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UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA**

<p>In re JUDITH KAY BARNEY,</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 7 Proceedings</p> <p>Case No. 2-04-10226-PHX-CGC</p> <p>UNDER ADVISEMENT DECISION</p> <p>RE: TRUSTEE'S ORDER TO SHOW</p> <p>CAUSE AGAINST DONALD</p> <p>WEISENBURGER</p>
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The United States Trustee for the District of Arizona ("Trustee") filed an Application for an Order to Show Cause for: (1) Failure of Bankruptcy Petition Preparer to Comply with 11 U.S.C. § 110; (2) Order Compelling Disgorgement of Fees; (3) Imposition of Fines; and (4) Certification to the District Court against Donald Weisenburger. Mr. Weisenburger objected. The parties submitted a joint pretrial statement and the matter was heard on September 9, 2004.

Having considered the pleadings and the arguments presented at the evidentiary hearing, the Court sanctions Mr. Weisenburger \$4,000 and orders him to disgorge an additional \$200 in fees. Further, the Court finds that Debtor's bankruptcy case was dismissed as a result of Mr. Weisenburger's failure to file to prepare the required Statement of Social Security Number and that such failure was, at minimum, the result of Mr. Weisenburger's negligence such that the Court finds certification of this matter to the Arizona District Court pursuant to 11 U.S.C. section 110(i) appropriate.

Debtor Judith Kay Barney hired Mr. Weisenburger to help her prepare her bankruptcy documents back on August 1, 2003. At all relevant times with respect to their dealings, Mr. Weisenburger's business name was "Legal Assistance & Tax Service." Ms. Barney contended that Mr. Weisenburger told her to call him "Judge" and led her to believe he was a retired lawyer and judge. He denies such allegations but admits he has never been a lawyer or a judge, only a justice of the peace and in that regard people have referred to him as judge.

Debtor paid Mr. Weisenburger a total of \$918 to prepare her bankruptcy documents

1 and file various tax returns on her behalf. To say the least, the bankruptcy filing was not
2 expeditious, although the parties dispute the reasons why. Mr. Weisenburger contends the
3 delay was due to Debtor's failure to file tax returns for six years and her delay in getting him
4 all documents necessary for him to file the returns before filing for bankruptcy. Debtor
5 counters that the delay was due simply to Mr. Weisenburger not doing his job. Nonetheless,
6 the petition took over ten months to file from the time of their first meeting.

7 The case was dismissed soon thereafter by the Court because the documents were
8 incomplete. In particular, Mr. Weisenburger failed to prepare the Statement of Social Security
9 Number, as required by Bankruptcy Rule 1007(f). Debtor sought reinstatement and the case
10 was in fact reinstated on July 9, 2004.

11 In its application, and in the Joint Pretrial Statement, the Trustee seeks sanctions
12 totaling \$4,000 and disgorgement of the entire \$918 Mr. Weisenburger charged Debtor for his
13 services. At the hearing, however, the Trustee also requested the Court award an additional
14 \$2,500 in sanctions due to Mr. Weisenburger's failure to provide his social security number
15 on each document prepared for Debtor as required by 11 U.S.C. section 110(c). The total
16 sanctions sought, at this time, is \$6,500 plus disgorgement of the \$918 fee.

17 The Court will address each requested sanction separately.

18 1. 11 U.S.C. section 110(d).

19 The Trustee seeks sanction of \$2,500 for failing to comply with 11 U.S.C. section
20 110(d)(1) & (2), which requires a document preparer to furnish the debtor a copy of the
21 documents prepared at the time the filing is presented for the debtor's signature. According to
22 the Trustee, Mr. Weisenburger prepared five documents for Debtor's signature: (1) the
23 petition; (2) the schedules of assets and liabilities; (3) the statement of financial affairs; (4) the
24 statement of intention; and (5) the master mailing list. No copies were ever provided to
25 Debtor, and Mr. Weisenburger does not dispute this. His argument is simply that at the time
26 Debtor signed the documents his copy machine was broken. He contends that he told Debtor
27 she could pick them up from his office at a later time. Mr. Weisenburger's explanation falls
28 short of reasonable cause exception of subsection (d)(2).

1 Section 110(d)(1) places the burden on the document preparer to provide the debtor
2 with copies of all documents, stating that “[a] bankruptcy petition preparer shall, not later
3 than the time at which a document for filing is presented for the debtor’s signature, furnish the
4 debtor a copy of the document.” (Emphasis added). The fact that Mr. Weisenburger’s copy
5 machine may have been broken at the time Debtor signed her documents is of little import.
6 Mr. Weisenburger has no reasonable explanation for not subsequently mailing the documents
7 to Debtor or providing them to her at a subsequent meeting. Instead, he attempts to foist the
8 blame on Debtor. The Court finds for the Trustee and sanctions Mr. Weisenburger \$500 for
9 each such failure, for a total sanction of \$2,500.

