

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM J. PATTON	:	CIVIL ACTION
Non-Attorney Bankruptcy Preparer	:	
	:	
v.	:	
	:	
DAVID A. SCHOLL	:	NO. 98-5729
Bankruptcy Judge	:	

MEMORANDUM AND ORDER

YOHN, J.

June 25, 1999

William J. Patton (“Patton”), a bankruptcy petition preparer, as that term is defined in 11 U.S.C. § 110 (“§ 110”), appeals from the September 23, 1998, order of the bankruptcy court which ordered him to disgorge the fees he had received from three Chapter 7 debtors for his assistance in preparing their bankruptcy petitions, and permanently enjoined him from assisting debtors in filing bankruptcy petitions in any jurisdiction in the United States. The United States Trustee (“Trustee”) filed an appearance in this appeal to defend the bankruptcy court’s order and filed a brief in opposition to Patton’s appeal. At issue in this appeal is whether Patton engaged in the unauthorized practice of law when he prepared bankruptcy petitions for three debtors who filed Chapter 7 bankruptcy cases in the Bankruptcy Court for the Eastern District of Pennsylvania. For the reasons described below, the bankruptcy court’s September 23, 1998, order will be affirmed in part and modified in part.

FACTUAL AND PROCEDURAL BACKGROUND

In this district, pro se debtors are required to file Local Bankruptcy Form 2016.1, which requires debtors to disclose whether they have paid any person to assist them in filing their

bankruptcy petitions. See Ross v. Smith (In re Gavin), 181 B.R. 814, 816 n.1 (Bankr. E.D. Pa. 1995) (discussing Local Bankruptcy Form 2016.1). On August 31, 1998, after reviewing the Forms 2016.1 filed by debtors Richard Allen Yeakley (“Yeakley”) and Eric Van Brister (“Brister”), which disclosed that those debtors had paid Patton for assistance in filing for bankruptcy, the bankruptcy court ordered Patton to answer several questions concerning the services he provides¹ and to show cause why he “should not be compelled to refund any sums charged to the Debtors; permanently enjoined from assisting any parties in filing bankruptcy cases; permanently enjoined from charging any persons for assisting them in filing bankruptcy cases; permanently enjoined from any violations of 11 U.S.C. § 110; and subjected to any penalties set forth in 11 U.S.C. § 110.” In re Yeakley, No. 98-23948, order at 2 (Bankr. E.D. Pa. Aug. 31, 1998). Several days later, and apparently in reaction to the Form 2016.1 filed by William Gerald Robson (“Robson”), another Chapter 7 debtor, the bankruptcy court enjoined Patton from further assisting debtors in filing bankruptcy petitions pending a hearing on the court’s order to show cause. See In re Robson, No. 98-30944, order at 2 (Bankr. E.D. Pa. Sept. 4, 1998).

In response to the bankruptcy court’s order to provide written responses to the questions outlined in its August 31, 1998, order, Patton wrote a letter to Bankruptcy Judge Scholl on September 10, 1998, in which he reported that he charged each of his clients a flat fee of \$250 for

¹ The bankruptcy court ordered Patton to explain, in writing “[w]hat services he claims to have performed for the Debtors; [w]hat sums, if any, were charged for these services; [w]hy any sums charged should not be refunded; [t]he names and case numbers of any other bankruptcy cases filed in any jurisdiction in which he has charged fees for assisting debtors but has not entered an appearance as counsel for the debtors,” and ordered him to provide the court with copies of all the advertising he uses. In re Yeakley, No. 98-23948, order at 2 (Bankr. E.D. Pa. Aug. 31, 1998).

preparing their bankruptcy petitions and schedules using data they provided. See Letter from Patton to Bankruptcy Judge Scholl (Sept. 10, 1998) (“Sept. 10 Letter”). He also informed the court that he was a “Non-Attorney Bankruptcy Petition Preparer, as defined in 11 U.S.C. § 110” and has never entered an appearance as counsel in any bankruptcy case. Id.

On September 22, 1998, the bankruptcy court held a hearing on its order to show cause, at which Patton, Yeakley, Brister, and Robson testified. John McLaughlin, an Assistant United States Trustee, questioned the witnesses and argued that Patton had engaged in the unauthorized practice of law. See Transcript of Sept. 22, 1998 Bankruptcy Court Hearing (“Tr.”), at 211-16.

