

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: November 30 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: ) Case No. 05-71228  
)  
Ronotta R. Scott, ) Chapter 7  
)  
Debtor. )  
) JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION REGARDING MOTION TO REVIEW FEES AND SERVICES RENDERED BY BANKRUPTCY PETITION PREPARER**

This matter is before the court on a Motion to Review Fees and Services Rendered by Bankruptcy Petition Preparer (the “Motion”) filed by the United States Trustee (“UST”). [Doc. # 9]. The motion seeks an order directing bankruptcy petition preparer Michelle Sawyer (“Sawyer”) to disgorge the fee she charged in this case, arguing that the fee was excessive and that Sawyer’s collection of the fee violated Fed. R. Bankr. P. 1006(b)(3). A hearing on the Motion was held on November 29, 2005.<sup>1</sup> Counsel for the United States Trustee appeared in person. There was no appearance by or on behalf of Sawyer.

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<sup>1</sup> The UST filed nearly identical motions against Michelle Sawyer in three other cases pending in this court, hearings on which were also held on November 29, 2005. Separate orders will be entered by the court in each case.

This court has jurisdiction over this Chapter 7 bankruptcy case under 28 U.S.C. §§ 1334 and 157 and the general order of reference entered in this district. The Motion is a contested matter and a core proceeding that this court may hear and determine under 28 U.S.C. § 157(b)(2)(A). This Memorandum of Decision constitutes the court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7052. The court has reviewed the Motion and the entire record in the case. Based upon that review, and for the following reasons, the Motion will be granted.

### **FACTUAL BACKGROUND**

On September 30, 2005, Debtor filed a *pro se* petition under Chapter 7 of the Bankruptcy Code. The petition discloses that Sawyer prepared Debtor's petition and that she is a bankruptcy petition preparer as defined in 11 U.S.C. § 110. [Doc. # 1, Petition, p. 2]. On that same date, a Petition Preparer Disclosure of Compensation, signed by Sawyer on September 27, 2005, was filed, disclosing that Sawyer charged Debtor \$350.00 for document preparation services, that \$175 had been received by Sawyer by that date and that there was a balance due of \$175.00. [Doc. # 2]. Also on September 30, 2005, Debtor filed an application to pay her filing fee in installments, [Doc. # 3], which the court granted. Debtor paid her final filing fee installment payment on November 18, 2005.

Debtor's bankruptcy schedules show no real property, three line items of personal property totaling only \$2,795, minimal secured debt, no unsecured priority debt, three pages of unsecured debt with such debt totaling \$11,358, and minimal income. All but two of the questions in Debtor's Statement of Financial Affairs are answered by checking the box for "none."

### **LAW AND ANALYSIS**

Section 110 of the Bankruptcy Code provides a mechanism for court oversight of bankruptcy petition preparers in an attempt to "address the growing problem of bankruptcy [petition] preparers who abuse the system in the course of preparing documents for the debtors to file." *In re Alexander*, 284 B.R. 626, 630 (Bankr. N.D. Ohio 2002) (quoting 2 Lawrence P. King, *Collier on Bankruptcy* ¶ 110.LH (15<sup>th</sup> ed. 2001). There is no dispute that, at the time Debtor's petition was prepared, Sawyer was a non-attorney bankruptcy petition preparer as defined in 11 U.S.C. § 110(a)(1).<sup>2</sup> With respect to a bankruptcy petition preparers' fees, § 110 authorizes the court to "disallow and order the immediate turnover to the bankruptcy trustee of any fee . . . found to be in excess of the value of

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<sup>2</sup> "Bankruptcy petition preparer" is defined to mean "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing." 11 U.S.C. § 110(a)(1). "Document for filing" means "a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title." 11 U.S.C. § 110(a)(2).

services rendered for the documents prepared.” 11 U.S.C. § 110(h)(2). “[T]he person seeking fees has the burden of establishing that he or she is entitled to them once a question regarding their reasonableness has been raised.” *Id.* at 634 (quoting *In re Kathy Froehlich*, 23 Fed. Appx. 572, 574, 2001 WL 1530594 (7<sup>th</sup> Cir. 2001)).

