. *Pioneer*, 507 U.S. at 402 (O'Connor, J., dissenting). While the dissent acknowledged that the Court is not bound by *Black's Law Dictionary*, it argued that if Congress had intended to depart from the ordinary, accepted meaning of "excusable neglect" and focus on the effect instead

approach is consistent with the accepted definition of "excusable neglect."[112]

Third, as the dissent correctly claimed, the majority's approach is circular and renders language in the rule superfluous.[113] The dissent recognized that by following the majority's two-part approach, "excusable neglect" becomes neglect that, in light of all the equities, the court determines is excusable.[114] Such a reading is not only unnatural, according to the dissent, but could have been achieved if Bankruptcy Rule 9006(b) had given courts the discretion to extend relief when the failure to comply with a deadline was the result of "neglect."[115] Thus, the majority's approach reads the word "excusable" directly out of the rule.[116]

Finally, the dissent stated that the Court's balancing test is indeterminate and will ultimately lead to wasting resources on unproductive litigation.[117] Since reasonable individuals often disagree on what the equities of a given situation require, results will frequently be called into question.[118] The *Pioneer* case itself is evidence of this phenomenon.[119] Two of the three lower courts, while applying virtually the same test that the Supreme Court ultimately applied, held that Brunswick had failed to meet the excusable neglect standard.[120] The Sixth Circuit Court of Appeals and the Supreme Court majority, in substituting their own judgment, held otherwise.[121]

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of the reason for the error, it would have made its position known. Id. at 403 (O'Connor, J., dissenting).

112. Id. at 402 (O'Connor, J., dissenting).

113. Id. at 403 (O'Connor, J., dissenting).

114. Id.

115. In the dissent's view, since Congress included "excusable," it intended to communicate that certain types of neglect cannot be forgiven, despite the consequences. Id.

116. Id.

117. Id. at 404, 409 (O'Connor, J., disssenting). See also Harrill, 11 Bankr. Dev. J. at 182 (cited in note 88) ("*Pioneer* paves the way for unpredictable results and the wasting of precious time and financial resources in [bankruptcy] 'excusable neglect' litigation."); Frank W. Koger and Roy B. True, *The Final Word on Excusable Neglect?*, 98 Com. L. J. 21, 25-6 (1993) (stating that the dissent's concern that the Court's balancing test will lead to indeterminacy in bankruptcy cases cannot be denied); Riggi, 1 Nev. Law. at 24 (cited in note 90) (claiming "excusable neglect" determination under Bankruptcy Rule 9006(b) may create time-consuming and unproductive bankruptcy appeals).

118. *Pioneer*, 507 U.S. at 404 (O'Connor, J., dissenting).

119. Id.

120. Both the Bankruptcy Court on remand from the District Court and the District Court on appeal applied a liberal excusable neglect standard and found Brunswick's conduct inexcusable. Id. at 385-86.

121. Id. at 404 (O'Connor, J., dissenting).

Each of the arguments advanced by the dissent has merit, and their combined effect seriously calls into doubt the soundness of the Court's opinion. When considered in conjunction with the differing goals of default judgments and bankruptcies, as well as several factors overlooked by the majority, one must inevitably question the appropriateness of extending *Pioneer* and its liberal standard to the determination of excusable neglect under Rule 60(b)(1).[122]

V. REASONS FOR REFUSING TO DEFINE EXCUSABLE NEGLECT TO INCLUDE MERE CARELESSNESS OR NEGLIGENCE UNDER RULE 60(b)(1)

Compelling reasons exist for refusing to grant relief under the excusable neglect standard in Rule 60(b)(1) in cases concerning mere carelessness or negligence. First, the *Pioneer* decision is inapplicable to determinations of excusable neglect under Rule 60(b)(1). The decision's internal problems, as well as the differing policies and goals of default judgments and bankruptcies, warrant this conclusion. In addition, the plain meaning of "excusable neglect" requires a narrow understanding of the term. Only by recognizing the plain meaning will courts give meaning to all words in Rule 60(b)(1) and effectuate the intent of the drafters. Finally, by rejecting requests to vacate default judgments occurring as a result of mere carelessness or negligence, courts advance other policies the American legal system has traditionally supported.[123]

