

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

In re:	:	Case No. 00-2157-CH
JEANNIE ANN SUTHERLAND f/k/a	:	
JEANNIE ANN POOLE,	:	
	:	Chapter 7
Debtor.	:	
	:	

**ORDER—MOTION FOR ASSESSMENT OF FINES AGAINST HEIDI L. VOSS
aka HEIDI L. SINN FOR VIOLATIONS 11 U.S.C. § 110 AND FOR REVIEW OF
FEES AND RESPONSE THERETO**

On August 6, 2001, a hearing was held on the United States Trustee’s (hereinafter UST) Motion for Assessment of Fines Against Heidi L. Voss aka Heidi L. Sinn for Violations 11 U.S.C. § 110 and for Review of Fees and Heidi L. Voss’s Response Thereto. Assistant United States Trustee James L. Snyder represented Region 12 United States Trustee Barbara G. Stuart. Debtor Jeannie A. Sutherland appeared pro se. Heidi L. Voss aka Heidi L. Sinn did not appear. 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) and § 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. On June 15, 2000, Jeannie Ann Sutherland (hereinafter Debtor) filed a petition for relief under chapter 7 of title 11, the Bankruptcy Code. Debtor's petition indicated that it was prepared without assistance of an attorney or a bankruptcy petition preparer.

2. Along with her bankruptcy petition, Debtor filed an application to pay the filing fee in installments. Debtor proposed paying \$0 upon filing the petition, \$50.00 on July 14, 2000, \$50.00 on August 13, 2000, \$50.00 on September 12, 2000, and \$50.00 on October 10, 2000.

3. The name Jeannie Ann Sutherland appears on the signature line of the application to pay filing fee in installments.

4. The application to pay filing fee in installments provides a section titled "CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION (see 11 U.S.C. § 110)." The section provided for the disclosure of the name, address, social security number, and signature of the bankruptcy petition preparer. The section contains the following statement: *"A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156."*

5. On June 16, 2000, the court entered an order granting Debtor's application to pay filing fees in installments.

6. Debtor made two installment payments, the first on September 13, 2000, in the amount of \$50.00 and the second on October 10, 2000, in the amount of \$50.00.

7. On the November 6, 2000, the court entered an Order to Show Cause Why Case Should Not Be Dismissed and Any Discharge Entered in the Interim Revoked. In its show cause order, the court directed Debtor to appear and explain her failure to make the proposed fee installment payments.

8. On November 14, 2000, Debtor appeared pursuant to the show cause order. Debtor appeared without counsel. During the hearing, Debtor advised the court that a bankruptcy petition preparer prepared the petition, schedules, statements and application to pay the filing fee in installments. The bankruptcy petition preparer received compensation for the service.

9. Debtor identified the bankruptcy petition preparer as Heidi L. Voss. Debtor presented the court with a copy of an envelope addressed to Debtor from Voss Paralegal Services; a copy of a receipt, No. 083713, for \$40.00 paid by Debtor to Voss Paralegal Services and dated June 11, 2000, containing a hand written notation "H.L. Voss;" a copy of a receipt, No.133801, for \$310.00 to Voss Paralegal Services showing a remaining balance of \$140.00; and a copy of a contract between Debtor and Voss Paralegal Services containing a payment provision calling for \$450.00, of which \$200.00 was for the filing fee and \$250.00 was for the preparation of documents.

10. Debtor furnished two addresses to the court: Voss Paralegal Services, 1009 Adams Court, Fairfield, Iowa 52556, and Voss Paralegal Service, 2640 Luminary Ln., Oskaloosa, Iowa 52577-9584.

11. Based on the information provided at the hearing, the court determined that a preliminary showing had been made that Voss had not complied with the

provisions of 11 U.S.C. § 110. In its order dated November 16, 2000, the court ordered Voss to appear before it on December 12, 2000, at 3:00 p.m., and show cause why the sanctions under 11 U.S.C. § 110 should not be imposed. Notice of the hearing was sent to Voss at both of the above addresses by regular mail.

12. The notices of the hearing addressed to Voss were returned. On the envelopes, the mailing address had been marked out and “unknown return to sender” had been handwritten alongside the markings.

