

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 01-03297-CH
RALPH L. JONES and	:	
JODI A. JONES,	:	
	:	Chapter 7
Debtors.	:	
	:	

ORDER—SANCTIONS PURSUANT TO 11 U.S.C. § 110

On October 15, 2001, the court held a hearing to show cause why sanctions pursuant to 11 U.S.C. § 110 should not be imposed. Jodi Cory appeared without counsel and stated that she did not wish to be represented by counsel. Debtors Ralph L. Jones and Jodi A. Jones appeared without counsel. At the conclusion of the hearing, the court took the matter under advisement. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1) & 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Upon review of the pleadings, evidence, and argument, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

FACTS

1. Debtors filed for protection under chapter 7 of the Bankruptcy Code on June 28, 2001. Debtors' schedules reveal three family members. Jodi Jones is employed outside the home as a clerk at Iowa State University with a gross monthly income of

\$2,360.00. Ralph Jones is employed as a laborer with a gross monthly income of \$740.00. They have a son aged eighteen years.

2. Jodi Cory signed the petition as a non-attorney petition preparer on June 8, 2001.

3. Along with their bankruptcy petition, on June 28, 2001, Debtors filed an application to pay the filing fee in installments. They signed the application on June 8, 2001.

4. The application provided for payment in four installments with the last payment to be made on or before August 24, 2001.

5. Jodi Cory signed the application to pay filing fees in installments on June 8, 2001. The certification and signature of Jodi Cory stated that she prepared the documents for compensation. She further certified as follows:

"I also certify that I will not accept money or any other property from the debtor before the filing fee is paid in full."

6. The court entered an order granting the application to pay filing fees in installments on July 2, 2001.

7. Paragraph 2 of said order provides as follows:

"Until the filing fee is paid in full, the debtor(s) shall not pay, and no person shall accept, any money for services in connection with this case, and the debtor(s) shall not relinquish, and no person shall accept, any property as payment for services in connection with this case."

8. On July 2, 2001, the court also issued an order to Debtors to amend

Schedules D and F because said schedules were incomplete as filed. Debtors were to comply with this order within 15 days of the filing of the order. Debtors complied with this order on July 16, 2001, after having signed the same on July 10, 2001.

9. Debtors failed to comply with the order granting the application to pay filing fees in installments when they failed to make full payment of the filing fees on or before August 24, 2001.

10. On August 30, 2001 the court entered its order to show cause why the case should not be dismissed and any discharge entered in the interim since Debtors failed to comply with the order concerning the payment of the filing fee in installments.

11. The order required Debtors to appear on September 10, 2001.

12. Debtors appeared without counsel on September 10, 2001. Debtors advised the court that a bankruptcy petition preparer, Jodi Cory, had prepared the petition, schedules, statements, and application to pay the filing fee in installments. They also advised the court that the bankruptcy petition preparer had received compensation prior to the payment of the filing fees in full.

13. The court then issued its order of September 14, 2001 (DN 16) requiring Jodi Cory to appear on October 15, 2001, and show cause why the sanctions of 11 U.S.C. § 110 should not be imposed.

14. Jodi Cory caused business cards to be printed. (Exhibits 1 and 2). She gave these cards to friends and acquaintances.

15. Jodi Jones became aware of Jodi Cory's services through an acquaintance at work when she received one of these business cards. She then contacted Jodi Cory.

16. Jodi Jones brought her financial papers to Jodi Cory and on May 4, 2001, paid Jodi Cory \$140.00. (Exh. 2, Back)

17. Jodi Cory prepared the chapter 7 petition, schedules, statements and the application to pay filing fee in installments which Jodi and Ralph Jones signed on June 8, 2001.

18. Jodi Cory refused to file the petition until she had been paid \$300.00 in full.

19. Jodi Jones eventually paid Jodi Cory \$300.00 plus \$10.00 as part of the filing fee.

20. Jodi Jones was to receive her paycheck on June 15, 2001, but she only received a partial check because of garnishment deductions taken out by her employer. Debtors did not have enough money to pay their rent and other living expenses, and the family was about to be evicted.