10 2. 11 U.S.C. section 110(f).

11 The Trustee contends that Mr. Weisenburger violated section 110(f)(1) by using the
12 word “legal” in his business name – “Legal Assistance & Tax Service.” Again, the Court
13 agrees. The prohibition of section 110(f)(1) extends beyond merely the traditional notion of
14 advertising and includes operating under a name that includes the word legal, law, paralegal
15 and similar such terms. *See In re Avery*, 280 B.R. 523 (Bankr. D. Colo. 2002); *In re Gomez*,
16 259 B.R. 379 (Bankr. D. Colo. 2001) (holding that bankruptcy document preparer working
17 under trade name incorporating word paralegal and advertising such trade name violates
18 section 110(f)(1)); *In re Brokenbrough*, 197 B.R. 839 (Bankr. S.D. Ohio 1996) (holding
19 document preparer violated section 110(f) by conducting business under the name “Legal Aid
20 Services” and “Legal Aid Servs” and being listed in the white and yellow pages as such).
21 Holding oneself out as a provider of legal services is enough, as it is an advertisement at its
22 essence. Section 110(f) is designed to prevent debtors from believing they are in fact getting
23 legal advice. The document preparer must “steer clear from any suggestion that the preparer
24 will be offering legal services or insights.” *Id.* at 531.

25 Further, upon review by this Court of the 2004 edition of the Qwest Dex White Pages
26 for the Phoenix Metro area, Mr. Weisenburger’s business is advertised on page 311 as “Legal
27 Assistance & Tax Service” and located at the address used by Mr. Weisenburger on all his
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1 pleadings before this Court.¹

2 In addition, the Court finds Mr. Weisenburger's prior promise to the Trustee's office
3 to stop using the word legal in his business name for the very reason alleged here telling. Mr.
4 Weisenburger's willingness to change his name to "Bankruptcy Document Preparation by
5 Donald Weisenburger" is nearly an acknowledgement that the name may in fact be in violation
6 of subsection (f). At minimum, it shows he had notice as far back as 1997 that the Trustee's
7 office believed his trade name violated section 110(f).

8 Mr. Weisenburger states that he is entitled to use the word legal in this way because he
9 is certified by the Arizona Supreme Court. This is disingenuous. The Arizona certification
10 requires only that document preparer include his or her name and the title "Arizona Certified
11 Legal Document Preparer" or "AZCLDP on all legal documents prepared. It does not grant
12 permission to the document preparer to do business under a trade name including the word
13 legal. For this violation, the Court fines Mr. Weisenburger \$500.

14 3. 11 U.S.C. section 110 (g).

15 The Trustee also alleges that Mr. Weisenburger violated subsection (g)(1) by collecting
16 a payment from Debtor for the court fees necessary to file the petition and by, in fact, filing
17 the various bankruptcy documents with the Court on Debtor's behalf. Mr. Weisenberg does
18 not really dispute these allegations, but states that he filed the documents himself only because
19 Debtor was unable to due to her health. Debtor does not confirm this allegation, but it is of
20 no import. Such filing is improper and no exception exists. Mr. Weisenburger further
21 contends that he did not receive any money from Debtor to pay the filing fee, but instead used
22 the \$200 bankruptcy preparation fee he received from Debtor to pay the filing fees, in effect
23 paying the fees out of his own pocket because Debtor could not afford the filing fees.

24 Clearly, however, Mr. Weisenburger violated section 110(g)(1) by controlling the
25 filing of the bankruptcy and the related documents. This is the essence of what subsection

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27 ¹Judicial notice of this fact is appropriate under Rule 201 of the Federal Rules of Evidence.
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1 (g)(1) seeks to prevent. *See In re Green*, 197 B.R. 878 (Bankr. D. Ariz. 1996) (stating that
2 section 110(g) generally allows a document preparer to act only at the direction of the debtor
3 but cannot give advice or act on behalf of the debtor, including interacting with the court on
4 debtor's behalf); *see also In re Wallace*, 227 B.R. 826 (Bankr. S.D. Ind. 1998) (holding that
5 document preparer is prohibited from delivering documents to bankruptcy court on behalf of
6 debtor). For this violation, the Court sanctions Mr. Weisenburger \$500.

7 4. 11 U.S.C. section 110(h).