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122. Some courts have applied the *Pioneer* holding in cases interpreting excusable neglect under Rule 60(b)(1). See note 124 and accompanying text. The Supreme Court, however, has declined to state that *Pioneer* applies in all such cases. In *Stutson v. United States*, the applicability of *Pioneer* to determinations of excusable neglect under Federal Rule of Appellate Procedure 4(b) was an issue. *Stutson v. United States*, 116 S. Ct. 600, 602, 133 L. Ed. 571 (1996). After vacating the judgment below, the Court in *Stutson* remanded to the Eleventh Circuit to clarify whether the Court of Appeals had considered *Pioneer*'s applicability in rendering its decision. Id. at 602-03. Instead of instructing the Court of Appeals on remand that it must apply *Pioneer* to the facts at bar, the Court stated that, in the event that the Court of Appeals concludes that *Pioneer* does not apply, "it will be useful for us to have the benefit of its views so that we may resolve the resulting conflict between the Circuits." Id. at 603.

123. The most notable of these policies include ensuring finality of judgments, promoting judicial efficiency, deterring inappropriate behavior, and holding clients accountable for the mistakes of their agents. See Part V.C.

A. Inapplicability of the Pioneer *Decision to the Determination of Excusable Neglect under Rule 60(b)(1)*

Courts have been inconsistent in determining whether the *Pioneer* decision applies in cases concerning excusable neglect under Rule 60(b)(1). Some courts have applied the balancing test enunciated by the Supreme Court,[124] while others have made determinations of excusable neglect in the context of a default judgment without a single reference to *Pioneer*.[125] Still other courts have questioned the decision's applicability, while seeming to apply pre-*Pioneer* law.[126]

Courts either ignoring *Pioneer* or questioning its applicability and applying prior circuit law have not indicated their rationale for doing so. Compelling reasons exist, however, for not extending the Court's interpretation of excusable neglect under Bankruptcy Rule 9006(b) to cases interpreting excusable neglect under Rule 60(b)(1). Although the *Pioneer* Court attempted to buttress its position by showing that courts have liberally interpreted "excusable neglect" in the context of other Federal Rules,[127] this position is not entirely accurate. First, some courts have subjected Federal Rule of Civil Procedure 6(b), one of the rules with which the Supreme Court compared Bankruptcy Rule 9006(b), to a strict standard.[128] Courts have

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124. See, for example, *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 849 (11th Cir. 1996) (stating that the Supreme Court has clarified the meaning of "excusable neglect" in *Pioneer*); *Information Systems and Networks Corp. v. United States*, 994 F.2d 792, 796 (Fed. Cir. 1993) (choosing to apply the balancing test set forth by the Court in *Pioneer*); *Wolverton v. Bullock*, 1996 WL 254649 at 3 (D. Kan.) (electing to apply the factors set forth by the Supreme Court in *Pioneer* to make determination of excusable neglect).

125. See, for example, *American Alliance Ins.*, 92 F.3d 57 (making determination of excusable neglect without reference to the *Pioneer* decision); *Johnson v. Gudmundsson*, 35 F.3d 1104 (7th Cir. 1994) (determining absence of excusable neglect without reference to *Pioneer*); *United States v. 7108 West Grand Ave.*, 15 F.3d 632 (7th Cir. 1994) (making no reference to the *Pioneer* decision in declining to find existence of excusable neglect); *165 Adelle St.*, 850 F. Supp. at 537 (stating neglect is insufficient for finding of excusable neglect without consideration of *Pioneer*).

126. See, for example, *United States v. RG & B Contractors, Inc.*, 21 F.3d 952, 956 (9th Cir. 1994) (finding no excusable neglect under Ninth Circuit law, and then stating that there would still be no excusable neglect if the court assumed for the sake of argument that *Pioneer* applied); *Associated Business Telephone System*, 1995 WL 607545 at 3-4 (finding conduct inexcusable under Ninth Circuit precedent and then arguing conduct would also be inexcusable under Supreme Court's balancing test set forth in *Pioneer*); *Guess*, 163 F.R.D. at 508 n.6 (stating that attorney negligence can never provide a basis for Rule 60(b)(1) relief, even though questioning whether still good law after *Pioneer*).

127. See note 102 and accompanying text.

128. See, for example, *Marane Inc. v. McDonald's Corp.*, 755 F.2d 106, 111 (7th Cir. 1985) (finding no excusable neglect under Rule 6(b) when attorney claimed unfamiliarity with Federal Rules of Civil Procedure as excuse for tardiness in filing); *Davidson v. Keenan*, 740 F.2d 129, 132

also strictly construed the excusable neglect standard in both Federal Rule of Appellate Procedure 4(a)[129] and Bankruptcy Rule 8002.[130] In particular, bankruptcy courts have consistently refused to find excusable neglect under Bankruptcy Rule 8002 in cases involving attorney inadvertence or negligence.[131] In addition, not all courts have agreed that "excusable neglect" under Rule 60(b)(1) requires a liberal interpretation.[132] Finally, the Supreme Court in *Lujan* referred to the excusable neglect obstacle as "the greatest of all" and based its assessment on the movant's culpability and the cause of the failure to comply, not on the equities or consequences of the failure.[133]

Even though these rules all include the phrase "excusable neglect," they may serve different procedural purposes that bear no connection to each other.[134] The Supreme Court in *Pioneer* justified its

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(2nd Cir. 1984) (finding no excusable neglect under Rule 6(b) when party failed to request an extension the moment he learned he would be unable to obtain an affidavit within the prescribed time); *McLaughlin v. City of LaGrange*, 662 F.2d 1385, 1387 (11th Cir. 1981) (finding no excusable neglect under Rule 6(b) when attorney filed motion four days late and claimed preoccupation with other matters).

129. Federal Rule of Appellate Procedure 4(a) provides, in pertinent part, "[a] district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal. . . ." F.R.A.P. 4(a)(5).

Under Rule 4(a), a court should allow an extention based on excusable neglect in only two situations: "(1) a finding that the party failed to learn of the entry of judgment, or (2) a finding of extraordinary circumstances, where excusing the delay is necessary to avoid an injustice." Harrill, 11 Bankr. Dev. J. at 210 (cited in note 88) (quoting *In re Tinnell Traffic Svs., Inc.*, 43 B.R. 280, 282 (Bankr. M.D. Tenn. 1984)).

130. Bankruptcy Rule 8002 provides, in pertinent part, that a "bankruptcy judge may extend the time for filing the notice of appeal . . . upon a showing of excusable neglect." F.R.B.P. 8002(c).

For cases strictly construing Bankruptcy Rule 8002, see, for example, *In re G. General Electro Components, Inc.*, 113 B.R. 122, 123 (Bankr. D. Conn. 1990) (stating strict limitations are placed on trial court in finding excusable neglect under Bankruptcy Rule 8002); *In re Dayton Circuit Court #2*, 85 B.R. 51, 54 (Bankr. S.D. Ohio 1988) (asserting that courts must strictly construe "excusable neglect" with regard to motions to extend time to appeal bankruptcy orders); *Tinnell Traffic Services*, 43 B.R. at 282 (stating that court must apply the strict standard of excusable neglect when extending time to file an appeal under Bankruptcy Rule 8002(c)).

131. See, for example, *In re Intl. Coating Applicators, Inc.*, 647 F.2d 121 (10th Cir. 1981) (finding no excusable neglect when attorney could not contact debtor because he mailed letters to incorrect address); *In re Bahre*, 30 B.R. 367 (Bankr. D. Conn. 1983) (finding no excusable neglect when attorney missed deadline because of other trial commitments); *In re Smith*, 38 B.R. 685 (Bankr. N.D. Ohio 1982) (finding no excusable neglect when attorney filed appeal in wrong court).

132. See Part III.B.

133. *Lujan*, 497 U.S. at 897. See notes 107-09 and accompanying text.

134. Federal Rule of Civil Procedure 6(b) and Bankruptcy Rule 9006(b) both regulate a court's discretion to enlarge the time for performing a specific act when the failure to perform the act within the original allotted time was the result of excusable neglect. Federal Rule of Civil Procedure 13(f) governs the filing of late counterclaims. Federal Rule of Appellate Procedure 4(a) and Bankruptcy Rule 8002 address the court's discretion to permit tardy filings of appeals. See Harrill, 11 Bankr. Dev. J. at 208 (cited in note 88) (questioning the relevancy of comparing Bankruptcy Rule 9006 with Federal Rules of Civil Procedure 6(b), 13(f), and 60(b)(1)).

liberal interpretation of "excusable neglect" under Bankruptcy Rule 9006 by arguing the policies underlying Chapter 11 and the Bankruptcy Rules require it.[135] The Court acknowledged, however, that the different purpose of a Chapter 7 bankruptcy would preclude such a liberal construction of the rules governing its proceedings.[136] Therefore, in determining whether to construe "excusable neglect" liberally under Rule 60(b)(1), the Court seems to imply that one must consider the goals of the rule, as well as how it interacts with other policies the legal system has traditionally supported. Although Rule 60(b)(1) is admittedly remedial in nature and reflects a desire to decide cases on the merits,[137] the rule should not serve as a shelter for attorneys or parties who fail to act with due diligence.[138] To condone such behavior under the excusable neglect standard in Rule 60(b)(1) would undermine the purpose behind the rule[139] and threaten fundamental policies in American jurisprudence such as ensuring finality of judgments, promoting judicial efficiency, deterring inappropriate behavior and holding clients accountable for the acts of their agent.[140]

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135. The Supreme Court argued that the purpose behind Chapter 11 is reorganization "with the aim of rehabilitating the debtor and avoiding forfeitures by creditors." To balance these interests, bankruptcy courts must necessarily exercise broad equitable powers. *Pioneer*, 507 U.S. at 389.

136. According to the Court, the purpose of a Chapter 7 liquidation is to close and distributo the debtor's estate promptly. Consequently, the rules governing Chapter 7 liquidations do not permit a flexible, liberal approach. Id. at 389.

137. See, for example, *Brien v. Kullman Industries, Inc.*, 71 F.3d 1073, 1077 (2nd Cir. 1995) (stating a preference for trial on the merits); *Meadows*, 817 F.2d at 521 (stating that Rule 60(b) is remedial in nature and should be applied liberally so as to decide cases on the merits when possible); *Johnson v. Garden State Brickface and Stucco Co.*, 150 B.R. 617, 619 (Bankr. E.D. Pa. 1993) (stating that court should resolve doubt in favor of trial on the merits).

138. See, for example, *Pryor*, 769 F.2d at 287 (stating that Rule 60(b)(1) relief is available only when a party has acted in constant due diligence with respect to her case); *C.K.S. Engineers*, 726 F.2d at 1205-06 (stating that a party is incapable of establishing excusable neglect when she has failed to conduct litigation with the degree of diligence and expediency dictated by the trial court).

139. Rule 60(b) was an attempt to codify and simplify the common law practice of reforming judgments under special circumstances. Wright, Miller and Kane, 11 *Federal Practice & Procedure* § 2851 at 227 (cited in note 2). Surely, the drafters could not have intended to create a mechanism through which attorneys and parties could disregard process or procedural rules without consequence.

140. See Purts V.B and V.C.

B. Plain Meaning of "Excusable Neglect"

To assert a plain meaning of "excusable neglect" may seem a bit presumptuous given the dramatic disagreements in the courts over its meaning. Regardless, one interpretation seems more plausible: Congress intended the words to be read in unison. On this logic, the Supreme Court in *Pioneer* was wrong. While the Court unquestionably presented a convincing definition of "neglect,"[141] the majority erred in asserting that a court must first answer the threshold question of whether neglect is present before it may assess whether the neglect is excusable.[142] In adopting such an approach, the Court disregarded the fact that the rules do not permit a court to extend relief on the basis of neglect, but only on the basis of "excusable neglect." Under the Court's analysis the word "excusable" becomes unnecessary, as Congress could have achieved the same result by allowing relief simply on the basis of "neglect."[143] By including the term "excusable," Congress must have intended to convey that some types of neglect were simply inexcusable, at least for the purpose of extending relief under the rules.[144]

In addition, through the use of other language, the drafters built discretion into the rule. Rule 60(b)(1) states, "the court *may* relieve a party . . . for excusable neglect."[145] The initial inquiry, therefore, should be whether the movant has made a showing of excusable neglect.[146] Only once a court has made this determination should it exercise its discretion, in light of the equities, and extend or deny

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141. The Court adopts *Webster's* definition, "to give little attention or respect" or "to leave undone or unattended to esp[ecially] through carelessness," as the ordinary meaning of "neglect." *Pioneer*, 507 U.S. at 388 (quoting *Webster's Ninth New Collegiate Dictionary* 791 (cited in note 98)).

142. Under the Supreme Court's analysis, a court must first assess whether a movant has made a showing of neglect. Only then must the court apply a liberal balancing test to determine if it is excusable. Id. at 394-95. As the *Pioneer* dissent notes, however, this approach is circular. By following the Court's two-part analysis, "excusable neglect" becomes neglect that in light of all the equities the court determines is excusable. Id. at 403 (O'Connor, J., dissenting). See also Part IV.B.