This court addressed the reasonableness of fees charged by a bankruptcy petition preparer in several previous cases. *See Alexander*, 284 B.R. 626; *In re Haney*, 284 B.R. 841 (Bankr. N.D. Ohio 2002); *In re Winnick*, Case No. 04-30532 (Bankr. N.D. Ohio March 21, 2005), available at <http://ohnb-web>. Although such determinations must be made on a case by case basis, *see Alexander*, 284 B.R. at 636, these cases are for the most part indistinguishable from this case. In *Alexander* and *Haney*, the court considered, as a starting point, the services that a bankruptcy petition preparer is legally permitted to provide. The court concluded that, given the Ohio Supreme Court’s expansive definition of what constitutes the unauthorized practice of law, such services are “limited to providing forms, providing limited information such as court location and filing fees, typing documents from information provided by debtors, compiling them in proper order and providing duplication services.” *Id.* at 635; *Haney*, 284 B.R. at 851; *see also Cleveland Bar Assoc. v. Baron*, 106 Ohio St. 3d 259 (2005) (finding bankruptcy petition preparer engaged in the unauthorized practice of law by providing legal advice); *Ohio State Bar Assoc. v. Cohen*, 107 Ohio St. 3d 98 (2005) (same). After considering, among other things, the range of fees (\$450 - \$925) charged by attorneys representing debtors in Chapter 7 cases in this court and the fact that such fees include significant services that a petition preparer cannot provide under either Ohio law or the Bankruptcy Code, such as counseling, legal strategy and analysis, exemption analysis and selection, contact with creditors, contact with the trustee, and appearance at the first meeting of creditors, the court found that the maximum value of the permitted services provided by the bankruptcy petition preparer was \$200. In both *Alexander* and *Haney*, the schedules and statement of affairs showed the cases to be “the essence of routine,” as debtors had no real property, limited personal property, and debts that were not unusual in kind or number, and the bankruptcy petition preparer offered no evidence supporting a fee greater than \$200. *Alexander*, 284 B.R. at 637; *Haney*, 284 B.R. at 853.

The court’s review of Debtor’s schedules in this case reveals nothing unusual that would remove it from the routine case described in *Alexander* and *Haney*. Debtor’s schedules report no real property, personal property totaling only \$2,795 and unsecured debt that is unusual in neither kind nor number of creditors. Sawyer did not appear and has offered, and the court finds, nothing that suggests any factor exists adding additional value to her services over and above the \$200 that the court has previously determined represents the maximum value of a bankruptcy petition preparer’s

services for a routine Chapter 7 petition. Finding no evidence in the record supporting a higher fee, the court finds that the value of the services rendered by Sawyer to Debtor is \$200.

Although § 110(h) only requires Sawyer to turnover any fee in excess of the value of her services, the UST requests disgorgement of the entire fee collected by her in light of Sawyer's violation of Fed. R. Bankr. P. 1006(b)(3). At the time Debtor's petition was filed, that rule provided as follows<sup>3</sup>: "The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney *or any other person* who renders services to the debtor in connection with the case." Fed. R. Bankr. P. 1006(b)(3)(emphasis added).

There is no question that Sawyer knew the filing fee was not yet paid when she accepted Debtor's \$175 payment installment against a total fee of \$350. She had prepared the Application to Pay Filing Fee in Installments and Debtor's final installment payment of her filing fee was not paid until November 19, 2005, in accordance with the Application. Sawyer's clear violation of Rule 1006(b)(3) is an alternative grounds for disgorgement of fees. *See In re Castorena*, 270 B.R. 504, 517 (Bankr. D. Idaho 2001); *In re Campanella*, 207 B.R. 435, 450 (Bankr. E.D. Pa. 1997); *In re Ali*, 230 B.R. 477, 483 (Bankr. E.D.N.Y. 1999). This court, as well as other courts, has found that a violation of Rule 1006(b)(3) is grounds for disgorgement of the entire fee paid to the petition preparer. *See Winnick*, Case No. 04-30532 (Bankr. N.D. Ohio 2005); *Foulston v. Jones (In re Robinson)*, 162 B.R. 319, 326 (Bankr. D. Kan. 1993) (finding requirement to disgorge all fees was supported by defendants' actions in assisting the debtors in preparing applications to pay their filing fees in installments in violation of Rule 1006(b)(3)). Based on the evidence before it, the court finds that Sawyer should be required to disgorge the entire fee received from Debtor in this case, and that to the extent that Debtor has not paid the \$175 balance due on her agreement with Sawyer, she shall be relieved of the obligation to pay that additional amount.

### CONCLUSION

Based on the foregoing reasons and authorities, the court will grant the Motion and order Sawyer to turnover to Debtor any fees collected from her in this case.<sup>4</sup> A separate judgment and

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<sup>3</sup> Interim Bankruptcy Rules apply to cases filed on or after October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Interim Bankruptcy Rule 1006(b)(3) provides that "[a]ll installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payment to an attorney or any other person who renders services to the debtor in connection with the case."

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Although § 110(h)(2) provides that excessive fees be turned over to the bankruptcy trustee, it also provides that an individual debtor may exempt any funds so recovered under 11 U.S.C. § 522(b). The UST requests the court to order the excessive fees in this case to be turned over to Debtor, which the court finds appropriate given Debtor's minimal assets and the unused exemptions that would be applicable to such funds.

order in accordance with this Memorandum of Decision will be entered by the clerk.

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Ohio Revised Code. § 2329.66.