8 Next, the Trustee complains that Mr. Weisenburger failed to accurately disclose under
9 section 110(h)(1) all fees he received from Debtor within the twelve months preceding the
10 filing of her petition. Mr. Weisenburger did in fact file such a declaration, he disclosed only
11 the receipt of \$200 and did not disclose the additional \$718 he says he charged Debtor for
12 preparing six years of her tax returns. Mr. Weisenburger does not dispute this. He simply
13 argues that the only fees related to the bankruptcy filing was the \$200 he charged within the
14 limits set by the Supreme Court. Subsection (h)(1) makes no distinction between fees related
15 solely to the bankruptcy filing and any other fees charged. It simply states that the document
16 preparer "shall file a declaration under penalty of perjury disclosing *any fee* received from or
17 on behalf of the debtor within 12 months immediately prior to the filing of the case."
18 (Emphasis added). Again, the Court finds sanctions of \$500 appropriate.

19 5. 11 U.S.C. section 110(c).

20 Although not raised by the application itself, the Court will nonetheless address the
21 Trustee's request for sanctions of \$2,500 for Ms. Weisenburger's failure to include on each
22 document his social security number as his identifying number in violation of subsection c.
23 The Court finds Mr. Weisenburger's explanation convincing and sufficient to establish
24 reasonable cause for his noncompliance. As Mr. Weisenburger testified, use of social security
25 numbers as personal identification numbers frequently can lead to a myriad of problems,
26 including identity theft. As he testified, his use of his social security number on his client's
27 bankruptcy documents has resulted in those clients' bankruptcies appearing on his credit
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1 report. Further, instead of using his social security number, Mr. Weisenburger used his
2 *Arizona document preparer certification number issued by the State.* This number clearly
3 identifies who he is and provides a sufficiently reliable method of identifying him for the
4 purposes of subsection (c). The text of section 110(c) is out of step with current developments
5 on privacy of social security numbers. The statute's permissive language contemplates that a
6 Court may decline to assess sanctions. Therefore, the Trustee's request for \$2,500 in
7 sanctions on this ground is denied.

8 6. Disgorgement.

9 Last, monetarily, the Trustee seeks disgorgement of the entire \$918 fee (less the \$209
10 filing fee) charged by Mr. Weisenburger in this case on the grounds that the documents
11 prepared were incomplete, in that they failed to include the required Statement of Social
12 Security Number resulting in dismissal of Debtor's case for a time, and contained incorrect
13 information. In addition, Debtor suffered a ten month delay in getting her case filed, for
14 which the Court holds Mr. Weisenburger primarily liable. The Court agrees that a portion of
15 the fees should be disgorged. However, the Court believes Mr. Weisenburger should disgorge
16 only that portion actually charged to prepare the bankruptcy documents - the \$200. The
17 remaining \$718 was charged to prepare her tax returns. Whether this amount was reasonable
18 or not is outside this Court's jurisdiction and there has been no evidence provided that the tax
19 returns were done poorly or incorrectly.

20 7. Certification.

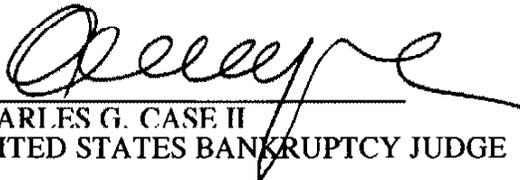
21 In addition to sanctions, he Trustee seeks certification to the Arizona District Court
22 pursuant to section 110(i) to determine whether Mr. Weisenburger's actions resulting in the
23 dismissal of Debtor's case justify an additional damage award for Debtor. The Court grants
24 such certification. Mr. Weisenburger's failure to file the requisite Statement of Social Security
25 Number was due solely to his own failure to keep up to date on the required bankruptcy
26 filings, thereby falling below the rather simple standard of care he must abide by as a
27 document preparer. He acknowledged that his software was out of date and that he was
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1 unaware of the social security number requirement.

2 Therefore, the foregoing reasons, the Court sanctions Mr. Weisenburger \$4,000 and
3 orders him to disgorge an additional \$200 he received in fees from Debtor for his violations of
4 11 U.S.C. section 110. In addition, the Court certifies this matter to the District Court
5 pursuant to 11 U.S.C. section 110(i). The Trustee is to submit a form of order consistent with
6 this decision for the Court's signature.

7 So ordered.

8 DATED: Sept 20, 2004

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11 
12 CHARLES G. CASE II
13 UNITED STATES BANKRUPTCY JUDGE

14 COPY of the foregoing mailed or sent
15 via facsimile this 20th day of
16 September, 2004, to:

17 Donald Weisenburger
18 18010 N. 42nd Place
19 Phocnix, Arizona 85032

20 Judith Kay Barney
21 C/O Jackie Aguirre
22 3037 W. Dahlia Drive
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24 Debtor

25 Maureen Gaughan
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