143. As the dissent indicates, this approach "reads the word 'excusable' right out of the Rule." *Pioneer*, 507 U.S. at 403 (O'Connor, J., dissenting). When possible, however, courts should avoid rendering language superfluous and adopt an intorpretation that gives meaning to all words in a statuto.

144. Otherwise, no justification exists for including "excusable" in the rules. Id. Courts that read Rule 60(b)(1) strictly adopt this interpretation and assume, at a minimum, that relief is unavailable for defaults occurring as a result of mere carelessness or negligence, regardless of the consequences. See Part III.B.

145. F.R.C.P. 60(b)(1) (emphasis added).

146. The dissent advocated this approach in *Pioneer*. See Part IV.B.

relief under the rules.[147] This interpretation of the plain meaning of "excusable neglect" gives meaning to all the words in Rule 60(b)(1).

C. Policy Concerns

Courts that narrowly define "excusable neglect" advance other policies the American legal system has traditionally supported. First, by adopting a bright-line rule and refusing to vacate default judgments occurring as a result of carelessness or negligence, courts are better able to achieve finality of judgments.[148] In addition, a narrow understanding of excusable neglect not only promotes judicial efficiency and the need for clear rules but also deters inappropriate behavior.[149] Finally, courts further the policy of holding clients accountable for the sins of their agents when they interpret "excusable neglect" strictly.[150]

1. Ensuring Finality of Judgments

A default judgment's exceptional nature mandates that courts faced with a motion to vacate carefully balance the competing policies of a need for finality of judgments and a preference for deciding cases on the merits.[151] At some point, however, litigation must be brought to an end. Finality of judgments is necessary to maintain order and predictability in the legal process, as well as to allow others to rely in good faith on a court's decision. Thus, courts should not reopen judgments on tenuous or insignificant grounds, simply because the movant so requests.[152] Instead, courts should carefully consider the

147. *Pioneer*, 507 U.S. at 403 (O'Connor, J., dissenting).

148. See Part V.C.1.

149. See Part V.C.2 and V.C.3.

150. See Part V.C.4.

151. See, for example, *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981) (stating that, faced with a request for relief under Rule 60(b)(1), a court must balance the interests of finality and the demands of justice); *Bankers Mortgage Co. v. United States*, 423 F.2d 73, 77 (5th Cir. 1970) (asserting that provisions of Rule 60(b)(1) must be interpreted so as to preserve the balance between the "sanctity of final judgments" and the desire that "justice be done in light of all the facts") (emphasis omitted); *Lloyd v. Carnation Co.*, 101 F.R.D. 346, 347 (M.D.N.C. 1984) (stating that the court must balance the interests of finality and the desire to decide cases on the merits).

152. While a default judgment is an extraordinary sanction, so too is a grant of a motion to vacate an extraordinary remedy. Courts should not grant such motions lightly. See, for example, *Seven Elves*, 635 F.2d at 401 (stating that judgments should not be lightly vacated); *Geigel v. Sea Land Service, Inc.*, 44 F.R.D. 1, 2 (D.P.R. 1968) (stating that courts should not grant motion for relief on insignificant gronnds or judgments will lack finality).

grounds on which relief is sought. If courts extend relief in cases concerning carelessness or negligence, they have difficulty in ever satisfactorily drawing the line of finality again.[153] Virtually all errors, at some level, are a result of carelessness or negligence.[154] By adopting a bright-line rule and declining to vacate default judgments occurring as a result of carelessness or negligence, however, courts are better able to draw a clear line of finality with reliable definiteness.[155]

2. Promoting Judicial Efficiency

When possible, courts should strive for interpretations that establish clear rules and promote judicial efficiency.[156] Such an approach ultimately benefits not only the parties by discouraging the waste of resources on unproductive appeals, but also the courts by rendering the law's application easier and more certain.[157] The Supreme Court's *Pioneer* decision undermines these interests. As the *Pioneer* dissent correctly noted, the Court's approach of determining whether a movant's neglect is excusable in light of all the equities creates an indeterminate balancing test whose results will often be called into question.[158] Since reasonable individuals often differ over what the equities require, *Pioneer* invites litigants who are unhappy with a lower court's application of the balancing test to seek a "second

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153. See *Pryor*, 769 F.2d at 288 ("Were this Court to make an exception to finality of judgment each time a hardship was visited upon the unfortunate client of a negligent or inadvertent attorney... courts would be unable to ever adequately redraw that line again, and meaningful finality of judgment would largely disappear.").

154. For example, ignorance of the law, grounds on which relief can be denied, reflects an attorney's failure to conduct himself in the manner of a reasonably prudent attorney by keeping abreast of all relevant laws and regulations. Were courts to grant relief on the basis of carelessness or negligence, an attorney or party who had committed a more grievous error for which relief would normally be denied could downplay the error and cast the mistake simply as negligent behavior. Such a result would undermine the purpose of Rule 60(b)(1).

155. Courts adopting a strict interpretation of "excusable neglect" under Rule 60(b)(1) recognize the need to accurately draw a line of finality at some point. See, for example, *165 Adele St.*, 850 F. Supp. at 538 (stating that to grant relief under Rule 60(b)(1) on the basis of negligence or carelessness would be an abuse of discretion given the need to draw a clear, objective line of finality at some point); *Pryor*, 769 F.2d at 288-289 (asserting that meaningful finality of judgment would disappear if the court were to grant relief under Rule 60(b)(1) on grounds of negligence).

156. See *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) ("The desirability for order and predictability in the judicial process speaks for caution in the reopening of judgments.").

157. In addition, when courts adopt a clear, bright-line rule, parties are provided with notice of the standards to which their behavior must conform. See Part V.C.3. Also, bright-line rules enhance the ability of a non-party to rely on a court's judgment.

158. *Pioneer*, 507 U.S. at 404 (O'Connor, J., dissenting). While the dissent predicts this indeterminacy will occur in the bankruptcy context, nothing indicates that the result would be any different with regard to default judgments.

opinion" in another court.[159] Not only does this render the law uncertain, but it also wastes the resources of both the parties and the court.

By adopting a stricter standard of excusable neglect and refusing to vacate default judgments occurring as a result of mere carelessness or negligence, the problems created by *Pioneer* are diminished. At a minimum, a stricter standard fails to condone mere carelessness or negligence under Rule 60(b)(1), requiring a litigant to make a stronger initial showing before a court may exercise any discretion in determining whether to extend relief.[160] As a result, the finding of carelessness or negligence becomes a question of fact, not of law, and the incentive to seek the "opinion" of a second court significantly decreases.[161] In the end, a stricter standard improves judicial efficiency and wastes fewer resources on unnecessary litigation.

3. Deterring Inappropriate Behavior

Deterring inappropriate behavior is an important premise in the American legal system.[162] In this respect, deadlines and default judgments play an important role in helping to maintain integrity in the legal system. While deadlines often give rise to unwelcome results, they induce individuals to act,[163] and they produce finality.

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159. As the dissent indicates, the *Pioneer* case itself evidences this phenomenon. Although all four courts rendering a decision in *Pioneer* applied virtually the same balancing test, two courts found Brunswick had made a showing of excusable neglect while two did not. Id. at 404 (O'Connor, J., dissenting). Such a result is not one courts should encourage in the context of default judgments as it undermines both the ability of individuals to rely on decisions and the need for finality of judgments.

160. Even once a party has made a showing of grounds on which Rule 60(b)(1) allows relief, a court may still exercise its discretion and refuse to vacate a default judgment if the equities so require. F.R.C.P. 60(b)(1) (providing that "the court *may* relieve a party . . . for . . . excusable neglect") (emphasis added). A plain meaning interpretation of excusable neglect also necessitates such a conclusion. See Part V.B.

161. The standard for overturning a determination of fact is much higher than the standard for overturning a determination of law. A reviewing court may overturn a determination of fact only if it is clearly erroneous. F.R.C.P. 52(a). The dissent in *Pioneer* notes that none of the reviewing courts or parties ever suggested that clear error was present. *Pioneer*, 507 U.S. at 408 (O'Connor, J., dissenting).

162. See, for example, Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 Wm. & Mary L. Rev. 5, 44 n.125 (1996) (commenting that deterrence is one of the "articulated current goals of [the American] legal system"); *Developments in the Law—Lawyers' Responsibilities and Lawyers' Responses: Shifting the Costs of Liability*, 107 Harv. L. Rev. 1651, 1674 (1994) (stating that deterrence is one of "the legal system's conflicting goals").

163. See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality."). See also *Carlisle v. United States*, 116 S. Ct. 1460, 1468, 134 L. Ed. 2d 613, 627 (1996) (quoting *United States v.*

Similarly, a court's power to enter a default judgment prompts all parties to act and adhere to timetables.[164] These tools are important to ensure that parties who are not earnestly pursuing their cases do not impede those who are.

Any definition of "excusable neglect" under Rule 60(b)(1) must be formulated with reference to these principles. Courts that adopt a liberal interpretation of "excusable neglect" and vacate default judgments on the basis of mere carelessness or negligence fail to take steps to prevent future negligent behavior by either the attorney or the client.[165] In circuits applying a strict interpretation and refusing to extend relief on grounds of carelessness or negligence, however, attorneys and parties are more likely to exercise the requisite level of diligence toward their cases.[166] The legal system can achieve this result and prompt attorneys and clients to act in a reasonably prudent fashion only if it defines "excusable neglect" by focusing on the types of conduct that should be deterred, and not on the consequences of a failure to comply with deadlines.[167]

4. Holding Clients Accountable for the Sins of Their Agents

Holding clients accountable for the acts and omissions of their freely selected agents is a long-established policy in American juris-

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Locke, 471 U.S. 84, 101 (1985)) ("If 1-day late filings are acceptable, 10-day late filings might be equally acceptable, and so on in a cascade of exceptions that would engulf the rule erected by the filing deadline; yet regardless of where the cuteff line is set, some individuals will always fall just on the other side of it."). Such a statement acknowledges that for deadlines to serve their purpose and produce finality, courts must enforce them. Otherwise, courts create a slippery slope problem that they can never effectively eliminate.

164. See *United States v. Di Mucci*, 879 F.2d 1488, 1495 (7th Cir. 1989) (stating that the threat of a dismissal is useful in eliciting action from the parties); *Sea Land Service*, 44 F.R.D. at 2 (stating that the power to invoke sanctions prevents unnecessary delays and avoids congestion in the dockets). The power to enter a default judgment or dismissal, however, is only effective in deterring behavior if courts exercise the power when the situation mandates and refuse te vacate on inappropriate grounds.

165. In this situation, neither the attorney nor the client has much incentive to act in due diligence with regard to litigation. If either misses a deadline or fails to comply with a discovery request, for example, relief is available and the party is given another chance.

166. At the very least, the attorneys and parties are on notice of the level of diligence expected from them.

167. The Supreme Court in *Pioneer* acknowledged that "excusable neglect" should be interpreted in such a way as te "deter crediters or other parties from freely ignoring court-ordered deadlines in the hopes of winning a permissive reprieve under Rule 9006(b)(1)." *Pioneer*, 507 U.S. at 395. As the dissent noted, however, the approach the Court adopted will not have this result. If the Court's desire is actually te deter noncompliance, then the focus should be on the cause of the failure to comply, not on the consequences, which should be irrelevant. Id. at 404 (O'Connor, J., dissenting).

prudence.[168] Any other policy would be inconsistent with a system of representative litigation.[169] Consequently, a party is deemed bound by the acts of his attorney, as well as charged with notice of any fact that can be charged to her counsel.[170]

This agency law policy supports the proposition that courts should adopt a strict understanding of "excusable neglect" and hold clients accountable for the negligent and careless acts of their attorneys. Most significantly, the policy serves as a deterrent and induces both the client and her attorney to act in accordance with a court's timetable.[171] If the law were to shield a client from the effects of her attorney's negligence by permitting courts to vacate default judgments arising as a result thereof, attorney negligence would become all too common.[172] Furthermore, a client would actually have an incentive to stay uninformed of her attorney's actions in the case.[173] Holding clients accountable for the negligent acts of their counsel, however, maintains integrity of process and ensures negligent parties do not

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168. See, for example, id. at 396 (stating that clients must be held accountable for the acts and omissions of their counsel); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-34 (1962) (holding that acts of a freely-chosen attorney must be charged to petitioner).

169. *Link*, 370 U.S. at 634.

170. See, for example, *Pioneer*, 507 U.S. at 396 (stating clients must be held accountable for the acts and omissions of their counsel); *Link*, 370 U.S. at 633-34 (holding that acts of freely chosen attorney must be charged to client); *Smith v. Ayer*, 101 U.S. 320, 326 (1879) (stating that a client must be charged with notice of all facts that can be charged to attorney).