13. Upon the return of the notices of hearing, the court requested that the Assistant United States Trustee conduct an investigation into Voss’s identity and her whereabouts. The Assistant United States Trustee, among other things, determined the following:

- A. An affidavit filed with the Iowa Department of Transportation on March 23, 2000, indicates that Heidi L. Sinn officially changed her name to Heidi L. Voss.
- B. On September 7, 2000, Heidi L. Sinn filed a voluntary petition for relief under chapter 7 of title 11 in United States Bankruptcy Court for the Southern District of Iowa, case number 00-03307-CJ.
- C. The social security number used by Heidi Voss is the same number used by Heidi Sinn.
- D. On her chapter 7 petition, Heidi L. Sinn listed her address as P.O. Box 2302, 1009 Adams Court, Fairfield, Iowa 52556. The return address on an envelope sent by Voss Paralegal Services is 1009 Adams Court, Fairfield, Iowa 52556.
- E. In her chapter 7 case, Heidi L. Sinn commenced an adversary proceeding to determine the dischargeability of a debt. All of the notices, pleadings, and other documents in the main case and the adversary proceeding were served on Heidi L. Sinn at 1009 Adams Court, Fairfield, Iowa 52556. None of the documents in the chapter 7 case or the adversary proceeding were returned.

14. On May 18, 2001, the Assistant United States Trustee for the Southern District of Iowa filed a motion for assessment of fines versus Heidi Leann Voss a/k/a and f/k/a Heidi Leann Sinn. (DN 26)

15. This motion for assessment of fines was served on Heidi L. Voss a/k/a and f/k/a Heidi L. Sinn by mail at her address at 1009 Adams Court, Fairfield, IA 52556.

16. Heidi Leann Voss filed her answer and response to the United States Trustee's motion on June 1, 2001. (DN 27) This document was signed "Heidi L. Voss, 1009 Adams Court, Fairfield, IA 52556." It was not signed under oath or affirmation.

17. The motion for assessment of fines was set for hearing on August 6, 2001, and notice was given to Heidi Leann Voss a/k/a and f/k/a Heidi L. Sinn, 1009 Adams Court, Fairfield, IA 52556.

18. Heidi Leann Voss failed to appear at the hearing on August 6, 2001, and no one appeared for her.

19. The debtor, Jeannie Ann Sutherland, did appear at the hearing on August 6, 2001, and testified under oath.

20. Debtor learned from her sister that Voss prepares bankruptcy documents. Debtor indicated that Voss advertised her services in a local "shopper."

21. Debtor contacted Voss, and arranged a meeting. Voss directed her to bring her bills with her. Debtor met with Voss in Fairfield, Iowa, and discussed bankruptcy. Debtor did not complete a worksheet or questionnaire. She left the bills with Voss.

22. On June 11, 2000, Debtor met Voss at Oskaloosa, Iowa. Voss presented the completed petition and other documents, and told Debtor to sign them. Debtor did not review the documents. Debtor returned the petition and other documents to Voss. Debtor did not send the documents to the court.

23. The bankruptcy documents included the application to pay filing fees in installments. Debtor did not sign the application. She believed that the first two installments would be paid from funds that she paid Voss. She would then have to pay the final two payments to the clerk.

24. Voss accepted compensation from Debtor to prepare and file a voluntary chapter 7 bankruptcy petition and other bankruptcy documents for Debtor.

25. Voss did not sign the petition or the bankruptcy documents, thereby disclosing her role in their preparation.

26. Voss accepted funds from Debtor to be used for the filing fee in conjunction with Debtor's chapter 7 petition. Voss did not remit these funds to the bankruptcy clerk.

27. Voss did not file a disclosure of compensation received for the preparation of bankruptcy documents.

28. Voss prepared and filed an application to pay filing fee in installments for Debtor. Although the cursive name "Jeannie Ann Sutherland" appears on this application, this name was not placed there by the debtor and is not the signature of the debtor. Voss did not complete the bankruptcy petition preparer section of the application.

29. Upon engaging Voss to prepare bankruptcy documents, Debtor delivered bills and receipts to Voss. Voss determined how the schedules should be completed; how debts should be scheduled; how assets should be scheduled; how income and expenses should be scheduled; how the statement of financial affairs should be completed; how the statement of intentions should be completed; what property should be exempted, and what state and/or federal code sections provided the exemptions.

30. Debtor paid the balance of the filing fee on December 12, 2000, when she paid \$100.00. She received her discharge on December 14, 2000.

DISCUSSION

This matter comes before the court on UST's motion for sanctions pursuant to 11 U.S.C. §110 against Heidi L. Voss aka Heidi L. Sinn. As set forth in six counts, UST argues that Voss improperly filed a bankruptcy petition and other documents on behalf of Debtor. In particular, Voss failed to sign various documents and disclose her services. She improperly accepted funds for filing fees and then failed to remit the funds to the clerk. UST requests that Voss be sanctioned for her various violations and be ordered to disgorge the fee that she received from Debtor.

Voss filed a response to the motion generally denying UST's allegations of wrongdoing. She states that she did not knowingly violate § 110 because she did not know of its existence. Voss denies that she is a bankruptcy petition preparer as identified by the Bankruptcy Code. Voss contradicts statements made by Debtor to UST, and

statements made by Debtor to the court at previous hearings. However, Voss did not appear at this hearing and subject herself to examination under oath or affirmation.

Debtor did appear at the hearing and provided testimony to the court about her dealings with Voss. Debtor additionally provided documents concerning the same. The court finds Debtor to be a credible witness.

The court agrees with UST that Voss 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, Voss 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. Voss admits as much in her response by stating that she typed bankruptcy documents for Debtor. Likewise, Debtor testified that she paid Voss to prepare the documents, and Voss admits in her response that she received compensation.

Section 110(b)(1) requires a bankruptcy petition preparer to sign each document that he or she prepares for filing. The bankruptcy petition preparer must also print his or her name and address on the document. Section 110(b)(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.

In Count One, UST alleges that Voss failed to sign the bankruptcy petition. In Count Two, she alleges that Voss failed to sign the statement of financial affairs. UST argues that both failures violate 11 U.S.C. § 110(b)(2) and requests that Voss be sanctioned for each failure.

The majority of the courts that have considered the issue have held that the petition, the schedules, and the various statements constitute separate documents for the purposes of § 110. Fessenden v. Ireland (In re Hobbs), 213 B.R. 207, 212 (Bankr. D. Me. 1997); But see In re Brokenbrough, 197 B.R. 839, 843-44 (Bankr. S.D. Ohio 1996) (“overreaching” to consider schedules and statements as multiple documents under § 110). Nothing in the Code requires that all the schedules and statements be filed with the petition. See Fed. R. Bankr. P. 1007(c)(permitting schedules and statements to be filed within fifteen days of the filing of the petition). Further, the majority interpretation comports with the Advisory Committee Notes to the 1995 amendments to the Official Forms which state that the schedules, the statement of financial affairs, and the chapter 7 debtor’s individual statement of intention are separate documents for filing. In re Rausch, 197 B.R. 109, 120 (Bankr. D. Nev. 1996) aff’d, 213 B.R. 364 (D. Nev. 1997) aff’d, In re Crawford, 194 F.3d 954 (9th Cir. 1999). In fact, the Official Forms for these required documents contain specific sections for the bankruptcy petition preparer’s name, address, signature, and social security number. Id.

The court finds the majority view persuasive and accordingly considers Debtor’s petition and statement of financial affairs separate documents. Voss’s failure to print her name and address and provide her signature on each document constitutes separate violations of § 110(b)(1). Absent a showing of reasonable cause for her failure, the court may impose a sanction for each violation.

As noted formerly, Voss did not attend the hearing on this matter. In her response, Voss stated that she was acting as typist and as such was not a bankruptcy

petition preparer who was required to sign the documents. Further, she claims that she was not aware of 11 U.S.C. § 110 and did not intend to violate its provisions.

As to the former, typing is precisely the service to which bankruptcy petition preparers are limited. As to the latter, Voss's argument fails on two points. First, as stated above, ignorance of the statutory provisions does not constitute reasonable cause. In re Paskel, 201 B.R. at 518. Second, the application to pay filing fees in installments that Voss prepared for Debtor contains a section for the signature of a "non-attorney." Language in that section cites to 11 U.S.C. § 110 in two different places. As one who holds herself out to be knowledgeable in the preparation of bankruptcy documents, Voss should have familiarized herself with the Code section, especially when it was cited by the forms that she used. Consequently, the court determines that Voss has not shown reasonable cause for her failure to provide her name, address, and signature on the two documents. Voss knew or should have known of the requirements of the statute, and sanctions are appropriate.

Counts Three and Four of UST's motion alleges that Voss violated 11 U.S.C. § 110(c)(1) by failing to provide an identifying number on Debtor's petition and statement of financial affairs. UST requests that Voss be sanctioned for each violation.

Section 110(c)(1) requires that an identifying number that identifies the bankruptcy petition preparer who prepared the document appear following the bankruptcy petition preparer's signature. The identifying number shall be the preparer's social security number. 11 U.S.C. § 110(c)(2). If the preparer fails to provide the social

security number, he or she may be fined up to \$500.00 for each failure, unless the failure is due to reasonable cause. 11 U.S.C. § 110(c)(3).

The analysis here is identical to that just made under § 110(b)(1). The court finds that Voss failed to provide her social security number as required by the statute. She failed to show a reasonable cause for her failure to comply with the statute. Further, she knew or should have known of the requirements of the statute; therefore, sanctions are appropriate.

In Count Five, UST alleges that Voss violated 11 U.S.C. § 110(g)(1) by requiring Debtor to pay Voss \$200.00 for the chapter 7 filing fee. UST requests that Voss be sanctioned for the violation.

Section 110(g) prohibits a bankruptcy petition preparer from collecting a payment for filing fees in connection with filing the petition. Unlike paragraphs (b) and (c), 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.

UST submitted Debtor’s contract with Voss. The contract provides that Debtor pay \$450.00 to Voss “in relation to legal documents prepared in connection with Ch. 7 Bankruptcy.” The fee represented \$200.00 for the filing fee and \$250.00 for a “preparation fee.” Contrary to Voss’s assertions in her response, Debtor testified that Voss did not return the filing fee to her. The court finds that Debtor’s version concerning the parties’ financial transactions is more credible than Voss’s version. The court finds that Voss 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.

In Count Six, UST alleges that Voss charged Debtor \$400.00 to type a chapter 7 petition. UST contends that the fee is excessive for the value of the services rendered and requests the court to order Voss to return all funds to Debtor.

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.

In this case, the contract called for Debtor to pay Voss \$450.00, \$250.00 of which was for the preparation of documents. Evidence presented at the hearing shows that Debtor paid Voss \$350.00. However, Voss never paid the filing fee. She prepared an application to pay filing fee in installments and led Debtor to believe that she need only make installment payments of \$50.00 on September 12, 2000, and \$50.00 on October 10, 2000. Debtor made two \$50.00 payments leaving a remainder of \$100.00. The deficiency caused the court to issue its show cause order which in turn required Debtor to travel to Des Moines to appear at the hearing. The matter was continued to December 12, 2000, when Voss was ordered to appear. The notices of the December 12, 2000, hearing that were sent to Voss were returned causing the court to request UST to investigate Voss's whereabouts. Finally, the present hearing was held on August 6, 2001.

In total, Debtor made three round trips from her home in Kirkville, Iowa to Des Moines. She lost three days' wages plus tips that she would have earned from her employment as a waitress. She also incurred travel expenses.

The court finds that each of the hearings was a direct result of Voss's actions and in particular her violation of the provisions of § 110. Accordingly, Voss was responsible for the extra expenses incurred by Debtor. Further, her actions put Debtor in jeopardy of having her discharge revoked and her bankruptcy case dismissed. Therefore, court finds that Voss's services proved of no value to Debtor, 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 agrees with UST that Voss should return all the fees to Debtor.

The court notes that although UST could have pressed for sanctions on additional counts, she did not. Nor did UST file a complaint requesting that Voss be permanently enjoined from preparing documents in the future. The court also notes that Voss aka Sinn recently filed for chapter 7 bankruptcy and received a discharge. Accordingly, the court finds that the proper amount of sanctions is \$100.00 for each of Counts One through Five and will so order. Further, the court will order Voss to return \$350.00, the full amount received, to Debtor.

Finally, certain actions taken by Voss are of concern to the court. First, Voss apparently presents herself to the public as a "paralegal" although she is not in

association with an attorney. See In re Hobbs, 213 B.R. at 215 (use of the term paralegal implies that person works under the supervision of an attorney or promotes the person's legal skills). She uses the term paralegal in her address. See Id. (use of the term fosters consumer confusion). In her contract, she stated that she provides legal services.

Of more concern is the fact that Debtor testified that she left her bills with Voss. Voss then prepared the schedules. Such preparation would necessarily require Voss to determine how the schedules should be completed; how debts should be scheduled; how assets should be scheduled; how income and expenses should be scheduled; how the statement of financial affairs should be completed; how the statement of intentions should be completed; what property should be exempted, and what state and/or federal code sections provided the exemptions. All of these actions raise questions concerning whether Voss engaged in the unauthorized practice of law. See Iowa Supreme Court Comm. on Unauthorized Practice of Law v. Sturgeon, 635 N.W. 2d 679 (Iowa 2001) (finding that a bankruptcy petition preparer engaged in the unauthorized practice of law by giving legal advice, drafting documents, and making decisions concerning schedules). Accordingly, the court will refer the matter to the Iowa State Bar Association.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. A fine in the amount of \$100.00 is hereby imposed upon Heidi L. Voss aka Heidi L. Sinn pursuant to 11 U.S.C. § 110(b) for failure to provide her name, address, and signature on Debtor Jeannie Ann Sutherland's bankruptcy petition. The fine is payable to the Clerk of the United States Bankruptcy Court, P.O. Box 9264, Des Moines, Iowa 50306-9264.

2. A fine in the amount of \$100.00 is hereby imposed upon Heidi L. Voss aka Heidi L. Sinn pursuant to 11 U.S.C. § 110(b) for failure to provide her name, address, and signature on Debtor Jeannie Ann Sutherland's statement of financial affairs. The fine is payable to the Clerk of the United States Bankruptcy Court, P.O. Box 9264, Des Moines, Iowa 50306-9264.

3. A fine in the amount of \$100.00 is hereby imposed upon Heidi L. Voss aka Heidi L. Sinn pursuant to 11 U.S.C. § 110(c) for failure to provide her Social Security number on Debtor Jeannie Ann Sutherland's bankruptcy petition. The fine is payable to the Clerk of the United States Bankruptcy Court, P.O. Box 9264, Des Moines, Iowa 50306-9264.

4. A fine in the amount of \$100.00 is hereby imposed upon Heidi L. Voss aka Heidi L. Sinn pursuant to 11 U.S.C. § 110(c) for failure to provide her Social Security number on Debtor Jeannie Ann Sutherland's statement of financial affairs. The

fine is payable to the Clerk of the United States Bankruptcy Court, P.O. Box 9264, Des Moines, Iowa 50306-9264.

5. A fine in the amount of \$100.00 is hereby imposed upon Heidi L. Voss aka Heidi L. Sinn pursuant to 11 U.S.C. § 110(g) for receiving a payment from Debtor Jeannie Ann Sutherland for court fees in connection with the filing of a bankruptcy petition. The fine is payable to the Clerk of the United States Bankruptcy Court, P.O. Box 9264, Des Moines, Iowa 50306-9264.

6. Heidi L. Voss aka Heidi L. Sinn, pursuant to 11 U.S.C. § 110(h)(2) shall turn over to Debtor Jeannie Ann Sutherland the sum of \$350.00 which represents the fee paid by Debtor to Heidi L. Voss aka Heidi L. Sinn. Heidi L. Voss aka Heidi L. Sinn 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.

7. The facts of this matter shall be referred to Iowa State Bar Association.

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