SUMMARY OF KEY CONCEPTS

Section 1. Working in Law Firms

Most law firms are either:

- sole practitioners—one attorney who practices law alone and owns his practice;
- partnerships—two or more attorneys who work together and share ownership of their law practice; or,
- professional corporations—one or more attorneys who have incorporated their practice.

Sole practitioners are “sole proprietors” in a legal sense—just like any individual who is the sole owner of a business. The term “sole practitioner” simply puts the emphasis upon practicing law alone, without the assistance or cooperation of other attorneys.

Law partners generally cooperate in practicing law, in addition to sharing the financial profits and liabilities of that practice. They often consult with each other on legal issues, and may substitute for each other, now and then, in court. As in any business partnership, law partners may own equal shares of the practice, or some partners may own a larger share than others.

Professional corporations are similar to other corporations, except state laws often subject them to different legal and tax rules. Shareholders in a professional law corporation—in most states all shareholders must be attorneys—benefit from the same type of liability protection that other kinds of corporations bestow upon their shareholders. Creditors of the corporation may go after the assets of the corporation, but not the personal assets of the owners.

In earlier centuries, all lawyers were sole practitioners. They became lawyers the same way people learned most crafts in those days—they studied under the tutelage of a master of their craft. A young apprentice who aspired to the law would “read the law” and then test his understanding and analytical abilities in dialogue with his master.

Eventually, courts required one to be “admitted to the bar” before practicing law. The “bar” refers to the low railing that separates the spectator portion of a courtroom from the area reserved for the judge and the lawyers appearing before the court. Admission to the bar meant that the court recognized his qualifications to practice law—originally based upon sponsorship by the master under whom he had apprenticed, but in modern times based upon passing a state bar examination.

In multi-attorney firms, lawyers generally fall into two categories; partners and associates. Unlike
partners, associate attorneys do not own a share in
the law practice—in effect, they are simply employ-
ees of the firm who are licensed to practice law. As-
sociates typically work under the supervision of a
small firm’s managing partner, but in larger firms
each partner may supervise a number of associate at-
torneys.

It is vitally important for paralegals to estab-
lish positive working relationships with attorneys
and the support staff (legal secretaries, file clerks,
word processors, etc.) in a law office. Successful
relationships require more than good “people
skills.” In a law office, they also require:

• accuracy and attention to detail;
• punctuality and reliability; and,
• forthrightness and integrity.

For new legal assistants, in particular, it is essential
to recognize the contributions and expertise of le-
gal secretaries. Most legal secretaries become
quite expert in the procedural aspects of practic-
ing law: court rules, serving legal papers upon oth-
ers, obtaining the cooperation of court clerks, etc.
The dividing line between the responsibilities of le-
gal secretaries and paralegals is not always clear-
cut. In theory, paralegals do not address envelopes
and legal secretaries do not do legal research. In
practice, however, sometimes both do both.

The size of a law firm can influence the division
of responsibilities between legal assistants and at-
torneys, and between legal assistants and legal
secretaries. For a paralegal, the significance of firm
size lies in such things as:

• opportunities for challenging and varied
  assignments;
• opportunities to become a specialist or a
  generalist;
• opportunities for advancement; and,
• support staff services available to the legal
  assistant.

In general, the smaller the firm the greater the op-
portunities for varied assignments. On the other
hand, there may be less opportunity to specialize
in a particular field of law—unless the entire office
specializes in that field. Larger firms more often of-
er opportunities for advancement and more ex-
tensive support services. In firms with numerous
associate attorneys, the legal assistant is less likely
to do substantial legal research and legal writing
(e.g., motions to be submitted to court).

The suitability of a larger—or smaller—law of-
office is a matter of personal preference and per-
sonal ambition. Some legal assistants want to be-
come “virtual attorneys”—attorneys in every
sense except for the responsibilities and the privi-
leges that are granted to licensed attorneys: the
right to give legal advice, to appear in court, to es-

tablish an attorney-client relationship, etc. These
individuals want to take on the most sophisticated
assignments in legal research, analysis, and writ-
ing, subject only to a final review by the supervis-
ing attorney. Other legal assistants prefer to han-
dle less complex assignments and to work with
more constant attorney direction and supervision.

The latter role is far more common in law of-
ices of all sizes. However, the opportunities for a
would-be “virtual attorney” are probably greater in
small- and mid-sized firms. Regardless of firm size,
however, the legal assistant’s role is determined
primarily by the needs and preferences of the su-
pervising attorney. As time passes, increasing num-
bers of legal assistants are finding that they are
given greater latitude to assume complex assign-
ments and responsibilities. Through this process,
the paralegal’s role continues to be defined.

Some legal assistants encounter “glass ceil-
ings,” which appear to limit their professional
growth and their opportunity to take on more so-
phitisticated assignments. Avoiding glass ceilings
involves a number of factors:

• the paralegal’s qualifications;
• the quality of the paralegal’s work;
• professionalism in all aspects of the
  paralegal’s work and behavior; and,
• the attorney and the paralegal sharing a
  common view of the paralegal’s role.

The more experienced the paralegal, the greater
the opportunity to find an employing attorney who
will help the paralegal to reach her full potential.

The opportunity to assume more challenging
assignments is probably greater for the legal assis-
tant who specializes in one or two areas of law. Yet,
many legal assistants appreciate the opportunity
to be a “generalist” in their paralegal practice. A
general practice of law usually includes:

• civil litigation;
• business law; and,
• real estate law.

In smaller communities, a general practice might
also include family law, criminal law, probate, and
bankruptcy. Obviously, a generalist is likely to
have more variety in her work. In a sole practi-
tioner’s office, the generalist might find that she is
the receptionist, secretary, and file clerk, as well.

The most common paralegal specialty, by far, is
civil litigation. Closely related specialties are insur-
ance defense and personal injury practices. Criminal law is a distinct field of (non-civil) litigation, in which the government is always the plaintiff. Family law, environmental law, real estate, and bankruptcy practices often involve substantial litigation. Of course, there are many other legal specialties that involve less litigation—intellectual property law, probate, and immigration law are examples.

Within law firms, paralegals can find other opportunities. Some become paralegal managers or paralegal teachers. Moving beyond the standard “paralegal” definition, some become law librarians, computer systems managers, law office marketing directors, or legal administrators.

