The below described is SIGNED.

Dated: December 10, 2004

JUDITH A. BOULDEN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re: DEAINE BURNINGHAM, Debtor.	Bankruptcy Number: 04-24586 Chapter 7

MEMORANDUM DECISION

On March 24, 2004, debtor Deaine Burningham (the "Debtor," or "Burningham"), representing herself, filed for bankruptcy relief under chapter 7 of the Bankruptcy Code. The Debtor's petition, and schedules and statement of financial affairs, were prepared and filed with the assistance of a bankruptcy petition preparer, Aaron Meier (Meier) of Aaronson Grand & Associates (Aaronson Grand).

In an effort to enforce the provisions of 11 U.S.C. § 110,[1] the office of the United States Trustee (the "UST") brought a motion seeking disgorgement of fees and fines against Meier raising the following issues: 1) Meier's collection of a check for the filing fee made payable to the U.S. Bankruptcy Court was a violation of § 110(g)(1); 2) the fee charged by Meier was in

[1] All future statutory references are to Title 11 of the United States Code unless otherwise indicated.

excess of the reasonable value of the services he rendered and must be returned pursuant to § 110(h)(2); 3) Meier attempted to perpetrate fraud against the Court by filing a false Disclosure of Compensation; and 4) Meier engaged in the unauthorized practice of law when he provided legal advice to the Debtor in selecting the appropriate chapter of the Bankruptcy Code, filling out the schedules and statement of financial affairs, and in choosing which exemptions to claim, all in violation of § 110(k). An evidentiary hearing was held upon the motion and the matter taken under advisement.

The UST brought similar motions against Meier in this Court in cases assigned to other judges, and Chief Judge Glen E. Clark recently issued a decision[2] on similar issues. This Court has now considered the evidence presented in this case, the credibility of the witnesses, the arguments of counsel and has made an independent review of applicable case law including that set forth in the *Boyce* opinion. The Court concurs with the opinions expressed in *Boyce* as applied to the UST's issues 1 and 2. On the facts of this case, the Court rejects the relief sought in issue 3. And as to issue number 4, with the exception of whether Meier's conduct regarding the Debtor's claim of exemption constituted the unauthorized practice of law, the Court concurs with *Boyce*. Based thereon, the Court hereby enters its Memorandum Decision containing findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052(a).

[2] *In re Boyce*, No. 04-24409, 2004 WL 2659669 (Bankr. D. Utah Nov. 18, 2004).

I. FACTS[3]

The Debtor testified that she visited Aaronson Grand over almost a year's time, beginning in April and October 2003, and again in March 2004, before filing her petition on March 24, 2004. A Fee Receipt entered into evidence indicates the Debtor made several payments to Aaronson Grand: $100, $115, and $80. The $100 payment was made in cash prior to Meier acquiring Aaronson Grand and there was no evidence introduced which would indicate the previous accounts receivable were purchased along with the other assets of the company. The other payments of $115 and $80 were paid to Aaronson Grand while Meier was the owner. The $80 payment is termed a "redraw fee" which was incurred by Burningham because she did not file her petition the first time she met with a representative of Aaronson Grand and in fact she did not file her petition until more than a year had passed since her initial consultation. It is Aaronson Grand's practice to charge a fee to update the bankruptcy documents and to add creditors. In addition, a "court fee" of $209 made payable to the U.S. Bankruptcy Court was also given to Aaronson Grand prior to the petition being filed.

Meier filed a Disclosure of Compensation of Bankruptcy Petition Preparer (Disclosure of Compensation) indicating he received $195, which is consistent with the $115 and $80 payments. Aaronson Grand used a courier service for which it charged the Debtor an additional $20 to deliver the petition and related documents and filing fee to the Bankruptcy Court clerk's office. This courier fee and the initial $100 cash payment were the only monies not reported on

[3] In the interest of judicial economy, this Memorandum Decision will not restate the common facts related to the history and operation of Aaronson Grand and its interaction with the UST set forth in the *Boyce* opinion.

the Disclosure of Compensation.[4] The "court fee" was delivered by Aaronson Grand to the Court when the petition was filed.

The UST alleges that Meier gave Burningham legal advice which constitutes the unauthorized practice of law by selecting the appropriate chapter of the Bankruptcy Code she should file, filling out the schedules and statement of financial affairs, and in choosing which exemptions to claim. The evidence indicates that the Debtor met with Meier in the October 2003 and March 2004 consultations. Testimony did not reveal exactly what transpired at each of these meetings. However, at some point Burningham received a worksheet, which is not in evidence, to assist her in completing her schedules and statement of financial affairs. The evidence indicates that during one of Burningham's meetings with Meier, she inquired as to the difference between chapter 7 and chapter 13 of the Bankruptcy Code. The Debtor testified that Meier explained "the difference between the two is one you pay back, one you don't."[5] Meier denied that he offered this explanation.[6] No evidence was presented indicating Meier's alleged statement influenced Burningham's decision as to which chapter to file, and Burningham testified that she was aware that Aaronson Grand only prepared chapter 7 filings.

The evidence also indicates that Meier prepared the Debtor's petition, and schedules and statement of financial affairs, using a computer software program called EZ-Filing. The Debtor's worksheets were input into the computer program by employees of Aaronson Grand. In some

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[4] Ex. A at 32.

[5] Court Electronic Recording of hearing, 10/22/04 at 9:23:38 a.m.

[6] Although the Court finds Meier to be a credible witness, the Court will nonetheless analyze whether, if true, the statement amounts to the unauthorized practice of law.

manner not specifically in evidence, the software program populated Schedule C with information regarding the Debtor's assets, thus claiming those assets as exempt under the corresponding Utah exemption statutes.[7] The Debtor testified that she understood what an exemption was prior to meeting with Meier but did not select any exemptions on her schedules and statement of financial affairs even though they appear on Schedule C[8] which the Debtor reviewed and agreed to have filed with the Court. Meier testified that EZ-Filing automatically matches Utah state exemption statutes with personal property entered on Schedule B. He also indicated that, once he became aware of the UST's assertion that his actions regarding claiming the Debtor's exemptions constituted the unauthorized practice of law, he modified the computer program and it no longer transfers information entered into the EZ-Filing program automatically onto Schedule C.

II. ANALYSIS

A. Jurisdiction.

This Court has jurisdiction to determine this matter under 28 U.S.C. §§ 1334(b) and 157(b)(1). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

B. Issues Raised by the U.S. Trustee.

1. § 110(g)(1): Receipt and Delivery of Filing Fee

Section 110(g)(1) prohibits a bankruptcy petition preparer from handling any of the filing fees for the bankruptcy petitions prepared. Specifically, the language of the statute explains that a bankruptcy petition preparer "shall not collect or receive any payment from the debtor or on

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[7] Utah has opted out of the federal exemption list.

[8] Ex. A at 9.

behalf of the debtor for the court fees in connection with filing the petition."[9] There is no dispute that Meier is a petition preparer as defined in § 110(a)(1). At the time the Debtor's petition was filed, Aaronson Grand's policy was to receive a cashier's check made payable to the United States Bankruptcy Court which would be delivered to the Bankruptcy Court clerk's office along with the petition for filing. While Meier's attorney correctly argued that there is a very small minority position supporting this practice as being in compliance with the Bankruptcy Code,[10] an overwhelming majority of courts have specifically rejected this position and do not allow petition preparers to handle filing fees of their clients in any form.[11] Consistent with those cases, including the *Boyce* opinion, this Court agrees that such a practice is prohibited.

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[9] § 110(g)(1).

[10] *See In re Reed*, 208 B.R. 695, 697 (Bankr. N.D. Cal. 1997) (finding "[a] more reasonable construction of § 110(g)(1) is that it prohibits a preparer from accepting funds for its own account in respect of the filing fee. . . . Allow[ing] preparers to deliver bankruptcy petitions to the court in accordance with a debtor's instructions without having to resort to awkward devices to avoid taking possession of the debtor's check for the filing fee.") (footnote omitted).

[11] *E.g., Boyce,* 2004 WL 2659669, at *4 ("Acknowledging that there is a split in authority with respect to whether acceptance of a check or money order made payable to the bankruptcy court constitutes a violation of § 110(g)(1) of the code, this court joins the majority and finds that such conduct is prohibited . . ."). *See also In re Paysour,* 313 B.R. 109, 116 (Bankr. E.D.N.Y. 2004) ("courts have consistently found that Section 110(g) prohibits a bankruptcy petition preparer from taking possession of the debtor's bankruptcy filing fee in the form of the debtor's money order payable to the bankruptcy court for later delivery to the bankruptcy court"); *In re Rose,* 314 B.R. 663, 714 (Bankr. E.D. Tenn. 2004) (finding it a "direct violation" for a petition preparer to "to accept filing fees, in any form, from customers"); *Bodenstein v. Shareef (In re Steward),* 312 B.R. 172, 179 (Bankr. N.D. Ill. 2004) (finding "*Reed's* primary conclusion has been rightfully rejected by virtually every court addressing its holding"); *Tighe v. Scott (In re Buck)*, 290 B.R. 758, 765 (Bankr. C.D. Cal. 2003) (finding "that Congress intended section 110(g)(1) to broadly prohibit bankruptcy petition preparers from handling court filing fees"); *U.S. Trustee v. Summerrain (In re Avery)*, 280 B.R. 523, 531-32 (Bankr. D. Colo. 2002) (determining "Section 110(g) prohibits a petition preparer from taking possession of a debtor's filing fee in any form – including acceptance a [sic] debtor's check or money order made payable to the bankruptcy court for later delivery to the court"); *In re Kaitangian,* 218 B.R. 102, 115-16 (Bankr. S.D. Cal. 1998) (fining respondent for collecting the debtor's court filing fees); *U.S. Trustee v. PLA People's Law-Arizona, Inc. (In re Green)*, 197 B.R. 878, 881 (Bankr. D. Ariz. 1996) (concluding that the petition preparer violated § 110(g)(1) by receiving filing fees from debtors and arranging for the filing of the case).

It is undisputed that Meier collected the Debtor's filing fee and delivered it, along with the petition, to the Bankruptcy Court for filing. Meier testified that this practice has been discontinued and his clients now receive a "Delivery Information" sheet[12] containing a map and an explanation of how to file the petition without the assistance of Aaronson Grand or its courier service. The Court finds this practice to be an appropriate remedy and deems it unnecessary, at this time, to impose other than a nominal sanction of $1. However, should Aaronson Grand violate § 110(g) in the future, the Court will not hesitate to impose the maximum statutory sanction.

2. §110(h)(2): Reasonableness of Fees

Section 110(h) requires petition preparers to disclose any fee received from a debtor and unpaid fees charged. Fees paid to petition preparers are subject to a reasonableness inquiry by the Court.[13] "The burden of proving the reasonableness of a fee collected by a bankruptcy petition preparer rests upon the petition preparer."[14] Meier disclosed that he collected $195 from the Debtor but failed to disclose the $20 courier fee.[15]

The *Boyce* opinion has thoroughly analyzed the criteria by which fees for a petition preparer should be determined. The UST urges the court to adopt a fee system based on what a typist would charge. As *Boyce* explains, "[g]iven the risks and responsibilities posed by § 110, it does not make sense for a typing service to charge the same rate for bankruptcy petition

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12 Ex. 9.

13 *In re Woodward*, 314 B.R. 201, 205 (Bankr. N.D. Iowa 2004).

14 *Id.* (citations omitted).

15 Ex. A at 32. *See* courier fee discussion *infra* Part II.B.3.

preparation work as it would for ordinary typing."[16] This Court agrees with *Boyce* and finds the amount Meier charged for the service Burnigham received to be reasonable. Therefore, the Court concludes that $195 "is a reasonable fee for the accurate and well organized preparation of a bankruptcy petition."[17]

3. § 110(h)(1): Fraud Upon the Court

The UST asserts that Meier's failure to disclose the $100 the Debtor paid to Aaronson Grand prior to its acquisition by Meier, on his Disclosure of Compensation, constitutes fraud on the Court. The evidence does not support a finding that Meier received the $100 and, therefore, the Court declines to find any fraud upon the Court. Meier apparently did not disclose the $20 courier fee on the Disclosure of Compensation because he was unaware that it should be included. Concluding there was no intent on Meier's part to hide the fee, the Court declines to find fraud or grant this portion of the UST's motion. Since the issue has been raised, Meier has changed his practice and all extraneous fees are reported. However, because the courier fee was not properly disclosed the Court will require Meier to immediately turnover the courier fee to the Debtor in accordance with § 110(h)(2).

4. §110(k): Unauthorized Practice of Law

The UST urges this Court to sanction Meier for engaging in the unauthorized practice of law pursuant to § 110(k). Section k reads: "[n]othing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the

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[16] 2004 WL 2659669, at *4.

[17] *Id.*

unauthorized practice of law."[18] Unlike most of the prohibitions contained in § 110, this particular section does not specifically outline the offensive behavior, nor does it suggest an appropriate sanction. Instead, what constitutes the unauthorized practice of law is governed by state law.[19]

It is unnecessary to iterate the full convoluted history of Utah's definition of the unauthorized practice of law because it was recently analyzed in some detail in *Boyce*.[20] However, because Utah appears to be in an extreme minority on what constitutes the unauthorized practice of law, it might be helpful to expand on the underlying controversy that has left what constitutes the unauthorized practice of law in this state in what has been termed the "murky, muddy gray."[21]

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[18] § 110(k).

[19] *Boyce,* 2004 WL 2659669, at *5 ("State law governs the unauthorized practice of law."). *See also In re Graham,* No. 02-81930C-7D, 02-82065C-7D, 2004 WL 1052963, *7 (Bankr. M.D.N.C. Feb. 13, 2004) (finding state law applicable in determining what constitutes the unauthorized practice of law); *Steward,* 312 B.R. at 175 ("The Bankruptcy Code leaves the question of whether the preparation of a bankruptcy petition and related documents constitutes the unauthorized practice of law to state law."); *In re Schneider*, 271 B.R. 761, 764 (Bankr. D. Vt. 2002) ("In order to determine what constitutes the unauthorized practice of law, bankruptcy courts must look to state law."); *In re Boettcher,* 262 B.R. 94, 96 (Bankr. N.D. Cal. 2001) ("While a federal court has inherent authority to regulate the conduct of all who practice in it, state law is properly considered in determining whether the unauthorized practice of law has occurred in a bankruptcy court."); *In re Farness*, 244 B.R. 464, 470 (Bankr. D. Idaho 2000) (explaining "bankruptcy courts have generally looked to state law for guidance" on what constitutes the unauthorized practice of law); *Kaitangian,* 218 B.R. at 108 ("Section 110(k) provides that the ability of nonlawyers to practice before bankruptcy courts in a given jurisdiction will be governed by '[relevant state] law, including rules and laws that prohibit the unauthorized practice of law' . . .'") (citations omitted).

[20] 2004 WL 2659669, at *5-6.

[21] Debra Levy Martinelli, *Are You Riding a Fine Line? Learn to Identify and Avoid Issues Involving the Unauthorized Practice of Law*, UTAH ST. BAR J., Dec. 2002, at 18.

Members of the Utah State Bar and the Utah State Legislature found themselves at odds in a debate over Substitute House Bill 349 which the Utah State Legislature passed and then Governor Leavitt signed into law.[22] The bill performed two functions: 1) it extended the sunset provision of the prior unauthorized practice of law statute[23] to May 2004; and 2) it adopted "a very narrow definition of the practice of law that essentially limit[ed] law practice to appearances in court"[24] as of May 2004. From what this Court has been able to piece together from both the legislative history and comments from the Utah Bar Association, the conflict arose between the Utah Legislature's desire to deliver affordable legal services to the middle class[25] and the Utah Bar Association's concern over regulating the practice of law in Utah by non-lawyers.[26]

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[22] John A. Adams, *Substitute House Bill 349 and the Definition of the Practice of Law*, UTAH ST. BAR J., May 2003, at 6.

[23] The repeal of § 78-9-101 was extended from May 2004 to May 2007. The prior statute which is discussed in some Utah case law contains similar language. Neither provision contains a definition of the unauthorized practice of law but limits the practice of law to those persons admitted and licensed to practice within the state. *Compare* UTAH CODE ANN. § 78-51-25 (repealed 2001) *with* UTAH CODE ANN. § 78-9-101 (implemented in 2001, to be repealed May 3, 2007).

[24] Adams, *supra*, at 6. The proposed legislation narrowly defines the practice of law as "appearing as an advocate in any criminal proceeding or before any court of record in this state in a representative capacity on behalf of another person." Utah H.B. 349 (2003).

[25] Ch. 3, Sec. 1, Session Laws of Utah 2001 (requesting a judiciary study regarding the accessibility of legal services because the Legislature found "there is a significant unmet need for legal services within the state of Utah . . . linked in part to the high cost of those services within the state of Utah" and suggesting "allowing independent lay professionals to perform certain functions now requiring an attorney").

[26] These two concerns over regulating the practice of law and the reality of non-lawyers assisting *pro se* debtors in filing bankruptcy also prompted the enactment of § 110 of the Bankruptcy Code. "Rather than prohibiting such assistance and, as a realistic matter, watching it flourish more dangerously underground, Congress chose to force it into the light by defining persons who provide such assistance and regulating their conduct. . . ." *In re Alexander*, 284 B.R. 626, 630 (Bankr. N.D. Ohio 2002).

As a result of the unstable state of the unauthorized practice of law in Utah, it is somewhat difficult to determine what law is applicable, but it appears that at the time Meier consulted with the Debtor in October 2003 and/or March 2004 he was within the extended sunset provision of the repealed definition, which limits the practice of law to state licensed attorneys, and prior to the much more narrow definition which was repealed the same date it was to go into effect in May 2004. Because the applicable statute regulates, but does not define, the unauthorized practice of law,[27] we turn to Utah case law for guidance.

The Utah Supreme Court "has the exclusive authority to regulate the practice of law in Utah."[28] Meaning, without a more precise definition of unauthorized practice of law from the Utah State Legislature, this Court must determine how the Utah Supreme Court would interpret Meier's actions. The Utah Supreme Court has explained that the "practice of law, although difficult to define precisely, is generally acknowledged to involve the rendering of services that require the knowledge and application of legal principles to serve the interests of another with his

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[27] Perhaps a preferable solution as it relates to petition preparers would be that adopted by the Arizona Supreme Court in which legal document preparers must be state certified. The certification process involves an examination for admission, educational and experience criteria, written disclaimers to clients, continuing education courses, and an extensive code of ethics. *In re Bankruptcy Petition Preparers Who are Not Certified Pursuant to Requirements of the Arizona Supreme Court*, 307 B.R. 134, 137 n.3 (9th Cir. BAP 2004). These "certified legal document preparers may perform specified legal services . . . but are not permitted to give legal advice or to engage in the unauthorized practice of law." *Id*. at 138. *See also* Debra Moore, *By Creating Safe Harbors for Non-Lawyers, the Proposed UPL Rule Will Increase Access to Legal Services*, UTAH ST. BAR J., April 2004, at 6 (discussing Arizona and other state certification schemes and explaining "creating safe harbors reflects sound public policy whenever the public benefit from access to legal assistance by non-lawyers outweighs the risk of harm").

[28] *Utah State Bar v. Summerhayes & Hayden,* 905 P.2d 867, 870 (Utah 1995) (citing UTAH CONST. ART. VIII, § 4).

consent."[29] In *Summerhayes*, the Utah Supreme Court determined that giving advice, counsel, or facilitating a settlement requires a determination of the legal rights, duties, and relationships of different parties and was therefore the unauthorized practice of law.[30] It follows that if Meier determined the legal rights or duties of the Debtor, that action could conceivably fall under the Utah Supreme Court's definition of unauthorized practice.

Along with *Summerhayes*, there is one other case regarding the unauthorized practice of law in Utah.[31] *Peterson* involves a non-attorney who "prepared wills, divorce papers, and pleadings and conducted legal research on behalf of clients for a fee."[32] The Utah State Bar claimed the man "had engaged in the unauthorized practice of law in violation of section 78-51-25 of the Utah Code and sought a permanent injunction against him."[33] The Utah Supreme Court built off its *Summerhayes* decision by explaining "drafting complaints, drafting or negotiating contracts, drafting wills, counseling or giving advice on legal matters, and many other things"[34] are included as the practice of law.

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[29] *Id.* at 869.

[30] *Id.* at 870.

[31] *Bd. of Comm'rs of the Utah State Bar v. Petersen*, 937 P.2d 1263 (Utah 1997).

[32] *Id.* Although *Petersen* was decided when UTAH CODE. ANN. § 78-51-25 was the controlling statute, *Peterson* is still relevant. As explained *supra*, at 10 n.23, UTAH CODE. ANN. § 78-9-101, the controlling statute in this case, like the prior statute discussed in *Peterson*, merely prohibits the practice of law by those not licensed in the State of Utah but does not define what constitutes unauthorized practice.

[33] *Id.*

[34] *Id.* 1268.

There are three allegations of conduct which the UST claims constitute Meier's unauthorized practice of law: 1) the brief explanation of the difference between a chapter 7 and chapter 13 filing under the Bankruptcy Code; 2) filling out the schedules and statement of financial affairs; and 3) the automatic exemption assignment performed by Meier's software.

a. Explanation of Chapters of Bankruptcy

The concern with Meier's pithy explanation of the difference between chapter 13 and chapter 7 bankruptcy filings, if in fact he made such a statement, is not accuracy. Rather, it is that the explanation is over-simplified and lacks the detail necessary for a debtor to make an informed decision on which chapter to file. However, the UST did not assert that Meier advised, counseled, or assisted the Debtor with her decision as to which chapter to file, and the evidence indicates that the Debtor knew Aaronson Grand only processed chapter 7 filings. The lay explanation that may have been offered by Meier indicates he was not attempting to advise or counsel the Debtor on legal matters and was not making legal judgments nor was he applying legal principles. There is no evidence, or even an allegation, that Meier advised Burningham on which chapter of bankruptcy *she* should file, he simply offered a brief explanation: one you pay back, one you don't. Meier's explanation did not apply legal principles to the Debtor's legal rights and duties.

In contrast, the document preparer in *Peterson*

> met with and counseled clients on how to best proceed in their particular cases; with the aid of forms he selected, he drafted such things as complaints, summonses, motions, orders, and findings of fact and conclusions of law for pro se clients; he drafted wills; and he advertised his services in local publications.

> Thus Peterson held himself out to the public as a person qualified to provide, for a fee, services constituting the practice of law.[35]

The Court does not believe the evidence proves that Meier's explanation rises to the level of the violations discussed in *Summerhayes* and *Peterson*.

b. Filling Out the Schedules and Statement of Financial Affairs

The evidence is not particularly helpful regarding the process utilized by Meier to produce finished schedules and statement of financial affairs. The "worksheet" the Debtor completed was not received into evidence, and the Court will not speculate that the worksheet was so substantially different from the schedules and statement of financial affairs that the entry of the Debtor's answers into the EZ-Filing Program by Meier required the knowledge and application of legal principles. To the extent that the UST complains that the use of the EZ-Filing Program itself was the unauthorized practice of law, the Court concurs with *Boyce* that the use of computer software to prepare schedules and statements is not only helpful to all those involved in administering or ruling upon bankruptcy cases, but, under the facts of this case, it does not fall within the unauthorized practice of law.[36]

c. Software Automatic Assignment of State Exemptions

The issue of using computer software to select exemptions is more problematic. Bankruptcy courts in other jurisdictions have consistently concluded that the use of software or

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[35] *Id.*

[36] *Boyce*, 2004 WL 2659669, at *9. *See infra* notes 38-44 and accompanying text discussing the use of bankruptcy preparation software.

websites to complete bankruptcy forms and select exemptions violates § 110(k).[37] The software generally works in a similar manner to that used by Aaronson Grand in the present case: a worksheet is completed by the debtor and the petition preparer (or in some website cases, the debtor) inputs the worksheet information into the computer program and the program automatically populates the debtor's information into the correct spaces on the Bankruptcy Official Forms and the relevant exemption statutes are matched with personal property of the debtor.

Meier testified that he has complied with the applicable licensing requirements for EZ-Filing software and purchases the periodic updates which are issued to keep the software current. There is no motion pending before this Court against EZ-Filing as a petition preparer, and, as explained above, without the Debtor's worksheets in evidence, the Court cannot determine how much interpretative work was performed by the petition preparer and/or the software. However, testimony did reveal that the software was programed to automatically assign exemption statutes to the appropriate corresponding property on Schedule C. Meier testified that after he discovered the automatic exemption feature and the problems it was creating with the UST as potentially creating issues of the unauthorized practice of law, he contacted the software company and was

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[37] *Ihejirika v. Neary (In re Reynoso),* 315 B.R. 544, 552 (9th Cir. BAP 2004) ("Solicitation of information which is then translated into completed bankruptcy forms is the unauthorized practice of law, whether by website or otherwise, as is advising a debtor of the availability of particular exemptions or choosing those exemptions."); *In re Moffett*, 263 B.R. 805 (Bankr. W.D. Ky. 2001) (using computer software questionnaire program to solicit information and prepare debtor's petition and schedules constitutes the unauthorized practice of law); *In re Farness*, 244 B.R. 464, 472 (Bankr. D. Idaho 2000) (explaining the bankruptcy petition preparer "is not saved [from the unauthorized practice of law] by his use of preprinted bankruptcy forms or bankruptcy software which automatically placed the information he solicited from the Debtors' into the appropriate schedule . . . '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'") (internal citations and footnotes omitted).

given instructions to disable the feature. As of the date of the hearing on this matter, Meier testified that he continues to use the software but does not enable the exemption assignment feature.

While the use of software by petition preparers has been approved by the Court in this District, those persons who endeavor to create or utilize software in their business to assist *pro se* debtors must be mindful of when their actions cross the line into the unauthorized practice of law. Other bankruptcy courts interpreting their own state definitions of the unauthorized practice of law as they relate to automatic exemptions, consistently reach a different conclusion from *Boyce*.

> 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.[38]

Meier's defense is that he was not using his own knowledge to make an application of legal principles to the Debtor's case because the software made the selection without his knowledge. Regardless of what means Meier employed to select exemptions for the Debtor, "whether consultation with a computer program, a textbook, or other prepared materials,"[39] this Court concludes that Meier performed legal services for Burningham when he allowed the software to select the exemptions. Unlike listing property or creditors, or reporting transactions

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[38] *In re Kaitangian,* 218 B.R. 102, 110 (Bankr. S.D. Cal. 1998) (citations omitted). *See also* cases cited *supra* note 37.

[39] *Farness*, 244 B.R. at 472.

on the statements and schedules, a determination of what property a debtor may claim as exempt can become such a complex application of legal principles that it requires resolution by the Supreme Court.[40] Selecting exemptions falls squarely within *Summerhayes* by "determin[ing] the legal rights"[41] of the Debtor.

This Court does not want to discourage the use of innovative technology which increases the efficiency of the judiciary in performing its function. Clean, legible, electronic documents are much easier to review and interpret than hand-written filings which are even more difficult to read once they are scanned into the Court's docketing system and viewed on a computer screen.[42] At the same time, this Court does not want to open the door to a "the software did it" excuse for improper legal advice. Bankruptcy petition preparers must be responsible for the legal interpretations and consequences of the software utilized in completing bankruptcy forms for *pro se* debtors. "Websites [and software] don't just grow out of thin air and aren't maintained out of thin air. They're put together by people; . . . and it's not the [software] that provides the assistance. It's the people who develop [and utilize] the [software] that provide the assistance."[43]

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[40] The question of whether and to what extent Individual Retirement Accounts are exempt from a bankruptcy estate under § 522(d)(10)(E) of the Bankruptcy Code is currently pending before the Supreme Court and oral arguments were held December 1, 2004. *Rousey v. Jacoway (In re Rousey)*, 347 F.3d 689 (8th Cir. 2003), *cert. granted*, 124 S.Ct. 2817 (U.S. June 7, 2004) (No. 03-1407).