21. Jodi Jones thought that the chapter 7 petition had been filed and attempted to contact Jodi Cory. Jodi Cory would not respond to Jodi Jones' inquiries about the status of the filing, and Jodi Jones finally sent a certified letter to Jodi Cory on June 22, 2001. (Exh. 3)

22. Debtors had to borrow \$500.00 from their daughter to pay the rent so that the family would not be evicted.

23. Jodi Cory filed the petition and schedules on June 28, 2001. A partial filing fee of \$10.00 was paid at that time.

24. Sometime thereafter Jodi Cory delivered a copy of the petition, schedules, and statements to Debtors. (Exh 4)

25. At the time that Jodi Cory delivered the copy of the petition to Debtors, the filing stamp receipt had been altered by excising the date, time, and place of filing from the receipt. (Exh 4)

26. Jodi Cory removed the receipt from Debtors' copy of the petition, cut the receipt so that the date, time, and place of filing were removed, and then glued the altered receipt back on the face of the petition.

DISCUSSION

This matter comes before the court on its order to show cause why sanctions pursuant to 11 U.S.C. § 110 should not be imposed on Jodi Cory for her actions and omissions in the above caption case. In particular, Cory improperly accepted funds for filing fees; failed to disclose fees received for her services; prepared the statement of financial affairs indicating that Debtors had not made any payment for the preparation of the bankruptcy petition; failed to provide Debtors with copies of all the documents that she prepared at the time she presented them for signature; and prepared and submitted an application to pay filing fees in installments after receiving payment for preparing the petition contrary to Fed. R. Bankr. P. 1006(b)(3).

The court finds that Cory violated various provisions of 11 U.S.C. § 110. For the following reasons, sanctions are appropriate.

As part of the Bankruptcy Reform act of 1994, Congress added § 110 to the Bankruptcy Code. The purpose of § 110 is to protect consumers from abuses by non-

attorney bankruptcy petition preparers. Consumer Seven Corp. v. United States Trustee (In re Fraga), 210 B.R. 812, 816-17 (B.A.P. 9th Cir. 1997). The rationale beyond the enactment of § 110 was explained in a House of Representatives report:

Bankruptcy petition preparers not employed or supervised by any attorney have proliferated across the country. While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.

H.R. Rep. 103-834, 103rd Cong., 2nd Sess. At 40-42 (Oct.4, 1994): See also In re Farness, 244 B.R. 464, 466-67 (Bankr. D. Idaho 2000).

The Bankruptcy Code defines a “bankruptcy petition preparer” as “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). A “document for filing” is 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 title 11. 11 U.S.C. § 110(a)(2).

Clearly, Cory is a bankruptcy petition preparer as envisioned by the statute. It is uncontroverted that she prepared Debtor’s petition, schedules, statement of intention, statement of financial affairs, and application to pay filing fee in installments. Cory identified herself as a bankruptcy petition preparer by signing the petition, schedules, statements, and application to pay filing fee in installments as such. Further, she utilizes business cards identifying her as a form preparer specializing in chapter 7 bankruptcy.

Section 110(d)(1) requires a bankruptcy petition preparer to provide the debtor with copies of the documents at or before the time that they are presented to the debtor for signature. Section 110(d)(2) provides that failure to comply with the above provision may result in a fine of not more than \$500.00 for each failure, unless the failure is due to a reasonable cause.

“Reasonable cause” to violate the statute exists “where the violation is unavoidable through no fault of the violator.” United States Trustee v. Womack (In re Paskel), 201 B.R. 511, 518 (Bankr. E.D. Ark. 1996). “Ignorance of the law does not constitute reasonable cause.” Id.

The court finds that Cory failed to comply with § 110(d)(1). The record indicates that she presented the documents to Debtors for signature on June 8, 2001. Debtors did not receive copies of the documents until sometime after June 28, 2001. Cory did not offer evidence of reasonable cause for her failure to comply with the provision. The court finds that sanctions are appropriate.

Section 110(g) prohibits a bankruptcy petition preparer from collecting a payment for filing fees in connection with filing the petition. Unlike paragraph (d), paragraph (g) does not provide the “safe harbor” for reasonable cause. Any violation of the section shall be subject to a fine of not more than \$500.00.

Debtors provided evidence showing that they paid Cory \$310.00 for preparation of their bankruptcy documents and for the first installment of the filing fee. On January 28, 2001, Cory filed the documents on behalf of Debtors and paid the first fee installment of \$10.00 according to the proposed payment schedule.