Outside of law firms, many legal assistants work in the legal departments of corporations and government agencies. Some corporate and government paralegals work in human resource offices, research and development offices, and environmental compliance offices. Large numbers of legal assistants are found in banks, real estate and construction companies, and insurance companies. In government, some work on the staff of state and federal legislators.

Increasing numbers of experienced legal assistants are becoming independent contractors, selling their services to law firms that need additional paralegal support but do not want to take on additional paralegals as employees. These freelance paralegals typically work for a number of different attorneys on a contract-for-work basis. In some regions, freelance paralegals are known as “independent” paralegals.

The increasing acceptance of telecommuting has opened the door of opportunity for a growing number of freelance paralegals. The paralegal enjoys the flexibility of accepting or declining additional work, and many with small children are able to schedule their workloads so that less childcare is needed. Often working out of their own homes, freelance legal assistants can operate with minimal overhead. Of course, the home office for a freelancer involves a substantial investment in equipment and legal reference materials. There is no guarantee of steady work, and there are no employer-paid health benefits. Even so, many legal assistants find that the independence and earnings potential makes freelance work an attractive opportunity.

Some experienced paralegals choose to go into “non-paralegal” careers. In other words, they no longer work under the direct supervision of an attorney, but they apply their legal knowledge and skills in non-traditional ways. These “non-paralegals” are former legal assistants who find new challenges and satisfaction in careers where legal issues abound and their expertise in law finds ready application. Some examples include:

- contract negotiator and administrator;
- mediator or arbitrator;
- labor relations representative; and,
- human resources administrator.

The possibilities increase, when the former legal assistant can combine other expertise with his legal background. Two obvious examples are:

- real estate broker; and,
- legal nurse consultant.

These examples also require a license either in real estate or as a registered nurse. But most “non-paralegal” careers listed in Chapter 2 do not require a license in another field.

A growing controversy surrounds the appearance of self-styled “paralegals” and so-called “self-help” legal services. These individuals and enterprises are not licensed to practice law in any state, and generally operate without any attorney supervision. Most states permit anyone to call himself a paralegal, regardless of any education, training, or expertise he might have—or might lack. The appearance of these unsupervised legal services results, in large part, from the high cost of legal services provided by attorneys. There is a movement in some states to establish a licensure system for unsupervised “legal technicians,” who would have to meet certain qualifications. Those licensed as legal technicians would be permitted to provide strictly limited legal services directly to the public.

Section 2. Finding the Right Job

The majority of all paralegal positions are never advertised. Instead, they are filled by placement agencies or applicants who hear of them through their network of acquaintances in the legal field. In addition to the many new paralegal positions being created each year, the Bureau of Labor Statistics estimates that about 15% of all existing paralegal positions become vacant each year. One reason for this high rate of turnover is the intense competition among employers for experienced legal assistants.

New legal assistants can tap the hidden job market by participating in their local paralegal associations and developing a broad network of friends in the field. For advertised positions, the legal press generally carries more job announcements than do the general circulation papers.
Placement agencies are another good source of leads for entry-level legal assistants. The Internet offers a rapidly growing number of job announcements for paralegals. In addition to the Web sites of paralegal organizations, on-line commercial sites serve as clearing houses for job announcements and applicants' resumes. On-line directories of attorneys are also helpful in identifying prospective employers.

When applying for a position, the applicant is “selling” himself as a prospective employee. An important first step is a careful evaluation of one’s strengths and weaknesses. Weaknesses often can be remedied, and hidden strengths need to be identified. Preparation for the inevitable job search should be underway from the very beginning of one’s paralegal education.

Many advertised paralegal positions require the applicant to have prior legal experience. This can be discouraging to those who are entering the legal field for the first time. However, many new paralegals have valuable knowledge and skills in other fields which often can overcome the employer’s reluctance to hire an entry-level paralegal. In addition, the experience “requirement” may reflect the employer’s hope that she can find an experienced legal assistant—it isn’t always a genuine requirement.

Experienced or not, every paralegal applicant should emphasize any unique skills or experience which might be valuable to an employer. Often, paralegal students overlook the value of their background to a prospective employer. That is one reason the early self-assessment is so important.

Common ways to overcome the “experience barrier” include service as an unpaid intern—many paralegal programs offer intern opportunities—or service as a volunteer in a local Legal Aid Society. Some paralegal students work as a word processor or file clerk in a law office while they are enrolled in a paralegal program. This is helpful because one becomes familiar with legal terminology and law office procedures. Each of these approaches also offers the possibility of obtaining an attorney’s recommendation for employment as a paralegal.

**REVIEW QUESTIONS**

Fill in the blank space(s) to complete the following statements. The correct answers appear at the end of this chapter.

1. In earlier centuries, men trained to become lawyers by “__________ the law.”

2. In those times, prospective lawyers studied as an _______ under the tutelage of a master lawyer.

3. In order to establish professional standards and promote ethical practice, lawyers organized themselves into _________ associations.

4. When a legal assistant has made an important error, the textbook cautions against “keeping _______ secrets.”

5. A “general” law practice usually includes ________, ________, law, and ________ law.

6. Some personal _____ firms have more legal assistants than attorneys, and the legal assistants do the great majority of the legal work on the uncomplicated cases.

7. Some firms have paralegals ________ who prepare job descriptions, screen resumes and interview paralegal applicants, in addition to coordinating the work assignments for legal assistants in the firm.


9. A legal ________ is a non-attorney who manages the business side of a legal practice, and often supervises the non-attorney employees of the firm.

10. Paralegals who work in corporations and government offices do not have to keep track of ________ hours, since their employer is the only “client” of the law office.

11. A(n) ________ is one example of a government official whose primary function is the practice of law.

12. A freelance paralegal works as an ________ contractor on assignments for a number of different attorneys.

13. The Bureau of Labor Statistics estimates that ________% of all existing paralegal positions become vacant each year.

14. In large metropolitan areas, legal ________ are the best place to find large numbers of advertised paralegal positions.

