

DISCLOSURE OF COMPENSATION OF BANKRUPTCY PETITION PREPARER

Applicable Law and Rules

1. Section 110(h)(2) of the Bankruptcy Code (title 11 of the United States Code) provides in part:

A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. . . .

2. Section 110(h)(2) does not give the court authority to extend the time for filing the disclosure.
3. Form B280 was issued by the Director of the Administrative Office for petition preparers to use to make the disclosures required by section 110(h)(2) the Code.
4. The purpose of the reporting requirement for bankruptcy petition preparers is to permit the court to determine whether the compensation exceeds the reasonable value of the services rendered. Section 110(h)(3) states:

(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services –

(i) rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition . . .

(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

(C) An individual may exempt any funds recovered under this paragraph under section 522(b).

5. Section 110(a)(1) defines a bankruptcy petition preparer as “a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing[.]”
6. Section 110(a)(2) defines a document for filing as “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 (the Bankruptcy Code).”

7. Section 110(b)(1) of the Code provides:

A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address. If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to –

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person, or partner.

8. Section 110(c) provides:

(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer’s signature, an identifying number that identifies individuals who prepared the document.

(2)(A) Subject to subparagraph (B), for purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

9. Section 110(d) of the Code requires that a petition preparer “shall, not later than the time at which a document for filing is presented for the debtor’s signature, furnish to the debtor a copy of the document.”

10. Section 110(b)(2) provides:

(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the

Federal Rules of Bankruptcy Procedure.

(B) The notice under subparagraph (A) –

(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

(iii) shall –

(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

(II) be filed with any document for filing.

11. Form B19, Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer, was prescribed by the Judicial Conference for use under section 110(b)(2).

Instructions

Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: “Eastern District of California.”
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Case No.”: Insert the bankruptcy case number assigned by the court at the time of filing.

The instructions to the rest of the form are self-evident. Special care should be taken to complete questions 2, 3, and 4 in detail, specifying documents prepared, services provided, and the source of compensation paid or to be paid. Additional sheets should be attached to the form as needed.

General Information for the Clerk

Section 110 of the Bankruptcy Code sets out several requirements for bankruptcy petition

preparers.

Petition preparers must disclose their compensation. This may be done on Form B280. Petition preparers must sign the documents they prepare for filing and place an identifying Social Security number on the document. Many bankruptcy forms include a section for the petition preparer's signature and Social Security number. Form B19 also may be used for this purpose. A petition preparer must give the debtor a copy of any document for filing the petition preparer prepares for the debtor's signature.

Before preparing a document for filing or accepting any fees from a debtor, a petition preparer must give the debtor a written notice which informs the debtor that a bankruptcy petition preparer is not an attorney and may not give legal advice. The petition preparer must use Form B19 for the notice. The notice must be signed by the debtor and, under penalty of perjury, by the petition preparer.

The notice must be filed with any document for filing, but a single copy of Form B19 may be filed with multiple documents which are filed at the same time, rather than filing a copy of Form B19 with each of the documents.