Four arguments are generally offered in support of holding clients accountable for the sins of their attorney. First, a party who voluntarily chooses an attorney as her representative cannot subsequently escape the consequences of this freely chosen agent. See, for example, *Link*, 370 U.S. at 633-34 (holding that a client is bound by acts of her freely chosen agent); *7108 West Grand Ave.*, 15 F.3d at 634 (stating that under the law of agency, a client is bound by the acts of her chosen agent). Second, the policy helps to ensure that both attorneys and clients attend to the case in a reasonably prudent fashion by complying with all deadlines. See id. at 634 (stating that the policy ensures parties and attorneys take care to comply). Third, the policy aids in establishing finality of judgments. See *Pryor*, 769 F.2d at 288-89 (asserting that holding clients accountable for the negligent errors of their counsel aids in establishing a clear, objective line of finality). Finally, a truly deserving party who is prejudiced by her attorney's negligence can seek recourse in a malpractice suit. See, for example, *Link*, 370 U.S. at 634 n.10 (stating that client's remedy is against attorney in malpractice suit); *Johnson*, 35 F.3d at 1117 (noting that truly innocent litigants may seek remedy in suit for malpractice); *Pryor*, 769 F.2d at 289 (asserting proper recourse for client prejudiced by attorney's negligence is malpractice damages).

171. See note 170 and accompanying text.

172. See *7108 West Grand Ave.*, 15 F.3d at 634 ("If the lawyer's neglect protected the client from ill consequences, neglect would become all too common. It would be a free good—the neglect would protect the client, and because the client could not suffer the lawyer would not suffer either." (quoting *Tolliver*, 786 F.2d at 319)).

173. So long as any negligent conduct remains solely that of the attorney, relief would still be available to the client. As a result, clients would have an incentive to inquire only minimally about their own case.

prejudice or hinder other litigants.[174] Such a policy also encourages finality of judgments, which allows others to rely in good faith on a court's judgment.[175] Finally, by refusing to vacate a default judgment occurring as a result of an attorney's carelessness or negligence, a court would not eliminate the only means of redress available to an innocent party. An innocent client would still be free to seek damages in a malpractice action.[176]

VI. CONCLUSION

One court has described Rule 60(b) as a "valuable, equitable and humane" discretionary device that courts have been able to use to relieve an oppressed party from the burdens of judgments that were fraudulently, unfairly or mistakenly entered.[177] The court went on to say, however, that to use the rule to circumvent another rule would be a perversion of both the rule and its purpose.[178] This view accurately expresses the role that Rule 60(b)(1) should play in the legal system.

With Rule 60(b), the drafters attempted to both codify and simplify the equitable common law practice of reforming judgments under *special* circumstances. The drafters did not intend the rule to be, nor should it be, a license for parties and their counsel to disregard process or procedural rules with impunity, to fail to exercise due diligence in regard to litigation, or to impede the efforts of other litigants vigorously pursuing their cases. To condone such behavior makes a mockery of Rule 60(b) and unduly hinders other policies such as ensuring finality of judgments, promoting judicial efficiency, deterring inappropriate behavior, and holding clients accountable for the sins of their agents.

In this regard, circuits adopting a strict interpretation of "excusable neglect" recognize that Rule 60(b)(1) was not designed to excuse all types of error. At a minimum, the rule does not permit a court to vacate a default judgment occurring as a result of mere negli-

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174. By denying relief to parties and attorneys who failed to diligently pursue their own cause of action, courts would be able to keep their calendars free for parties and attorneys who were acting in a reasonably prudent fashion. See *Johnson*, 35 F.3d at 1117 (quoting *Stevens v. Greyhound Lines, Inc.*, 710 F.2d 1224, 1230 (7th Cir. 1983)) ("[Default judgments are useful in] ensur[ing] that litigants who are vigorously pursuing their cases are not hinderod by those who are not.").

175. See note 170 and accompanying text.

176. See note 170 and accompanying text.

177. *Edwards v. Velvac, Inc.*, 19 F.R.D. 504, 507 (E.D. Wis. 1956).

178. As a rosult, the court refused to vacate a default judgment on the basis of excusable neglect when the moving party had failed to file an appeal within the allotted time. Id.

gence or carelessness. Only by applying such an understanding of "excusable neglect" can courts sustain the integrity of Rule 60(b)(1), while at the same time maintaining the delicate balance with other policies traditionally advanced by the American legal system.

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