15. The nation’s largest print directory of attorneys and law firms is the ________- ________ Law Directory.

16. In that directory, the peer ratings for attorneys and law firms are found in the “_________ pages.” The highest possible combined rating for legal expertise,
professional and ethical standards is denoted by the letters “__________.”
17. A paralegal student without legal experience can partially remedy that disadvantage by enrolling in an __________ program or doing volunteer work for the __________ __________ Society.

**KEY TERMS**

For each Key Term below, write your own “best effort” definition, based upon your understanding at this point. After you have written your definitions, compare them to the definitions given in the textbook’s Glossary. Finally, revise your definition (as needed) to eliminate any inaccuracies or ambiguities.

**associate attorney**

Your “best effort” definition:

Your revised definition:

**freelance paralegal**

Your “best effort” definition:

Your revised definition:

**independent contractor**

Your “best effort” definition:

Your revised definition:

**legal nurse consultant**

Your “best effort” definition:

Your revised definition:

**managing partner**

Your “best effort” definition:

Your revised definition:

**partner**

Your “best effort” definition:

Your revised definition:

**partnership**

Your “best effort” definition:

Your revised definition:

**product liability**

Your “best effort” definition:

Your revised definition:

**professional corporation**

Your “best effort” definition:

Your revised definition:

**sole practitioner**

Your “best effort” definition:

Your revised definition:

**WORKING ON-LINE**

Review the “job banks” on the following Web sites:

http://www.alanet.org
http://www.lamanet.org
http://www.paralegals.org
http://www.lawjobs.com
http://www.careerpath.com
http://www.monster.com

Prepare a brief report comparing these sites for the following criteria:

- number of legal assistant positions listed;
- “freshness” of the listings (or, if no dates shown);
- regional coverage for the entire nation;
• detail offered about the positions (e.g., qualifications, duties, compensation, etc.); and
• detail offered about the employers.

ETHICAL CHALLENGE

Mitchell Waters is a senior paralegal in a small firm of twelve attorneys. As part of his duties, he screens all incoming paralegal resumes and refers the promising ones to the managing partner for review. He also participates in the initial interviews for paralegal applicants. When new legal assistants are hired, Mitchell provides an orientation to the firm and generally serves as a mentor during the legal assistant’s first six months.

About one year ago, the firm hired Melinda Groot as an entry-level paralegal to work in civil litigation. Mitchell had been enthusiastic about hiring Melinda based upon her very impressive interviews and resume. Since she had just received her paralegal certificate, he devoted more time than usual to mentoring her while she learned her new duties. Melinda appears to be a quick learner, the attorneys are very pleased with her progress, and Mitchell is feeling proud of his part in her success story.

Last weekend, Mitchell attended his fifteen-year high school reunion. He was delighted to see an old buddy, Sean, with whom he had lost contact over the years. To Mitchell’s great surprise—and Sean’s—both of them are now working as legal assistants in law firms in Colorado. They spent most of Saturday afternoon talking about their jobs, finding one coincidence after another in the similarity of their work and their mutual acquaintances in the legal field. Mitchell was telling Sean about the great paralegal his firm had hired, when Sean interrupted: “Melinda Groot? You’ve gotta be kidding. Is she about five-ten, slender with long red hair?”

In less than ten minutes, Mitchell learned that about five years ago Melinda had been terminated from a part-time position in a corporate office for embezzling small sums from petty cash—no more than two hundred dollars in all. Sean had worked in the same company’s legal department and participated in the investigation. Mitchell was stunned when Sean reported that Melinda had confessed to taking the money, although she intended to pay it back. She was taking the money to meet essential needs—like buying textbooks—during her freshman year in college. She was fired, but because of her remorse no criminal charges were filed. The two compared details they knew about Melinda’s background—schools attended, hobbies, sister’s name, etc.—until they were certain that it was the same Melinda.

Mitchell is mortified at this discovery, and is torn between anger at the concealment and compassion for Melinda. He doesn’t know whether Melinda was ever asked by the law firm about leaving that part-time job, or if she had ever been fired. Mitchell can’t get the situation off his mind the entire weekend. He wonders, should he say anything about this on Monday? And if so, to whom? Is two hundred dollars that significant? Doesn’t everyone deserve a second chance?

ETHICAL ANALYSIS

It is understandable that Mitchell is torn between his friendship for Melinda and his loyalty to his employer. And it’s always difficult to judge someone harshly for a mistake made out of desperation at a youthful age.

First, let’s identify the issues:

• Was the embezzlement a serious offense?
• Were there extenuating circumstances?
• Does the embezzlement disqualify Melinda for paralegal work?
• Did Melinda have a duty to reveal her offense prior to accepting her job at Mitchell’s law firm?
• Is her failure to make the disclosure a separate and sufficient ground for dismissing her now?
• Does Mitchell have a duty to inform the firm’s managing partner about his discovery?

The first two questions present a threshold issue. If the offense was not serious, or if it were excusable for extenuating reasons, the other questions might become moot.

Of course, the offense was a criminal act—a misdemeanor in most jurisdictions. Also, an otherwise minor offense might be considered disqualifying for some professions. We do expect school teachers, judges, and medical doctors to follow a higher moral standard because of the harm they can do to the innocent.

In spite of some public perceptions, most legal professionals adhere to an uncommonly high ethical standard. The bar associations and state legislatures demand no less. Honesty—in regards to both truth and property—is a paramount duty for the ethical attorney and paralegal. Assuming Melinda will not have the opportunity to embezzle from clients or the law firm, our main concern is her pro-
fessional integrity regarding client confidences and all other aspects of her work.

An act of embezzlement inevitably places Melinda’s honesty in doubt. If she concealed this offense from her present employer, would she be less than truthful in other circumstances? Would she conceal errors in her work that might jeopardize a client’s interests? Would she commit overt acts of dishonesty to protect herself from the consequences of her errors? These are very difficult questions to answer because they call upon us to predict Melinda’s behavior under hypothetical circumstances. If Melinda’s honesty is now in question, does the law firm have a duty to shield its clients from possible future acts of dishonesty—in other words, should Melinda be terminated as a precaution?

The final question in that paragraph raises another: Would the firm have hired Melinda if she had told them about the embezzlement? Perhaps they would have—in consideration of her youth at the time of the offense, her motives and remorse, and her candor prior to accepting employment. Her youth, motives, and remorse are still relevant. But she was not, in fact, forthcoming when hired.

