

In re Gloria REYES, Debtor

CASE NO. 06-15957-BKC-AJC

Counsel for the Debtor, having provided “bankruptcy assistance” to the Debtor, was uncertain of whether she is a “debt relief agency” as defined in Section 101(12A) of the Bankruptcy Code and therefore subject to the additional restrictions and disclosures as required by 11 USC §§ 526 and 527, respectively. The Debtor’s counsel has not accepted any money or other valuable consideration for the representation of Debtor in this bankruptcy case, but counsel will receive credit toward the pro bono requirement of The Florida Bar.

The United States Trustee responded to the Motion, taking the position that the Motion should be denied as unnecessary “given the plain language of section 101(12A).” The UST posits that “Debtor’s counsel does not fall within the purview of the clear statutory language of section 101(12A).” The UST concludes that the pro bono credit received from The Florida Bar Association for providing pro bono representation to the Debtor in this case does not constitute “valuable consideration” to the attorney.

Notwithstanding the UST’s stated position that the issue is clear from the plain language of the statute, counsel for the Debtor argued that the statute was unclear and many law firms are reluctant to provide pro bono services to needy debtors for fear that by doing so they would be considered “debt relief agencies.”

The Court found that, even if 11 U.S.C. §§526, 527 and 528 pass constitutional muster, which this Court does not believe they do, and even if these Code sections apply to attorneys generally, which the Court concludes they do not, sections 526, 527 and 528 do not apply to attorneys providing pro bono representation to debtors and who receive no payment whatsoever, whether money or other valuable consideration, in return for their representation. Credit for fulfilling state bar requirements is not “valuable consideration.” To interpret these fact patterns otherwise would create a chilling effect upon attorneys with good intentions willing to provide pro bono services to needy debtors.