At that hearing, Patton testified that he has been a bankruptcy petition preparer since 1996, and submitted a list of 56 bankruptcy petitions he has prepared in a number of jurisdictions, including Pennsylvania, Maryland, Washington, D.C., Virginia, and Texas. See Tr. at 166-67; Letter from Patton to Bankruptcy Judge Scholl (Sept. 16, 1998). By “successful” bankruptcy petitions, Patton apparently meant those resulting in a discharge for the debtor. See Statement of Issues (Docket No. 5), ¶ 2. Patton has no legal training or college degree, and became a bankruptcy petition preparer, he claims, at the suggestion of Chief Bankruptcy Judge Woodside in the Middle District of Pennsylvania. See Tr. at 187-88. He became a bankruptcy petition preparer after dealing with his own Chapter 11 case. See Tr. at 164, 187. Before preparing bankruptcy petitions, Patton sold insurance, but he recently allowed his license to expire because he no longer has a contract with an insurance company. See Tr. at 189-90.

Patton advertises his bankruptcy petition preparation services in the newspaper, on the Internet, on the radio and through the distribution of business cards and printed pens. See Tr. at 183-86; Sept. 10 Letter. His newspaper advertisements, which appeared in the classified

advertising sections of newspapers in Maryland, Washington, D.C., and the Harrisburg Patriot News in Harrisburg, Pennsylvania, read “BANKRUPTCY Prepared \$250. 1-800-961-0085 or 717-230-9333.” See Sept. 10 Letter. Similarly, Patton’s America Online profile identifies his occupation as “Bankruptcy Preparer - Cases prepared for just \$250 . . . Nationwide . . . have Toll Free . . . Over 7 years Experience.” Id. During July, 1998, Patton advertised on a radio station in the Reading, Pennsylvania area.² See id. Patton’s business cards identify him as “W.J. ‘Bill’ Patton, Esq. Bankruptcy Preparer” and inform potential clients that he offers “Bankruptcy Prepared for \$250. In-Home Service Available, Regionally By Appointment, Nationwide Service All Others Via Internet.” See id. Patton also advertises using printed pens which read “William J. Patton, Esq., Bankruptcy Preparer, Cases Prepared for \$250” and provide a telephone number at which to contact him.

Patton testified that he is careful to inform his clients that he is not an attorney, and that he cannot give them advice about what the Bankruptcy Code does, or does not, allow them to do. See Tr. at 168, 207. Patton claims that Chief Judge Woodside told him not to take Chapter 13 cases, and asserts that he will refer those cases to an attorney rather than handling them himself. See Tr. at 169-71. A pamphlet published by Legal Aid helps Patton to determine when a case should be brought under Chapter 13 rather than Chapter 7. See id. Patton began to use the title “Esquire” after a court clerk in the District of Maryland allegedly told him that it was only a title

² The radio advertisement, which lasts approximately ten seconds, asked: Creditors pounding on your door? Phone ringing off the wall? Are credit card bills crashing down on you? Stop the torment. Call Bill Patton, bankruptcy preparer. He’ll come right to your home at your convenience and prepare your case for only \$250. Emergency services also available. Call Bill today at 230-9333 or 1-800-961-0085.

See Cassette Tape accompanying Sept. 10 Letter.

of respect, and was not reserved for attorneys. See Tr. at 172, 196.

Patton prepared bankruptcy petitions for at least three debtors who filed Chapter 7 cases in the Bankruptcy Court for the Eastern District of Pennsylvania. Each of those debtors testified at the bankruptcy court's September 22, 1998, hearing.

Robson testified that he contacted two lawyers about filing bankruptcy, but was poorly treated by both. See Tr. at 21-23, 44, 61-62. An acquaintance recommended Patton, and he contacted Patton through America Online in approximately July, 1998. See Tr. at 11-13. Patton charged Robson \$250 for his services, which Robson paid in two \$125 money orders. See Tr. at 50. Robson supplied Patton with information about his debts and Patton decided how to schedule his debts and which exemptions to claim. See Tr. at 35, 38. Patton decided whether to classify his debts as secured or unsecured, whether his debts were priority debts, and which obligations were executory contracts. See Tr. at 35-36, 37-38, 43. Robson "relied on Mr. Patton's expertise in filling out the forms." Tr. at 43. Robson and Patton did not discuss the difference between federal and state exemptions, alternatives to bankruptcy, or lien avoidance. See Tr. at 21, 37, 70. Until the bankruptcy court hearing, Robson did not understand the difference between federal and state exemptions. See Tr. at 21. Robson, however, independently chose to file under Chapter 7 rather than Chapter 13, based on his discussions with friends and family, and based on his feeling that he would not be able to deal effectively with his mortgage company if he filed under Chapter 13. See Tr. at 18, 69. He did not discuss the issue of whether to file under Chapter 7 or 13 with Patton. See Tr. at 69. Robson testified that he knew that Patton was not an attorney, and attached no significance to Patton's use of "Esquire" as a title of respect. See Tr. at 24, 58-9. Robson also stated that he "didn't ask [Patton] for any legal advice.

I asked him to help me prepare the forms.” Tr. at 58. Robson is satisfied with the services Patton rendered, and thought his charges were reasonable. See Tr. at 13, 21.

Brister contacted Patton on the recommendation of a family member who worked at the post office Patton used, and who told him that Patton had a good reputation in Harrisburg. See Tr. at 79, 112. Brister testified that he decided to file a Chapter 7 bankruptcy after speaking to his sister who had previously filed for bankruptcy. See Tr. at 83, 121. He testified that his goal in filing for bankruptcy was to keep his house and his car, and that when he discussed the subject with Patton, Patton told him that Chapter 7 “would, more or less, be the best one for me.”³ Tr. at 83, 114. After Brister gathered information about his debts, Patton came to his home to complete the bankruptcy petition using information Brister supplied about his bills. See Tr. at 89. At the time of their first meeting, Brister paid Patton \$250. See Tr. at 81-82, 105. Patton was responsible for classifying Brister’s debts as priority debts or secured debts, for classifying his mortgage as an executory contract, and for choosing Brister’s exemptions. See Tr. at 90-91, 94-95, 99. According to Brister, Patton gave him no advice about whether he should file bankruptcy, what he should do at the bankruptcy court hearings, or what he should do if problems arose in those hearings. See Tr. at 118, 122. Brister also knew that Patton is not an

³ Brister gave conflicting testimony concerning Patton’s role in his decision to file under Chapter 7 or under Chapter 13. Patton’s attorney asked him:

Q: And did [Patton] provide you with any assistance in determining whether you should file a Chapter 7 or -- or some other chapter?

A: No.

Q: Did he provide you with a bankruptcy information sheet, describing to you the difference between Chapter 7 and Chapter 13?

A: No.

Tr. at 118.

attorney and had no idea what “Esquire” means. See Tr. at 110. He did not know whether Patton had been trained to be a non-attorney bankruptcy petition preparer, or whether he had a license. See Tr. at 111. Brister decided to hire Patton in part because he believed that he could not afford an attorney. See Tr. at 117.

The third debtor, Yeakley, hired Patton after hearing his ad on a local radio station. See Tr. at 126. Before hiring Patton, Yeakley had consulted a lawyer, who had advised him to file under Chapter 7, but Yeakley hired Patton because he was cheaper than the lawyer. See Tr. at 128-29, 154. Yeakley paid Patton \$250 when Patton came to his home in Bethel, Pennsylvania. See Tr. at 127. At that meeting, Yeakley testified, he and Patton discussed his bills, “figured out [his] expenses and how much money [he] needed, how much [he] was bringing in, that sort of thing, and went over the codes.” Tr. at 127. Yeakley testified that, prior to meeting with Patton, he had done some reading on bankruptcy, and was familiar with some of the terms used on the petition, such as exemptions. See Tr. at 127-28, 136-37. Yeakley was also convinced that his union-provided pension plan could not be touched in a bankruptcy proceeding because union personnel had informed him that he could not use the pension to pay his bills. See Tr. at 135. The role Patton played in placing his debts into particular parts of the bankruptcy petition is unclear; Yeakley did agree that Patton decided to put the value of his pension plan in the “description” box rather than the “current market value” box on Schedule B, and did agree that he viewed Patton as “assisting [him] in gathering the information and putting that information in the right place on [the] form.” See Tr. at 144, 159. Though Yeakley may have thought Patton was an attorney when he first called the telephone number in Patton’s radio ad, Yeakley stated that Patton told him during their first meeting that he was not a lawyer, and Yeakley did not think

that “Esquire” was only used by attorneys. See Tr. at 141, 150, 155, 157-58. Yeakley is satisfied with the services Patton provided and knows that he can expect no further help from Patton if problems arise during his bankruptcy case. See Tr. at 142, 159.

Following the September 22, 1998, hearing, the bankruptcy court ruled that Patton provided “services which were in the nature of the unauthorized practice of law,” and thus ordered him to refund the fees he collected from Robson, Brister and Yeakley, and enjoined him from “assisting any parties in filing bankruptcy cases; and [] accepting fees for representing parties in filing bankruptcy cases or for referring parties to attorneys to file bankruptcy cases, either directly or indirectly, in this jurisdiction or in any other jurisdiction of the United States.” In re Yeakley, No. 98-23948, order at 2 (Bankr. E.D. Pa. Sept. 23, 1998). Patton appealed this ruling, and obtained a stay of the bankruptcy court’s order pending that appeal. See Patton v. Scholl, No. 98-MC-153 (E.D. Pa. Dec. 18, 1998). In response to this court’s request for further information concerning Patton’s motion for a stay pending appeal, the bankruptcy court filed a supplementary opinion providing further explanation of its September 23, 1998, order. See Patton v. Scholl, No. 98-MC-153, 1998 WL 779238 (Bankr. E.D. Pa. Nov. 6, 1998). On appeal, Patton argues that the bankruptcy court’s order was “a blatant act of Lawyer Protectionism, designed to drive [him] out of business” and therefore, violates § 110. See Statement of Issues, ¶ 3. He further claims that his chosen profession as a “Non-Attorney Bankruptcy Petition Preparer” is “recognized and governed by” § 110. Id., ¶ 6. In addition to a reversal of the bankruptcy court’s order, Patton also seeks a damages award for the income he lost as a result of the bankruptcy court’s order. See id., ¶ 7. Patton did not submit a brief in support of his appeal, and is proceeding pro se in this court. The United States Trustee did submit a brief supporting

the bankruptcy court's order. See Answering Brief of the United States Trustee in Opposition to the Appeal of William J. Patton ("Trustee's Brief").

STANDARD OF REVIEW

The district court, sitting as an appellate tribunal, applies a clearly erroneous standard to review the bankruptcy court's factual findings and a de novo standard to review its conclusions of law. See In re Siciliano, 13 F.3d 748, 750 (3d Cir. 1994). Mixed questions of fact and law require a mixed standard of review, under which the court reviews findings of historical or narrative fact for clear error but exercises plenary review over the bankruptcy court's "choice and interpretation of legal precepts and its application of those precepts to the historical facts." Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991), cert. denied, 503 U.S. 937 (1992); see also Chemetron Corp. v. Jones, 72 F.3d 341, 345 (3d Cir. 1995), cert. denied, 517 U.S. 1137 (1996).

DISCUSSION

I. Unauthorized Practice of Law and 11 U.S.C. § 110

Patton's primary argument on appeal is that § 110 specifically authorizes him to prepare bankruptcy petitions, and that the bankruptcy court's order is in "direct conflict with" § 110. See Statement of Issues, ¶ 1. Section 110 was added to the bankruptcy code by § 308 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, Title III, § 308, 108 Stat. 4106, 4135-37 (1994) (applying to bankruptcy petitions filed after Oct. 22, 1994). The statute applies to any "bankruptcy petition preparer," defined as "a person, other than an attorney or an employee of an attorney, who prepares for compensation . . . a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection

with a case under this title.” § 110 (a)(1-2). Both Patton and the Trustee agree that Patton is a “bankruptcy petition preparer” as defined by the statute. See Statement of Issues, ¶ 2; Trustee’s Brief, at 13-14.

The statute establishes a set of requirements for bankruptcy petition preparers, and provides penalties for failure to comply with those requirements and for otherwise engaging in fraudulent or deceptive practices. Among its provisions, the statute requires petition preparers to sign all documents they prepare and to include their name, address and social security number on those documents, § 110 (b)(1), (c)(1), to furnish debtors with a copy of all documents they prepare, § 110 (d)(1), and within ten days after the filing of a bankruptcy petition, to file a declaration revealing all compensation they received from the debtor in the twelve months preceding the filing, § 110 (h)(1). Additionally, the statute prohibits petition preparers from “execut[ing] any document on behalf of a debtor,” § 110 (e)(1), from using the word “legal” or any related term in advertising, § 110 (f)(1), and from collecting court filing fees from debtors, § 110 (g)(1). In their discretion, bankruptcy courts may impose statutory fines of up to \$500 for each of these specific violations, and may recommend that the district court award further relief to the debtor, the trustee, or a creditor who seeks to enforce § 110.⁴ See § 110 (i). Finally, the statute permits injunctive relief against petition preparers when it is necessary to prevent the recurrence of conduct which violates § 110 or is otherwise “fraudulent, unfair, or deceptive.” § 110 (j). The statute explicitly cautions that “[n]othing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the

⁴ The bankruptcy court did not find that Patton had violated any of the specific requirements or prohibitions of § 110, and therefore, did not impose fines on him. See Patton, 1998 WL 779238, at * 10.

unauthorized practice of law.” § 110 (k).

Section 110's legislative history indicates that Congress designed the statute to control the proliferation of “bankruptcy typing mills” which have “unfairly preyed upon” people who “do not speak English or understand the bankruptcy system.” 140 Cong. Rec. H10772 (daily ed. Oct. 4, 1994) (statement of Rep. Berman). The bill was also intended to protect individual debtors from “bankruptcy petition preparers who negligently or fraudulently prepare bankruptcy petitions.” 140 Cong. Rec. H10771 (statement of Rep. Synar). Congress further explained that its purpose in enacting § 110 was not to authorize a new profession, but rather to provide a remedy against a growing number of non-attorneys who were performing legal services in bankruptcy cases. Included in the record of the House debate is the following statement describing the purpose of § 110:

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

140 Cong. Rec. H10770 (Bankruptcy Reform Act of 1994 - Section by Section Description).

This statement, when combined with § 110's explicit recognition that state unauthorized practice of law statutes govern the activities of petition preparers, makes it clear that § 110 is not a blanket authorization for non-attorneys to prepare bankruptcy petitions as Patton asserts. See Statement of Issues, ¶ 6. The bankruptcy court's order, which applies Pennsylvania's unauthorized practice of law statute to Patton's conduct, is therefore not in “direct conflict” with

§ 110.

To evaluate further Patton's contention that the bankruptcy court erred when it enjoined him from assisting debtors in filing bankruptcy cases, the court must review the bankruptcy court's decision that Patton engaged in the unauthorized practice of law. Pennsylvania law makes it a misdemeanor any non-attorney to

practice law, or [to] hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction.

42 Pa. Cons. Stat. Ann. § 2524 (a) (West Supp. 1999). The statute provides no definition of what it means to "practice law" and Pennsylvania courts have refused to formulate a definitive test for what constitutes legal practice because "[m]arking out the abstract boundaries of legal practice would be an elusive, complex task more likely to invite criticism than to achieve clarity."

Dauphin Cty. Bar Ass'n v. Mazzacaro, 351 A.2d 229, 233 (Pa. 1976) (quotation omitted).

Rather, courts must examine whether the challenged conduct "requires the abstract understanding of legal principles and a refined skill for their concrete application." Id.; Commonwealth v. Allstate Ins. Co., 1999 WL 203042, at * 4-5 (Pa. Commw. Ct. Apr. 13, 1999) (evaluating whether defendant was "offering legal advice" or "rendering legal judgment regarding the merits of any claim").

Though the Pennsylvania state courts have not recently addressed whether a non-lawyer who completes blank legal forms for the public is engaged in the unauthorized practice of law, the court did prohibit a similar practice in Childs v. Smeltzer, 171 A. 883, 885 (Pa. 1934). Smeltzer, a notary and stenographer, advertised her services as a "conveyancer" to local real

estate brokers and lawyers. See id. at 884. She advertised that she specialized in “the preparation of deeds, mortgages, releases, assignments, and all other legal papers” and admitted that she “has drawn a great variety of legal instruments, including wills, deeds of trust, bills of sale, leases, [and] partnership agreements” primarily using “forms containing blanks which she filled out with appropriate language.” Id. The court concluded that Smeltzer was engaged in the unauthorized practice of law because the “habitual drafting of legal instruments for hire constitutes the practice of law, even though the individual so engaged makes no attempt to appear in court or to give the impression he is entitled to do so.” Id. at 885 (commenting that “legal instruments” are those “by which legal rights are secured”).

Applying these standards, the bankruptcy court appropriately examined whether Patton offered legal advice to his clients, engaged in activities requiring the understanding and application of legal principles to concrete facts, and prepared legal instruments for paying clients. As a factual matter, the bankruptcy court found that Patton was responsible for choosing exemptions for Robson, Brister and Yeakley, and for determining how their debts should be categorized on the bankruptcy schedules. See Patton, 1998 WL 779238, at * 5, 8. Patton’s normal method of operation, the bankruptcy court concluded, was to interview the debtors about their obligations and to use this raw data to complete the bankruptcy petition and its schedules. See id. at * 3. The bankruptcy court also found that Patton “steered” debtors toward Chapter 7 rather than Chapter 13.⁵ See id. Patton did not argue that these findings were clearly erroneous,

⁵ Though the record is less than clear about whether Patton advised Brister to file Chapter 7 or whether Brister had already decided to do so, there is no evidence to suggest that the bankruptcy court’s factual finding that Patton steered him toward Chapter 7 is clearly erroneous. Moreover, Patton does not appear to challenge the bankruptcy court’s factual findings.

and even after keeping in mind the court's obligation to construe pro se pleadings liberally, the court can find nothing in the testimony presented to the bankruptcy court that these findings were made in error.

Patton's actions in steering his clients towards Chapter 7, selecting their exemptions and categorizing their debts constitute the unauthorized practice of law under Mazzacaro because he rendered legal judgments about the proper classification of his clients' obligations, and made legal decisions for them when he completed their petitions using the raw data they provided. See Mazzacaro, 351 A.2d at 233-34 (concluding that casualty adjuster engaged in unauthorized practice of law when he valued third parties' tort claims because the valuation process required him to apply "abstract legal principles to the concrete facts of the given claim"). Moreover, under Childs, it is clear that Patton has engaged in the unauthorized practice of law by preparing legal instruments, namely bankruptcy petitions, for paying clients. Like Smeltzer, Patton did not tell his clients that he would represent them in court proceedings, but he advertised his expertise in drafting bankruptcy petitions and gave his clients legal advice about how they should be completed. His classification of debts, selection of exemptions, categorization of contracts and recommendation or selection of the specific Chapter under which the bankruptcy petition should be filed went far beyond the mere typing of the document, and required the guiding hand of a trained lawyer.

A number of courts, charged with applying Pennsylvania law, are in agreement that activities similar to Patton's constitute the unauthorized practice of law. For example, courts have previously concluded that bankruptcy petition preparers who decide which chapter a debtor should file, select which exemptions a debtor should claim, categorize a debtor's obligations, and

advise debtors on remedies and procedures in the bankruptcy courts have engaged in the unauthorized practice of law. See Philadelphia Housing Auth. v. Rainey (In re White), No. 93-4895, 1995 WL 612931, at * 3-4 (E.D. Pa. Oct. 11, 1995); In re Skobinsky, 167 B.R. 45, 50-51 (E.D. Pa. 1994); Gavin, 181 B.R. 814, 823 (Bankr. E.D. Pa. 1995); O'Connell v. David, 35 B.R. 141, 143 (Bankr. E.D. Pa.), aff'd in part, 35 B.R. 146 (E.D. Pa. 1983), aff'd, 740 F.2d 958 (3d Cir. 1984); In re Arthur, 15 B.R. 541, 546 (Bankr. E.D. Pa. 1981); cf. In re Campanella, 207 B.R. 435, (Bankr. E.D. Pa. 1997) (concluding that the sale of instructional kits for completing legal documents, without more, may constitute the unauthorized practice of law).

Numerous other courts, applying the laws of other states, have concluded that actions similar to Patton's, including choosing debtors' exemptions, characterizing their debts, and completing their bankruptcy petitions using data they supplied, constitute the unauthorized practice of law. Accord Hastings v. United States Trustee (In re Agyekum), 225 B.R. 695, 702 (B.A.P. 9th Cir. 1998) (preparer's use of questionnaire which solicited information he then used to complete petitions was unauthorized practice of law); In re McDaniel, 232 B.R. 674, 679 (Bankr. N.D. Tex. 1999) (preparer gave clients unauthorized legal advice when he "applie[d] the statutes, rules, and information from publications to the facts of the particular cases" and when he "selected how creditors would be treated in the case"); In re Moore, 232 B.R. 1, 8 (Bankr. D. Me. 1999) (preparer gave legal advice without a license by informing debtor about bankruptcy chapters, selecting her exemptions, and opining on her ability to dispose of assets); Ostrovsky v. Monroe (In re Ellingson), 230 B.R. 426, 433-34 (Bankr. D. Mont. 1999) (preparer engaged in unauthorized practice of law when she advised debtors 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”); In re Gabrielson, 217 B.R. 819, 826-27 (Bankr. D. Ariz. 1998) (finding that advising debtors about exemptions and which bankruptcy chapter to file, as well as drafting pleadings, is the practice of law); In re Kaitangian, 218 B.R. 102, 110-13 (Bankr. S.D. Cal. 1998) (finding that preparer engaged in unauthorized practice of law by advising debtors about exemptions, selection of appropriate chapters, reaffirmation of debts, the timing of bankruptcy filing, classification of debt, and the dischargeability of student loans); United States Trustee v. Tank (In re Stacy), 193 B.R. 31, 39 (Bankr. D. Or. 1996) (preparer’s practices constitute unauthorized practice of law because his activities “involve the exercise of informed or trained discretion in advising another of his or her legal rights and duties”); In re Lyvers, 179 B.R. 837, 842 (Bankr. W.D. Ky. 1995) (preparer engaged in unauthorized practice by answering debtors’ questions concerning completion of bankruptcy petitions and advising debtors about exemptions); In re Bright, 171 B.R. 799, 803-05 (Bankr. E.D. Mich. 1994) (preparer’s activities constituted unauthorized practice of law).

Despite Patton’s protestations that his clients, and even bankruptcy trustees, are satisfied with the quality of his work, the level of service he provides is irrelevant to the determination of whether he is engaged in the unauthorized practice of law. See Statement of Issues, ¶ 2 (alleging that trustees told one or more of the debtors he helped that “Mr. Patton did an excellent job. An Attorney could not have done a better one.”). Even accepting, for purpose of argument, that Patton’s work-product in Robson’s, Brister’s and Yeakley’s cases was flawless, he has nonetheless given legal advice to those debtors, and his actions are therefore illegal in Pennsylvania. See 42 Pa. Cons. Stat. Ann. § 2524 (a) (West Supp. 1999). Patton also objects that the software program he uses picked the debtors’ exemptions automatically, and he therefore

does not exercise legal judgment in selecting the debtors' exemptions. See Statement of Issues, ¶ 5. 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 Robson, Brister and Yeakley when he chose their exemptions. See Kaitangian, 218 B.R. at 110 (finding preparer's contention that software program, not he, selects the debtors' exemptions is "disingenuous" because "[p]lugging in solicited information . . . to a pre-packaged bankruptcy software program constitutes the unauthorized practice of law").

Patton's primary objection to the bankruptcy court's order is his belief that Bankruptcy Judge Scholl and the United States Trustee are engaged in "Lawyer Protectionism," are attempting "to drive Mr. Patton out of business," and have "conspired to prevent Mr. Patton from [practicing] his profession not only in their District, but the entire United States of America." Statement of Issues, ¶¶ 3, 6. As discussed above, § 110 does not authorize non-attorneys to engage in the unauthorized practice of law which Pennsylvania has prohibited. See § 110 (k). Though Patton's desire to continue performing services which he enjoys is understandable, he has no right to perform legal services in violation of Pennsylvania law. Contrary to his contention, the purpose of Pennsylvania's unauthorized practice of law statute is not to protect lawyers, but rather to protect consumers of legal services. As the Pennsylvania Supreme Court explained, "the object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlearned persons in the practice of law, to assure to the public adequate protection in the pursuit of

justice.” Mazzacaro, 351 A.2d at 233 (quoting Shortz v. Farrell, 193 A. 20 (Pa. 1937)); Childs, 171 A. at 886 (“The strict regulation and control of persons who render legal services is as necessary and essential to the welfare of the public at large as the requirements for the practice of medicine or dentistry.”). Because Patton has engaged in activities constituting the practice of law, his actions are forbidden by Pennsylvania law, and the bankruptcy court and the Trustee took appropriate actions to enforce Pennsylvania law. See 42 Pa. Cons. Stat. Ann. § 2524 (a). Neither the bankruptcy court nor the Trustee engaged in an unlawful or malicious conspiracy as Patton argues; their actions appear, to the contrary, consistent with a national trend toward curtailing the unauthorized practice of bankruptcy law by non-attorneys. See Moore, 232 B.R. at 15 (commenting that preventing non-attorney preparer from dispensing legal advice is neither a political question nor a political outcome but is an application of established rules to the “rights-transforming process” of bankruptcy”). The bankruptcy court’s conclusion that Patton engaged in the unauthorized practice of law, is thus, affirmed.

II. Appropriate Remedy for Patton’s Unauthorized Practice of Law

Once a court determines that an individual has engaged in the unauthorized practice of law, the appropriate remedy is for the court to issue an injunction against the illegal practices. See 42 Pa. Cons. Stat. Ann. § 2524 (c) (West Supp. 1999) (providing that “[i]n addition to criminal prosecution, unauthorized practice of law may be enjoined in any county court of common pleas having personal jurisdiction over the defendant”); Mazzacaro, 351 A.2d at 232 n.4 (explaining that injunctions may be used to prevent the ongoing unauthorized practice of law). As Patton engaged in the unauthorized practice of law, and it appears that he would continue to

do so without court intervention, an injunction is appropriate to prevent him from continuing this illegal course of conduct. See Patton’s Motion to Modify an Order of a Bankruptcy Court, Docket No. 2 (indicating his desire to prepare petitions in districts other than the Eastern District of Pennsylvania).

The injunction entered by the bankruptcy court, however, does far more than prevent Patton from engaging in the unauthorized practice of law in Pennsylvania. The bankruptcy court’s injunction extends to all United States jurisdictions and prevents Patton from “assisting any parties in filing bankruptcy cases; and [] accepting fees for representing parties in filing bankruptcy cases or for referring parties to attorneys to file bankruptcy cases, either directly or indirectly.” Yeakley, No. 98-23948, order at 2. Because it is based on a finding that Patton engaged in the unauthorized practice of law, in violation of Pennsylvania law, the bankruptcy court’s order should be restricted to Patton’s Pennsylvania activities. See McDaniel, 232 B.R. at 679 (enjoining preparer’s activities in that district only); Ellingson, 230 B.R. at 436 (enjoining preparer from preparing documents for filing in that district only); Stacy, 193 B.R. at 40 (enjoining unauthorized practice of law in Oregon only because “what is considered to be the practice of law in Oregon would not necessarily be considered to be the practice of law in another state”); Lyvers, 179 B.R. at 842 (enjoining preparer from preparing documents for filing in that district only). Though the Trustee argues that Patton’s activities would constitute the unauthorized practice of law in any state, he has not presented caselaw from every United States jurisdiction demonstrating that Patton’s activities would be universally prohibited, and such a decision should be left to the courts of other states. See Trustee’s Brief, at 20-23. The bankruptcy court’s injunction will therefore be modified to prohibit Patton from engaging in the

unauthorized practice of law in Pennsylvania, and the injunction shall extend to the services he provides in Pennsylvania.

The scope of the bankruptcy court's injunction is also too broad in that it prevents Patton from engaging in activities which do not constitute the unauthorized practice of law. As even the Trustee admits, selling blank bankruptcy forms and providing typing services to debtors is not the practice of law. See Trustee's Brief, at 13; see also Gabrielson, 217 B.R. at 827 (explaining that preparers may permissibly "take[] official forms and type[] them based upon the handwritten or printed information from the debtor"); Bright, 171 B.R. at 803 (finding that non-attorneys may sell sample legal forms and publications explaining legal practice and may type bankruptcy forms "provided the typists only copy the written information furnished by the clients"). Neither of these activities requires the exercise of legal judgment and yet may be desired by debtors. The bankruptcy court's injunction will therefore be vacated to the extent that it enjoins activities that do not constitute the unauthorized practice of law. See Moore, 232 B.R. at 13 (tailoring injunction to prohibit specific unauthorized practices); Stacy, 193 B.R. at 40-41 (same). There is nothing in the record before the court to indicate that Patton would attempt to overstep the restrictions imposed in a more tailored injunction and, if he does, that issue may be examined in the bankruptcy cases of his future clients. On remand, the bankruptcy court may issue a more narrowly tailored injunction in accordance with this memorandum. See Specialty Bakeries, Inc. v. Halrob, Inc., 129 F.3d 726, 727 (3d Cir. 1997) (remanding to district court for modification of an injunction in accordance with the court's opinion). The bankruptcy court may wish to enjoin Patton from (1) advising his clients about which Chapter of bankruptcy they should elect, (2) describing the different bankruptcy chapters to his clients, (3) assisting his clients in completing

bankruptcy petitions and schedules, by categorizing debts or contracts and selecting exemptions, (4) defining bankruptcy terms for his clients, and (5) correcting perceived errors or omissions on his clients' bankruptcy petitions. Any injunction, however, should permit Patton to provide typing and copying services for his clients, provided that he types only the information that his clients have indicated should be entered on each section of the bankruptcy petition and schedules.

III. Disgorgement of Fees Collected From Yeakley, Brister and Robson

The bankruptcy court ordered Patton to return the \$250 fees he collected from Yeakley, Brister and Robson. See Yeakley, No. 98-23948, order at 2. The record before the court does not indicate whether Patton has complied with that paragraph of the bankruptcy court's order. Patton's Statement of Issues also does not explicitly challenge that aspect of the bankruptcy court's order. Because the court must construe pro se pleadings liberally, the court will consider the propriety of the bankruptcy court's disgorgement order. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

The fees which Patton received from Yeakley, Brister and Robson were compensation he derived from activities constituting the unauthorized practice of law. See supra, pt. I. The bankruptcy court was thus correct to order Patton to return those fees, for courts may order the return of profits illegally obtained. See Staiano v. File Aid of New Jersey (In re Bradshaw), No. 97-21361, 1999 WL 274527, at * 15 (Bankr. D.N.J. Apr. 26, 1999) (ordering disgorgement of fees collected for engaging in the unauthorized practice of law); Kaitangian, 218 B.R. at 115 (same); Gavin, 181 B.R. at 821 (same). The portion of the bankruptcy court's order ordering Patton to refund \$250 each to Yeakley, Brister, and Robson is thus affirmed.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM J. PATTON	:	CIVIL ACTION
Non-Attorney Bankruptcy Preparer	:	
	:	
v.	:	
	:	
DAVID A. SCHOLL	:	NO. 98-5729
Bankruptcy Judge	:	

ORDER

AND NOW, this 25th day of June, 1999, after consideration of Patton's Statement of Issues and the Answering Brief of the United States Trustee in Opposition to the Appeal of Patton, IT IS ORDERED that the Bankruptcy Court's Order dated September 23, 1998, and explained in a further opinion dated November 6, 1998, is AFFIRMED AS MODIFIED by this memorandum. This matter is REMANDED to the bankruptcy court to issue an injunction prohibiting William J. Patton from engaging in the unauthorized practice of law in Pennsylvania. The bankruptcy court, if it desires, may also specifically enjoin Patton from, *inter alia*, (1) advising his clients about which Chapter of bankruptcy they should elect, (2) describing the different bankruptcy chapters to his clients, (3) assisting his clients in completing bankruptcy petitions and schedules, by categorizing debts or contracts and selecting exemptions, (4) defining bankruptcy terms for his clients, and (5) correcting perceived errors or omissions on his clients' bankruptcy petitions.

If he has not already done so, Patton shall refund the entire fee of \$250 paid to him by Debtors Yeakley, Brister and Robson, as ordered in the bankruptcy court's September 23, 1998, order.

William H. Yohn, Jr., J.