Having completed a paralegal certificate program, Melinda can be presumed to understand the importance of ethical standards in law. She should be able to understand that her concealment of the embezzlement would appear to betray her prospective employer. It is possible that she rationalized the situation and dismissed the offense as being irrelevant to her employment in the law firm. However, that doesn’t protect the law firm from potential embarrassment if her offense becomes known to a client. Melinda should have informed her employer. This is essentially the same issue as that posed in the Ethical Challenge in the Study Guide section for Chapter 1. It is certainly arguable that her lack of candor alone is sufficient grounds for her dismissal.

Let us now turn to Mitchell’s ethical obligation. The clients are not Mitchell’s clients—they are the law firm’s clients. Mitchell does not have the moral right to substitute his judgment for that of the firm’s partners. Once Mitchell recognizes that Melinda’s embezzlement might raise serious ethical issues for the firm, he has a duty to inform the managing partner. To remain silent would put Mitchell in the identical moral situation which Melinda is in, and make him an accomplice- after-the-fact to her own concealment. Mitchell could confront Melinda and offer her the opportunity to make that revelation, but the firm must know that she is not doing so on her own initiative.

**READING CASE LAW**

Chapter 2 includes excerpts from the Bankruptcy Court’s opinion for *In re Farness*, 244 B.R. 464 (Idaho, 2000). The full text of the opinion follows. The first paragraph is not actually part of the Court’s opinion—it is a summary of the case prepared by West, the publisher. Following that summary (sometimes termed the “syllabus”), there are eleven enumerated headnotes (note the numbers within brackets). These, also, are not part of the Court’s opinion—they are provided by the publisher to quickly identify the legal issues addressed in the Court’s opinion. The actual opinion of the Court begins on the second page immediately following these words:

**MEMORANDUM OF DECISION AND ORDER**

TERRY L. MYERS, Bankruptcy Judge.

Everything before those words has been written by West Publishing Co.

Read the Court’s opinion, and then prepare a brief report which identifies the conduct by Wees which violated the *Bankruptcy Code*. Then explain how Wees could continue his occupation and still comply with the *Bankruptcy Code*.

**ANSWERS TO REVIEW QUESTIONS**

Fill in the blank space(s) to complete the following statements. The correct answers appear at the end of the Study Guide section for Chapter 2.

1. In earlier centuries, men trained to become lawyers by “**reading** the law.”

2. In those times, prospective lawyers studied as an **apprentice** under the tutelage of a master lawyer.

3. In order to establish professional standards and promote ethical practice, lawyers organized themselves into **bar** associations.

4. When a legal assistant has made an important error, the textbook cautions against “keeping **guilty** secrets.”

5. A “general” law practice usually includes **civil litigation**, **business law**, and **real estate law**.

6. Some personal **injury** firms have more legal assistants than attorneys, and the legal assistants do the great majority of the legal work on the uncomplicated cases.

7. Some firms have paralegal **managers** who prepare job descriptions, screen resumes and interview paralegal applicants, in addition to
coordinating the work assignments for legal assistants in the firm.

8. Prior to the U.S. Supreme Court decision in *Bates v. State of Arizona*, 433 U.S. 350 (1977), most states prohibited *advertising* by attorneys. The Supreme Court held that such laws violate the *First Amendment* rights of attorneys.

9. A legal *administrator* is a non-attorney who manages the business side of a legal practice, and often supervises the non-attorney employees of the firm.

10. Paralegals who work in corporations and government offices do not have to keep track of *billable* hours, since their employer is the only “client” of the law office.

11. A(n) *attorney general/district attorney/county counsel/city attorney/public defender* [all are correct] is one example of a government official whose primary function is the practice of law.

12. A freelance paralegal works as an *independent* contractor on assignments for a number of different attorneys.

13. The Bureau of Labor Statistics estimates that *15%* of all existing paralegal positions become vacant each year.

14. In large metropolitan areas, legal *newspapers* are the best place to find large numbers of *advertised* paralegal positions.

15. The nation’s largest print directory of attorneys and law firms is the *Martindale-Hubbell Law Directory*.

16. In that directory, the peer ratings for attorneys and law firms are found in the “*blue* pages.” The highest possible combined rating for legal expertise, professional and ethical standards is denoted by the letters “*av*.”

17. A paralegal student without legal experience can partially remedy that disadvantage by enrolling in an *internship* program or doing volunteer work for the *Legal Aid* Society.
244 B.R. 464
(Cite as: 244 B.R. 464)

United States Bankruptcy Court,
D. Idaho.

In re Herbert and Nita FARNESS, Debtors.

Bankruptcy No. 99-01931.


United States Trustee (UST) filed motion for review of fees collected by non-attorney bankruptcy petition preparer, based upon petition preparer's alleged violation of bankruptcy statute regulating his conduct. The Bankruptcy Court, Terry L. Myers, J., held that: (1) petition preparer's use of the word "legal" in his advertisements, in holding himself out as providing consumers with "self-help legal alternatives," violated statutory restriction on advertising; (2) petition preparer engaged in unauthorized practice of law; and (3) disgorgement of fee was appropriate remedy.

Granted in part and denied in part.

West Headnotes

[1] Bankruptcy 3030.6


[2] Bankruptcy 3030.8

Key to bankruptcy statute regulating the conduct of bankruptcy petition preparers is that statute allows petition preparers to provide typing services, but that petition preparers may not, in the guise thereof, advise debtors of their rights and options or otherwise engage in practice of law. Bankr.Code, 11 U.S.C.A. § 110.

[3] Bankruptcy 3030.10

Discrepancy between compensation disclosed on Chapter 13 debtors' statement of financial affairs, which indicated that they had paid non-attorney bankruptcy petition preparer the sum of $150.00 for his services, and compensation disclosed upon disclosure-of-compensation form filed by petition preparer, which indicated that preparer had received $165.00 for his services, did not warrant imposition of sanction on preparer, where preparer explained that this $150.00 figure had been embedded into form saved in his computer's memory and that he had inadvertently failed to change that amount to accurately reflect the fee he actually received. Bankr.Code, 11 U.S.C.A. § 110.