The court finds that Cory received a payment from Debtor for the fee for filing her bankruptcy petition in violation of § 110(g)(1). Accordingly, the court shall impose an appropriate sanction.

Section 110(h) requires a bankruptcy petition preparer to file a declaration disclosing any fee received from and any unpaid fee charged to a debtor. This declaration must be filed within 10 days of the filing of the bankruptcy petition. 11 U.S.C. § 110(h)(1). The court is required to disallow and order the immediate turnover of any amount that it finds to be in excess of the value of the services rendered by the preparer. 11 U.S.C. § 110(h)(2). The debtor may exempt any of the funds recovered. Id. If the bankruptcy petition preparer fails to comply with the court's turnover order within 30 days of its entry, he or she shall be fined not more than \$500.00 for each failure.

Jodi Jones took financial papers to Cory, and on May 4, 2001 paid her \$140.00. Cory refused to file the bankruptcy petition and required documents until she received payment in full for her services. However, she led Debtors to believe, that contrary to Fed. R. Bankr. P. 1006(b)(3), they were permitted to pay filing fees in installments and prepared an application for that purpose. On May 26, 2001, Debtors paid Cory the balance of her preparation fee. Debtors believed that the documents would be filed shortly thereafter and garnishment of their wages would cease. However, deductions continued to be deducted from Jodi Jones's paycheck causing the family continued financial distress. Debtors were unable to purchase groceries and pay rent. They faced eviction and had to borrow funds to pay the rent.

On June 22, 2001, after Debtors sent a certified letter demanding the bankruptcy documents be filed and threatening to contact the county attorney. In response, Cory filed their petition and schedules. She then altered the receipt that the clerk's office affixed to Debtors' copy to remove the date, time, and place that the petition was filed in an attempt to deceive Debtors into believing that the documents were filed much earlier.

The court finds that Cory was negligent in failing to file the bankruptcy documents in a timely manner. The court notes that when filed, the schedules were incomplete and required amendment. Further, Cory ignored Fed. R. Bankr. P. 1006(b)(3)'s proscription against Debtors paying her before paying the filing fee in full. Cory's actions contributed to Debtors' discharge being placed in jeopardy and their bankruptcy case dismissed. Debtors were required to attend two additional hearings and made two round trips from their home in Nevada, Iowa to Des Moines. They lost wages for those days and incurred travel expenses.

The court finds that each of the hearings was a direct result of Cory's actions and in particular her violation of the provisions of § 110. Further, any expense debtors incurred in goading Cory into filing the bankruptcy or caused by the delay in the filing petition can be attributed to Cory. Therefore, the court finds that Cory's services proved of no value to Debtors, and the full sum paid is excessive. See In re Paskel, 201 B.R. at 518 (total amount of fee was in excess of the value received because although petition preparer in fact prepared the documents, his actions accomplished little benefit and harmed the debtor). Because the chapter 7 trustee has filed a notice of no assets and abandonment, the court finds that Cory should return all the fees to Debtor.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. A fine in the amount of \$100.00 is hereby imposed upon Jodi Cory, pursuant to 11 U.S.C. § 110(d), for failure to provide copies of the bankruptcy documents not later than the time at which the documents were presented for the debtors' signatures. The fine is payable to the Clerk of Court, United States Bankruptcy Court, Southern District of Iowa, P.O. Box 9264, Des Moines, Iowa 50306-9264.

2. A fine in the amount of \$100.00 is hereby imposed upon Jodi Cory, pursuant to 11 U.S.C. § 110(g), for receiving a payment from Debtors Jodi A. Jones and Ralph I. Jones for court fees in connection with the filing of a bankruptcy petition. The fine is payable to the Clerk of Court, as set forth in paragraph 1 above.

3. Jodi Cory, pursuant to 11 U.S.C. § 110(h)(2) shall turn over to Debtors Jodi A. Jones and Ralph L. Jones the sum of \$300.00 which represents the fee paid by Debtors to Jodi Cory. Jodi Cory is advised that pursuant to 11 U.S.C. § 110(h)(4), the failure to turn over this sum within 30 days of the service of this order shall result in a fine of not more than \$500.00.

4. The fines shall be paid within 45 days of the filing of this order. Failure to pay the fines within this time period could cause an order to issue requiring Jodi Cory to appear and show cause why she should not be punished for contempt of court.

RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT