

In the United States Bankruptcy Court

for the

Southern District of Georgia

FILED

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U.S. BANKRUPTCY COURT
SAVANNAH, GA

CBP

In re: ATTORNEYS AT LAW AND DEBT RELIEF AGENCIES

ORDER

The issue before the Court is whether amendments to the Bankruptcy Code, which become effective today, regulating Debt Relief Agencies apply to attorneys licensed to practice law who are members of the Bar of this Court.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") established new and significant restrictions on the activities of debt relief agencies. 11 U.S.C. §§ 526, 527 and 528. They require "debt relief agencies" who render "bankruptcy assistance" to enter written contracts with "assisted persons," disclose the extent of services provided and fees charged, and disclose clearly and conspicuously in all advertising that their services contemplate bankruptcy. § 528. They are required to provide a detailed written notice to all "assisted persons" of the disclosure requirements of the Code, the obligation of accuracy and truthfulness on those disclosures, and that failure to comply with those requirements carry potential civil and criminal sanctions. § 527. They are required to advise the "assisted person" that the person may proceed *pro se*, or may hire an attorney, or may hire a bankruptcy petition preparer, and that only attorneys and not petition preparers can render legal advice. *Id.* They are required to provide the "assisted person" with information on how to value assets, how to complete bankruptcy schedules, and how to determine what property is exempt. *Id.* Debt relief agencies are prohibited from failing to provide the services they contracted to provide, counseling any person to make false statements, or advising the person "to incur more debt in contemplation of such

person filing a case under this title or to pay an attorney or bankruptcy petition preparer . . .” § 526(a)(4) (emphasis added).

Section 526(c) creates civil liability for violation of the duties enumerated. It also grants to the Court the right “on its own motion” or that of the United States Trustee or a debtor to enjoin violations or impose civil remedies. This grant complements the inherent authority of a Court to regulate the practice of the members of its Bar, as embodied in this District in Southern District Local Rules 83, 83.5 and Local Bankruptcy Rule 2090.

Debt relief agencies are defined as follows in § 101(12A):

[A]ny person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110

Bankruptcy assistance is defined as follows in § 101(4A):

[A]ny goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

Although attorneys are not expressly included in the definition, the language defining debt relief agencies is broad enough on its face to include attorneys and the reference to “providing legal representation” in § 101(4A) suggests that attorneys are covered.

Indeed during the months since passage of BAPCA, considerable analysis of all