[4] Bankruptcy 3030.8

Non-attorney bankruptcy petition preparer's use of the word "legal" in his advertisements, in holding himself out as providing consumers with "self-help legal alternatives," violated statutory prohibition against use of the word "legal" by non-attorney preparers, notwithstanding preparer's contention that his use of the word "alternatives" modified "legal," so as to make it clear to any reasonable person that he was not in business of offering legal advice. Bankr.Code, 11 U.S.C.A. § 110(f)(1).

[5] Bankruptcy 3030.8


[6] Bankruptcy 3030.8

To determine whether non-attorney bankruptcy petition preparer has violated statutory prohibition against use of the word "legal" in any of his/her advertisements, bankruptcy court must focus on practical impact of such advertising on the unsophisticated consumer. Bankr.Code, 11 U.S.C.A. § 110(f)(1).

[7] Bankruptcy 3030.10

Upon determination by bankruptcy court that non-attorney bankruptcy petition preparer has violated statutory prohibition against use of the word "legal" in any of his/her advertisements, imposition of sanction is mandatory, though bankruptcy court has discretion in setting its amount, up to a maximum of $500.00 per violation. Bankr.Code, 11 U.S.C.A. § 110(f)(1).

[8] Bankruptcy 3030.10

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While non-attorney bankruptcy petition preparer had been involved in preparing a great number of petitions, and while his improper use of the word "legal" in his advertisements might be seen as supporting imposition of sanction in regard to each of the multiple cases in which he prepared petitions, bankruptcy court, in context of motion to review fees collected by petition preparer in particular Chapter 13 case, would elect to levy only a single $500.00 fine, at that time, for petition preparer's violation of this advertising restriction. Bankr.Code, 11 U.S.C.A. § 110.

[9] Attorney and Client 45k11(3)
45k11(3)

Non-attorney bankruptcy petition preparer engaged in unauthorized practice of law, by offering services that went beyond merely converting debtors' handwritten entries into typed bankruptcy petition in providing assistance to debtors in classifying secured and unsecured debt, in identifying possible exemptions, and in completing Chapter 13 plan; petition preparer was not saved from liability for such unauthorized practice merely because he used preprinted bankruptcy forms or bankruptcy software which automatically placed the information he solicited from debtors' into proper schedule. Bankr.Code, 11 U.S.C.A. § 110.

[10] Bankruptcy 3030.12
51k3030.12

In absentia of request by United States Trustee (UST) for such relief, court, upon finding that non-attorney bankruptcy petition preparer had engaged in unauthorized practice of law, would not enjoin such unauthorized practice or impose sanctions pursuant to bankruptcy statute which regulated conduct of petition preparers. Bankr.Code, 11 U.S.C.A. § 110(i, j).

51k3030.10

Order requiring non-attorney bankruptcy petition preparer to disgorge $165.00 fee that he had received from Chapter 13 debtors was appropriate remedy where petition preparer's unauthorized practice of law, in conjunction with his misleading use of the word "legal" in his advertisements, had led debtors into situation where they paid fees to petition preparer only to find that, in order to successfully prosecute their Chapter 13 case, they had to hire counsel. Bankr.Code, 11 U.S.C.A. § 110(b)(2).

Herbert and Nita Farness ("Debtors") contracted with L.D. Wees ("Wees") to prepare their chapter 13 petition, schedules, statement of financial affairs, and proposed chapter 13 plan which were filed on July 29, 1999. Wees is a "bankruptcy petition preparer" as defined by § 110(a)(1). [FN1]

FN1. Section 110(a)(1) defines a "bankruptcy petition preparer" as "a person, other than an attorney or an employee of an attorney, who prepares a compensation a document for filing."

On August 27, 1999, the first meeting of creditors was held in the Debtors' case. Subsequently, on September 2, the United States Trustee ("UST") filed a motion to review the fees paid to Wees alleging that he had violated several provisions of § 110. Specifically, the UST contends that Wees provided incorrect information in the Debtors' statement of affairs, advertised using the term "legal," and engaged in the unauthorized practice of law. The UST's motion requests that, based on these violations, the Court should review the fees Wees charged for reasonableness or sanction him by denying them entirely.

On September 3, 1999, attorney Jake W. Peterson entered an appearance on the Debtors' behalf, and with his assistance, the Debtors proposed an amended chapter 13 plan, which was ultimately confirmed on October 21, 1999.

DISCUSSION

[1][2] In 1994, Congress enacted § 110 of the Bankruptcy Code which sets standards for bankruptcy petition preparers, and provides penalties for the failure to meet such standards. In re Mitchell, 97, 1
STUDY GUIDE

244 B.R. 464
(Cite as: 244 B.R. 464, *466)

I.B.C.R. 5, 6 (Bankr.D.Idaho 1997). The House Report explained the rationale for § 110:
Bankruptcy petition preparers not employed or supervised by any attorney have proliferated across the country. *467 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. 103-384, 103rd Cong., 2nd Sess. at 40-41 (1994). See also, United States Trustee v. Tank (In re Stacy), 193 B.R. 31, 35 (Bankr.D.Or.1996); Fessenden v. Ireland (In re Hobbs), 213 B.R. 207, 215 (Bankr.D.Me.1997). Thus, the statute’s main purpose is to protect consumers from abuses by non-lawyer petition preparers. Consumer Seven Corp. v. United States Trustee (In re Fraga), 210 B.R. 812, 818-19 (9th Cir. BAP 1997). [FN2] The key to § 110 is that a petition preparer may provide typing services, but may not in the guise thereof advise debtors of their rights and options or otherwise engage in the practice of law. This Court in Mitchell recognized the distinction:

Thus, the Court need not find that Wees intended to take unfair advantage of these or other debtors, or intended to ignore or violate the prohibitions of § 110; it is sufficient if his conduct simply runs afoul of those restrictions.

Document preparers are not attorneys... The task to organize information and type it, is something that a trained legal secretary can do, no more and no less. A document preparer may not give legal advice... Consequently, a document preparer should be compensated in the same fashion, and in the same amount as a legal secretary.


By virtue of the express provisions of § 110, and case law construing and applying those provisions (including, in this District, Mitchell ), petition preparers such as Wees are on notice of the limits of their authority, and the potential consequences should they transgress those limits.

A. Incorrect information

[3] The Debtors’ response to question no. 9 on their statement of financial affairs indicated that Wees received $150.00 for his services. However, on the same day Wees filed his disclosure of compensation form which stated he had received $165.00 for his services. The UST alleges that the entry of this incorrect information on Debtors’ statement of financial affairs amounts to a violation under § 110.

At hearing on September 27, 1999, Wees acknowledged the inconsistency, and explained that the $150.00 figure had been embedded into the form saved in his computer’s memory [FN3] and that he had neglected to change the amount to accurately reflect the fee actually charged.

FN3. Wees testified that, for the most part, he only prepares documents for chapter 7 cases, and the $150.00 figure is what he charges for his services in such cases.

The Court has not discerned nor has the UST explained what portion of § 110 is implicated by this acknowledged, though minor error. The UST has not alleged that any prejudice or damage befell the Debtors or the estate by virtue of this error. The disclosure of compensation signed by Wees was accurate. The inconsistency on the statement of affairs was adequately explained at hearing, and nothing indicates that this was anything other than an honest mistake. Accordingly, the Court does not find that a violation of § 110 has occurred.

B. Advertising using the word "legal"


FN4. Wees’ advertisement in the 1998 phone book published by U.S. West Dex., Inc., is at page 146 of the yellow pages under the “Bankruptcy Services” section. The text of this advertisement states in pertinent part:

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SELF-HELP LEGAL ALTERNATIVES OF IDAHO

... We can help YOU to HELP YOURSELF

... We can provide all necessary forms; and professional typing for legal form preparation.

Attorneys also advertise in this section of the yellow pages. It was not shown, however, that Wees advertises under any category designated as or for "attorneys", "lawyers", or "legal services."

Section 110(0)(1) provides:

A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

In its discussion of this provision the court in Hobbs states:

Section 110 is a consumer protection measure. Although there is no legislative history specific to subsection (f), it is clear that in enacting § 110 Congress was concerned with debtors who may be "ignorant of their rights both inside and outside the bankruptcy system." 140 Cong. Rec. H10752, H10770 (1994) .... Thus, § 110(0) is appropriately viewed as a measure meant to ensure that debtors understand exactly what they will and will not receive from bankruptcy petition preparers. Petition preparer advertising must keep well clear of any suggestion that the preparer will be offering legal services or insights.

213 B.R. at 215 (emphasis supplied).

Applying § 110(0)(1) to a petition preparer's advertisement, the Bankruptcy Court for the Southern District of California found:

[The tenor of Filippone's advertisement in the North County Times is that the bankruptcy services offered by USPS are not limited to simple clerical functions. The advertisement gives the distinct impression that USPS is able to provide all services, including legal services, associated with a debtor's bankruptcy. Specifically, the advertisement states that USPS is the "only paralegal company in San Diego that is able to handle your bankruptcy." The advertisement also contains the phrase, "no lawyers involved save money." The use of the word "paralegal," coupled with the representation that USPS is "able to handle your bankruptcy" creates the impression that USPS personnel can provide legal advice, but at a lower cost than a lawyer.

In re Kaitangian, 218 B.R. 102, 107-08

(Bankr.S.D.Cal.1998). See also, Hobbs, 213 B.R. at 215 (term "paralegal" fosters consumer confusion); In re Calzadilla, 151 B.R. 622, 626 (Bankr.S.D.Fla.1993) (typing service may not advertise in a fashion which leads reasonable lay person to believe the typing service offers the public legal services, legal advice or legal assistance regarding bankruptcy services).

At hearing and in briefing, Wees argues that, in his advertisement, the word "legal" is sufficiently modified by the word "alternatives" so that § 110(0)(1) is not offended and that no reasonable person would be misled into thinking that Wees' business offered legal advice. The Court is not persuaded.

[5] First, the clear and plain language of § 110(0)(1) prohibits any use of the word "legal" in any advertisement by a nonattorney petition preparer. The statute does not say that some uses of the word "legal" are acceptable through context, modifier, or otherwise. The prohibition is absolute and unambiguous. The advertisement here violates § 110(0)(1).

Second, the purpose of the statute, as well as its literal command, is here violated. As in the cases cited above, Wees' advertisement creates the misleading impression *469 that his business offers more than mere typing services to its clients. The word "legal" is not defined away by the word "alternatives." Rather, the phrase "legal alternatives" implies that a debtor can hire Wees in lieu of an attorney to prepare a bankruptcy filing.

Wees' advertisement leaves the impression that he provides all "necessary" services, which by implication would include legal services, required for the filing of a bankruptcy petition. Another phrase in Wees' advertisement, that he can "provide all necessary forms", gives the impression that Wees has legal knowledge which can assist debtors because he knows which "legal forms" are required for the filing of a proper bankruptcy petition. This is exactly what § 110(0)(1) seeks to prohibit. See Hobbs, 213 B.R. at 215.

The Court appreciates that the advertisement here also states that Wees provides "professional typing services," which services are properly within the role of a petition preparer. Mitchell, 97.1 I.B.C.R. at 6. But this has the appearance of providing typing as an added, supplementary service to the primary service of advising a debtor how, and with what forms, to
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file. [FN5]

FN5. Similarly, the passing nod to a debtor's pro se status ("We can help YOU to HELP YOURSELF") doesn't keep the advertisement from being misleading and improper under § 110(f)(1).

[6] Wees attempts to make fine distinctions in reading this advertisement, but § 110(f)(1) requires the Court to focus on the practical impact of this type of advertising on the unsophisticated consumer. Fairly read in its entirety, the advertisement leads the consumer debtor to believe that his need for legal advice and services can be safely obtained through Wees' "alternative."

[7][8] The Court therefore finds that Wees has violated the provisions of § 110(f)(1). Section 110(f)(2) provides "[a] bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1)." Thus, pursuant to § 110(f)(2), a sanction is mandatory, though the Court has discretion in setting its amount, up to a maximum of $500 per violation. Though the Court is aware that Wees prepares a great number of petitions (over 700 to date according to his brief) and that the advertising might be viewed as supporting a sanction in regard to multiple cases, the Court elects, at this time, to levy a single $500 fine for the violation in this case. This sanction will be made payable to the Clerk of the Bankruptcy Court. Accord Kaitangian, 218 B.R. at 118.

Wees also argues that § 110(f)(1) strictly interpreted violates his rights under the First Amendment to the United States Constitution and amounts to an unlawful restraint on trade, though he has provided no legal analysis or support for those contentions. These types of constitutional arguments have been previously considered and dismissed. See, Kaitangian, 218 B.R. at 107 and cases cited therein. See also, Madarang v. Bermudes, 889 F.2d 251, 253 (9th Cir.1989) cert. denied, 498 U.S. 814, 111 S.Ct. 54, 112 L.Ed.2d 29 (1990) (right to pursue a calling is not a fundamental right for purposes of the Equal Protection Clause); Jeter v. Office of the United States Trustee (In re Adams), 214 B.R. 212, 218 (9th Cir. BAP 1997) (right to pursue calling as petition preparer not a fundamental right).

The Court concludes that these contentions lack merit, and do not bar the Court's finding of a violation under § 110(f)(1).

C. Unauthorized practice of law

[9] The UST contends that Wees is engaged in the unauthorized practice of law, as reflected by his conduct herein. Thus, the UST asserts that § 110 is violated. See, § 110(i) & (j). [FN6]

FN6. As discussed below, the UST did not seek sanctions for this conduct under § 110(j) nor to enjoin such conduct under § 110(i). It sought, rather, to force Wees to disgorge the fee he was paid.

*470 Section 110 does not specifically prohibit the unauthorized practice of law. But neither does it excuse what would otherwise be unauthorized practice. Section 110(k) provides:

Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

A leading treatise explains:

Section 110(k) provides that the ability of nonlawyers to practice before bankruptcy courts in a given jurisdiction will be governed by the "[relevant state] law, including rules and laws that prohibit the unauthorized practice of law," as well as by Section 110 itself.


The Idaho Supreme Court has defined the practice of law as:

[T]he doing or performing services in a court of justice, in any matter depending [sic] therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be depending [sic] in a court.

Idaho State Bar v. Meservy, 80 Idaho 504, 508, 335 P.2d 62, 65 (1959) (quoting In re Matthews, 57 Idaho 75, 83, 62 P.2d 578, 582 (1936)).

In Meservy, the Court held:

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The drafting of the documents . . . or the giving of advice and counsel with respect thereto, by one not a licensed attorney at law, would constitute an unlawful practice of law, whether or not a charge was made therefor, and even though the documents or advice are not actually employed in an action or proceeding pending in a court. § 3-104[4].

Id. [FN7]

FN7. See also, Idaho Code §§ 3-401, 3-420; Idaho Bar Commission Rule 800, 801.

The UST alleges that Wees engaged in the unauthorized practice of law by assisting the Debtors in making determinations concerning what should be set forth in the filing, specifically in determining and claiming exemptions and deciding how the plan would treat certain creditors. Wees denies these allegations.

At hearing Wees testified that he met with the Debtors twice and prepared their forms with their assistance. Wees contends that, at these meetings, he read the actual forms to the Debtors question by question, and recorded their responses in his computer. [FN8] This information would then, through use of software, be entered automatically into all appropriate places on the schedules. Wees also provided the Debtors with a list of available exemptions and their applicable Idaho Code sections based on publications in his possession. He further assisted the Debtors in completing this District’s model chapter 13 plan.

FN8. Respondent uses the actual bankruptcy documents (not an interview sheet) and reads each question to the debtors and records their response. If debtors do not understand a question, respondent refers them to the relevant section or definitions provided in a self-help book entitled "Chapter 13 Bankruptcy—Repay Your Debts" or "How to File For Chapter 7 Bankruptcy" published by Nolo Press. Respondent’s [Wees’] Brief in Opposition of U.S. Trustee’s Motion to Review Fees Paid to Petitioner Preparer, at p. 2.

*[471] The conduct of Wees is more extensive than merely converting a debtor’s handwritten materials into typed form, which is what Mitchell validates. See also, Calzadilla, 151 B.R. at 625. Particularly, in his assistance to the Debtors in classifying secured and unsecured debt, identifying possible exemptions, and completing the chapter 13 plan, Wees goes well beyond what § 110 allows and what Meservey allows. [FN9]

FN9. See also, Hastings v. United States Trustee (In re Agyeum), 225 B.R. 695, 701-02 (9th Cir. BAP 1998) which recognized that any assistance a petition preparer gives a debtor in the filing of a bankruptcy petition and schedules, other than typing, almost inevitably brings the preparer in conflict with unauthorized practice of law restrictions. Examples of such prohibited "services" are specifically set forth in Agyeum. 225 B.R. at 701 (citing the Bankruptcy Petition Preparer Guidelines of the United States Bankruptcy Court for the Northern District of California.)

Ellingson found that a petition preparer had engaged in the unauthorized practice of law when it assisted debtors in a similar fashion:

The record is clear that Monroe advised Ellingson and Erwins of available exemptions, provided them with a comprehensive list of available exemptions, determined where property and debts were to be scheduled, summarized and reformulated information solicited from clients, and generated the completed bankruptcy forms for Ellingson and Erwin on her computer. These tasks require the exercise of legal judgment beyond the capacity and knowledge of lay persons such as Monroe. In re Herren, 138 B.R. 989, 994-95 (Bankr.Wyo.1992) (citing In re Anderson, 79 B.R. 482, 485 (Bankr.S.D.Cal.1987); O’Connell v. David, 35 B.R. 141, 143 (Bankr.E.D.Pa.1983) aff’d, 740 F.2d 958 (3rd Cir.1984); In re Bachmann, 113 B.R. 769, 772-3 (Bankr.S.D.Fla.1990). By soliciting information in Exhibit 8 and preparing Schedules and Statements on her computer, Monroe rendered legal advice and therefore engaged in the unauthorized practice of law. In re Agyeum, 225 B.R. at 700; Herren, 138 B.R. at 994; In re Grimes, 115 B.R. 639, 643 (Bankr.S.D.1990).

