

Minnesota District Court Declares parts of BAPCPA Unconstitutional

In Milavetz, Gallop & Milavetz v. United States, 355 B.R. 758 (D. Minn. 2006), United States District Judge James M. Rosenbaum declared portions of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") unconstitutional. In a subsequent order dated April 19, 2007, Judge Rosenbaum granted summary judgment to the Plaintiff, holding as unconstitutional the section which provided attorneys could not advise bankruptcy debtors to incur additional debt prior to filing. Additionally, the provision requiring attorneys to advertise themselves as "Debt Relief Agencies" was also held to be unconstitutional. The order provided Minnesota attorneys are relieved of any duties related to the Debt Relief Agency provisions of BAPCPA.

The net result of Judge Rosenbaum's decision is Minnesota attorneys can advise their clients to incur debts prior to filing bankruptcy, if the debt is incurred for a proper purpose. An example noted in the opinion is refinancing a mortgage to obtain a lower interest rate and payment. Milavetz, 355 B.R. at 765. Minnesota attorneys do not have to include confusing "Debt Relief Agency" language in their advertising. Finally, requirements that "debt relief agencies" must provide confusing disclosures to debtors do not apply to Minnesota attorneys.

The decision by Judge Rosenbaum was an excellent one, in my opinion. It has made it easier to practice under the arduous provisions of BAPCPA.

Milavetz On Appeal

The case is now on appeal and oral argument is scheduled to be heard in Minneapolis on March 11, 2008 by the Eighth Circuit Court of Appeals. Stay tuned.

Wayne G. Nelson

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