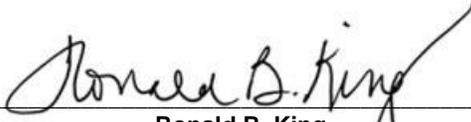
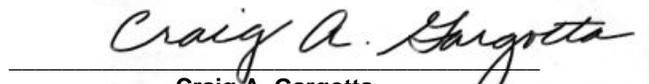


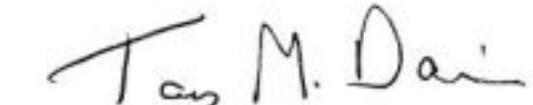
SIGNED this 06th day of October, 2015.



  
\_\_\_\_\_  
Ronald B. King  
Chief United States Bankruptcy Judge

  
\_\_\_\_\_  
Craig A. Gargotta  
United States Bankruptcy Judge

  
\_\_\_\_\_  
H. Christopher Mott  
United States Bankruptcy Judge

  
\_\_\_\_\_  
Tony M. Davis  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**STANDING ORDER: (I) THAT PRO BONO LEGAL COUNSEL ARE NOT DEBT RELIEF AGENCIES AND (II) THAT PRO BONO COUNSEL FOR DEBTORS ARE NOT SUBJECT TO SECTIONS 526 THROUGH 528 OF THE BANKRUPTCY CODE**

The Bankruptcy Judges for the Western District of Texas for the Austin Division have determined that this Order is necessary in order to encourage well-qualified, licensed attorneys to provide pro bono legal representation in bankruptcy cases to low income debtors. Accordingly, the Court makes the following findings of fact and conclusions of law:

## Findings of Fact<sup>1</sup>

1. This Court has jurisdiction to enter this final, standing order pursuant to 28 U.S.C. §§ 157 and 1334, which provides relief that can arise only pursuant to the provisions of Title 11 of the United States Code, §§ 101 et seq. (as amended, the "Bankruptcy Code").

2. The State Bar Bankruptcy Law Section Law School Pro Bono Project (the "Project"), is a program founded by the Bankruptcy Law Section of the State Bar of Texas, in cooperation and coordination with certain accredited law schools located in the State of Texas, to increase legal access to residents of the State of Texas who could not otherwise afford bankruptcy representation. The Project links qualified applicants, who are first interviewed and qualified under established Project procedures, with volunteer attorneys who, after further interview following their own conflict of interest review procedures, and with the assistance of one or more law students assigned to the case, enter into an agreement to represent the applicants in a case filed under chapter 7 of the Bankruptcy Code. The pool of volunteer attorneys may potentially include both consumer bankruptcy attorneys as well as: (i) volunteer nonbankruptcy attorneys willing to assist with matters arising from pro bono chapter 7 cases; and (ii) business bankruptcy lawyers who are willing to serve the program where they can.

3. For each case accepted by a volunteer attorney, the Project will assign one or more law students to handle the day to day affairs and duties attendant to the case under the supervision of the licensed attorney. Malpractice insurance coverage for the legal representation in the case shall be provided by the legal aid office making the referral. Accordingly, the applicants will enter into an engagement letter with the volunteer attorney using a form of

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<sup>1</sup> The following findings of fact and conclusions of law are made pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure. Where appropriate, any and all findings of fact shall constitute conclusions of law and any and all conclusions of law shall constitute findings of fact.

engagement letter approved by the Project and the participating law schools. In addition, the participating law school and the referring legal aid office, through the Project, will monitor the progress of the case. This procedure is essential to the availability of malpractice insurance applicable to the services rendered by the volunteer attorneys.

4. Pursuant to the enactment and effectiveness of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), certain requirements are imposed on consumer debtors who file a chapter 7 bankruptcy case, and also upon their legal counsel. According to the Project, in light of these extensive requirements, substantially fewer lawyers and firms who do not specialize in consumer bankruptcy law are willing to file pro bono consumer chapter 7 cases due to uncertainty over whether they could be considered a "debt relief agency" and the extent to which such designation might affect their usual practice. In particular, the Project believes that attorneys not specializing in consumer bankruptcy practice often do not want to have imposed upon them and their other practice the status and corresponding requirements applicable to a "debt relief agency" under the Bankruptcy Code.

5. However, these Bankruptcy Code obligations, applicable to counsel, apply only to counsel who charge or receive a fee, as distinct from counsel who represent clients pro bono.

6. The Project also believes that: (1) since the effective date of BAPCPA, programs for pro bono bankruptcy services have experienced significant difficulty in obtaining assistance for consumers debtors who seek pro bono bankruptcy representation due to a shortage of volunteer lawyers willing to accept such consumer bankruptcy cases on a pro bono basis; (2) a number of volunteer lawyers who previously had been willing to serve in such programs before BAPCPA have since discontinued their willingness to serve as volunteers due to the complexities of the law under BAPCPA and, in particular, those provisions associated with being a debt relief agency; and (3) many volunteers who are business bankruptcy lawyers with some familiarity of

the practice area now refuse to undertake this type of consumer bankruptcy representation because of the concern that they or their firms will be labeled "debt relief agencies" under the Bankruptcy Code.

7. In order to address the foregoing concerns, this Court believes that it is necessary and appropriate to clarify that public service pro bono representation done without payment, including but not limited to that proposed pursuant to the Project, does not fit the statutory definition of a "debt relief agency" for purposes of the Bankruptcy Code.

## **II. CONCLUSIONS OF LAW**

8. A debtor is an "assisted person" under the Code.

9. The Code in section 101 provides this definition:

(12A) The term "debt relief agency" means any 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, but does not include -

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

11 U.S.C. § 101(12A), (B) (emphasis supplied).

10. If a firm or attorney is a debt relief agency, then the Bankruptcy Code adds a number of requirements for consumer practitioners and those who are deemed "Debt Relief Agencies" to follow. Section 526 provides restrictions applicable to debt relief agencies, with section 527 imposing disclosure requirements on debt relief agencies.

11. A volunteer attorney or law firm's acceptance of clients who are referred to them by legal aid organizations or other similar nonprofit organizations should not render the accepting firm or lawyer a "debt relief agency" because the representation is pro bono; the lawyer or firm is not providing legal assistance in return for payment or fee, and, as set forth more fully

below, the Court holds that the goodwill or other non-pecuniary benefits of civic service do not constitute "other valuable consideration" being received by the lawyer. This conclusion appears to apply even where the pro bono service does not originate from a nonprofit organization. As a result, the restrictions on debt relief agencies enumerated in section 526 do not apply to attorneys merely because they represent debtors on a pro bono basis.

12. Pro bono counsel are not subject to the requirements imposed pursuant to the Bankruptcy Code on debt relief agencies, if counsel are not engaged in any paying consumer bankruptcy practice.

13. The plain meaning of the Code does not apply the term "debt relief agency" to pro bono attorneys. As a result, because sections 526 through 528 are directed only to debt relief agencies, these do not apply to the pro bono debtor or pro bono counsel.

14. The Court further determines that, as a matter of law, the following does not comprise valuable consideration under BAPCPA with regard to representation of assisted persons under the Bankruptcy Code on a pro bono basis: (i) gratitude, friendship, appreciation or other feelings of thanks for the assistance of pro bono counsel in a bankruptcy case by the pro bono debtor; (ii) any appreciation by members of the bar, the Court or the community for an attorney's participation in pro bono service; (iii) any prospect that an attorney or law firm may have for future referral or other client representation from any source related to the debtor, whether for a fee or otherwise, unless the parties agree to a specific referral as a condition of the pro bono engagement; (iv) acceptance or regard from the community; (v) the potentially favorable public relations or press that the lawyer or firm may receive; and (vi) any other sense of well-being or satisfaction for participation in serving the community.

15. Valuable consideration within the meaning of section 526 requires the receipt by legal counsel of money or something having measurable and definitive value or worth, which can

be converted into money or money's worth by the counsel. Service as pro bono counsel to a debtor who is otherwise an assisted person does not involve receipt by such attorney or firm of valuable consideration.

ACCORDINGLY, IN CONSIDERATION OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW IT IS HEREBY:

ORDERED ADJUDGED AND DECREED THAT that counsel representing a pro bono debtor in the Austin Division of the Western District of Texas are not debt relief agencies or debt relief agents under sections 526 through 528 of the Bankruptcy Code solely by virtue of any such pro bono representation. It is further

ORDERED ADJUDGED AND DECREED THAT that counsel thus excluded from the definition of "debt relief agency" are not required to comply with any of the requirements applicable to debt relief agencies pursuant to sections 526 through 528 of the Bankruptcy Code.

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