[41] *Summerhayes,* 905 P.2d at 870.

[42] As one bankruptcy judge explained "[s]o there is no misunderstanding, while all involved in the process would likely prefer it, bankruptcy papers need not be typed or printed. . . . Provided such are legible, these papers are readily accepted and effective." *In re Doser*, 281 B.R. 292, 314 n.22 (Bankr. D. Idaho 2002). *See also In re Moore*, 283 B.R. 852, 858 n.3 (Bankr. E.D.N.C. 2002) ("It is worth mentioning that there is no requirement that bankruptcy forms be typed. The court frequently receives handwritten materials.").

[43] *Reynoso*, 315 B.R. at 552.

Under the applicable definition of practicing law as set forth by the Utah Supreme Court in *Summerhayes*, this Court concludes, differently from *Boyce*, that the use of software in selecting exemptions constitutes the practice of law.

In *Boyce*, the Court concluded in the alternative that because "Aaronson Grand closely and/or directly associated itself with an attorney who is licensed to practice law in the state and is on active status, the Utah State Supreme Court would find that Aaronson Grand did not engage in the unauthorized practice of law."[44] The facts in this case are not sufficiently well developed as to exactly when Meier consulted with his attorney, or the scope of the representation, for this Court to make a determination that Meier was associated with an active, licensed attorney while resolving the Debtor's exemptions. What evidence is on the record, however, appears to indicate that Meier's relationship with his attorney existed at the time the Debtor's schedules were filed. In any event, it appears that Meier has terminated the practice of populating Schedule C with data in the EZ-Filing program as soon as the issue was raised. Since Meier no longer engages in this conduct, this Court finds it unnecessary to deal further with the issue.

III. CONCLUSION

While the Court has determined that Aaronson Grand has violated some sections of § 110, it must be pointed out that, as explained in the *Boyce* opinion,[45] Meier has made a tremendous effort to bring his petition preparation company into compliance with the Bankruptcy

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[44] *Boyce*, 2004 WL 2659669, at *9.

[45] 2004 WL 2659669, at *9 ("Aaronson Grand was convincing in its presentation that it had done all in its power to comply with the requirements of the code and Rules.").

Code and local practice. Meier's good faith efforts to comply have not gone unnoticed by the Court.

Returning to the four issues raised by the UST, the Court finds as follows: First, the violation of § 110(g) of collecting the Debtor's filing fee has been sufficiently remedied and only a nominal sanction of $1 is necessary. Second, the fee charged by Meier is reasonable pursuant to § 110(h)(2). Third, there is insufficient evidence that Meier received the additional $100 cash paid by the Debtor and although Meier did not report the courier fee on his Disclosure of Compensation, he has already remedied the problem by discontinuing the practice of using a courier and no fraud was perpetrated against the Court for either omission; however, the Bankruptcy Code requires disgorgement of the $20 courier fee to the Debtor within 30 days or further sanctions will be ordered. As to the fourth and final issue of whether Meier engaged in the practice of law without a license, the Court finds no violation for Meier's explanation of the chapters of bankruptcy and no violation for filling out the schedules and statement of financial affairs but finds that allowing a software program to select state exemptions for a debtor constitutes the unauthorized practice of law. Because Meier has changed his practice of allowing his software program to automatically assign state exemptions to personal property of debtors, no sanctions will be imposed at this time. A separate order will follow.

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SERVICE LIST

Service of the foregoing **MEMORANDUM DECISION** will be effected through the Bankruptcy Noticing Center to each party listed below.

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