230 B.R. at 433-434. See also, Samuels v. American Legal Clinic, Inc. (In re Samuels), 176 B.R. 616, 619 (Bankr.M.D.Fla.1994) ("It is necessary for Ms. Longley to paraphrase and explain bankruptcy concepts in order to obtain requisite information from consumers and place it in the proper form for the software."). Accord Glad v. Monk (In re Glad), 98 B.R. 976, 978 (9th Cir. BAP 1989) (which, prior to the enactment of § 110, reviewed fees paid to a non-attorney under § 329, and recognized that soliciting information from a debtor, advising him what chapter to file under, and assisting in the preparation of bankruptcy schedules amounted to the
practice of law); In re Anderson, 79 B.R. 482, 485 (Bankr.S.D.Cal.1987) (non-lawyer had performed legal services by interviewing and soliciting information from the debtor as well as preparing bankruptcy schedules, all without complying with § 329.)

And in Kaitangian, the court found that a petition preparer had engaged in the unauthorized practice of law by using his computer software to help him prepare a debtor's petition and schedules:

The Court finds that Filippone II's contention that the Bankruptcy Specialty Software "does it all" is disingenuous. Plugging in solicited information from questionnaires and personal interviews to a pre-packaged bankruptcy software program constitutes the unauthorized practice of law. Moreover, advising of available exemptions from which to choose, or actually choosing an exemption for the debtor with no explanation, requires the exercise of legal judgment beyond the capacity and knowledge of lay persons. In re Herren, 138 B.R. 989, 995 (Bankr.D.Wyo.1992); In re McCarthy, 149 B.R. 162, 166 (Bankr.S.D.Cal.1992); In re Webster, 120 B.R. *472(Cite as: 244 B.R. 464, *472) 111, 113 (Bankr.E.D.Wis.1990). Accordingly, the Court finds that the Filipinos engaged in the unauthorized practice of law with respect to selecting exemptions for the debtors in these proceedings.

218 B.R. at 110.

Wees similarly engaged in the unauthorized practice of law. He is not saved by his use of preprinted bankruptcy forms or bankruptcy software which automatically placed the information he solicited from the Debtors' into the appropriate schedule. Wees' approach requires debtors to rely on his judgment as to the forms required to successfully file and prosecute a bankruptcy case, his use of computer software to ensure that information is correctly disclosed, and his resources as to what exemptions were available and the legal authorities supporting those claims. [FN10] As stated in Patton:

[1]The choice of appropriate exemptions based on raw data provided by debtors is an exercise in legal judgment, and advising debtors to accept particular exemptions is legal advice. Regardless of what means Patton employed to select exemptions for each debtor, whether consultation with a computer program, a textbook, or other prepared materials, Patton performed legal services for [debtors] when he chose their exemptions.


Additionally and importantly, the completion of the model chapter 13 plan requires a significant amount of legal judgment as to the proper classification and treatment of creditors. Accord Samuels, 176 B.R. at 619-620. There is essentially no way the plan can be prepared without providing legal advice. And, there is no evidence that here the Debtors made all relevant decisions about plan treatment of creditors on their own. [FN11]

FN11. Wees admits that chapter 13 cases are different from chapter 7 cases, and that he does fewer of them. In fact, this is part of the explanation for the higher fee charged, and the problem with inaccurate disclosure of the fee in the statement of affairs. But it should be emphasized that the unauthorized practice of law occurred here not solely in the context of the chapter 13 plan. Wees' conduct in chapter 7 cases, if the same approach is taken to the forms, schedules, and exemptions, is still wrongful.

These services which Wees provided the Debtors clearly went beyond merely typing the Debtors' forms. Wees has performed tasks which necessitated the exercise of legal judgment. The Court finds that Wees has engaged in the unauthorized practice of law, whether analyzed under Meservy or the many reported § 110 decisions.

[10] The classic approach to a petition preparer's alleged unauthorized practice of law is to seek damages or an injunction. Section 110(n)(1) provides that:

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Both § 110(i) and (j) appear applicable to Wees’ conduct, given the Court’s findings and conclusions. However, the UST did not seek relief under these provisions. Accordingly, the Court concludes that relief cannot properly be granted under these sections at this time. [FN12]

FN12. The ruling herein is, of course, without prejudice to any future action which may be pursued under § 110(i) and/or (j). The Court notes that Fed.R.Bankr.P. 7001(7) requires an adversary proceeding when seeking injunctive relief.

111 The Court also concludes, however, that Wees’ unauthorized practice, in conjunction with his misleading advertising, led the Debtors into a situation where they paid fees to him only to find that, in order to successfully prosecute their chapter 13 case, they had to hire counsel. They did not receive reasonable value for the fee they paid, and were damaged in at least that amount. This is sufficient basis to require the disgorgement of Wees’ fee. § 110(b)(2); Mitchell, 97.1 I.B.C.R. at 6. See also, § 110(i)(1)(A). [FN13]

Therefore, the Court will order that $165.00 shall be refunded by Wees to the Trustee, and the Debtors may assert any exemption they might have therein. § 110(b)(2).

FN13. As indicated, the UST did not set forth a specific case for damages, sanctions, costs and fees under § 110(i). It did, however, identify as a requested remedy the refund of the fee charged as being, under all the circumstances, excessive. This is sufficient notice to Wees of the relief sought, and § 110(b)(2) supports disgorgement.

CONCLUSION AND ORDER

The Court finds and concludes that Wees has violated § 110(i)(1) by using the term “legal” in his advertising. Accordingly the UST’s motion is GRANTED in part, and the Court ORDERS Wees to pay, under and pursuant to § 110(i)(2), a sanction of $500.00. Such sanction shall be paid to the Clerk of the Court.

The Court further finds and concludes that the fee paid to Wees by the Debtors, under all the circumstances, is unreasonable and in excess of the value of services rendered, and the UST’s motion is in this regard GRANTED. The Court ORDERS that Wees pay $165.00 to the chapter 13 Trustee. § 110(b)(2).
The Court finds and concludes that the erroneous response to question no. 9 on the statement of affairs does not constitute or reflect a violation of § 110, and the UST's motion is, in that regard, DENIED.

The Court finds and concludes that, in this case, Wees' conduct constitutes the unauthorized practice of law. However, inasmuch as the UST sought no relief under § 110(i) or § 110(j), the Court will not enter an injunction, nor refer the matter to the District Court.

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