

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

**In RE: Francis I. & Beverly E. McCartney,
Debtors**

**Chapter 7
Case No. 05-58001**

MOTION TO DETERMINE ATTORNEY STATUS

Comes Now John K. James, attorney for the above debtors and licensed to practice law in the State of Georgia and before this Court, and files this Motion asking this Honorable Court to determine whether attorneys who practice before this Court are “debt relief agencies.” Specifically, are these attorneys subject to the provisions of Bankruptcy Code §§ 526, 527, and 528 regulating “debt relief agencies?”

In support of this Motion, the Court is presented the following:

1.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) placed restrictions on “debt relief agencies” who render services to “assisted persons.” These restrictions are principally in the new Bankruptcy Code §§ 526, 527, and 528.

2.

BAPCPA also added, or amended, numerous definitions to Bankruptcy Code § 101, in particular §§ 101(4), 101(4A), and 101(12A). An initial reading of these Code Sections could result in the conclusion that an attorney providing “bankruptcy assistance” is to be classified as a “debt relief agency.” But Code § 101(12A) defines a “debt relief agency” and omits an “attorney.” Congress clearly was aware of the word “attorney” as it is defined in Code § 101(4) and easily could have included it in Code § 101(12A).

The definition of an “attorney” in Code § 101(4) does not include the descriptive term “debt relief agency.” Code § 101(4A) defines the term “bankruptcy assistance” but makes no reference to an “attorney.” The omissions in these subsections indicate Congressional intent not to classify an attorney as a “debt relief agency.”

3.

Bankruptcy Code § 101(12A) defines a “debt relief agency.” An attorney is not included in this subsection. A “bankruptcy petition preparer” is, however, included as an entity within the scope of the definition. If Congress had intended to include attorneys as “debt relief agencies” it could have specifically listed them, as it did with “bankruptcy petition preparers.” The definition of a “bankruptcy petition preparer,” Code § 110, also omits any reference to an attorney.

4.

There are other provisions in BAPCAP whose plain meaning and logical interpretation lead to the conclusion that Congress did not intend to place attorneys who provide “bankruptcy assistance” within the scope of “debt relief agencies.”

5.

The new Bankruptcy Code § 526(a)(4) mandates a “debt relief agency” shall not advise an assisted person to “. . . pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.” If an attorney was to be classified as a “debt relief agency” this attorney would be required to advise the debtor not to retain his services. This is an illogical result.

6.

The new Bankruptcy Code § 527(b) requires a “debt relief agency” to advise an assisted person of their right to hire an attorney and that only an attorney can provide legal advice. Again Congress imposed the requirement on a “debt relief agency,” not an attorney. The choice of terms is important.

7.

When interpreting a statute we must read the ordinary meaning of the words. Congress was certainly aware attorneys provide bankruptcy assistance and file bankruptcies for debtors. Yet they explicitly chose not to include in the definition of “debt relief agencies” the word “attorney.” This omission must lead to the conclusion that Congress did not intend to impose on attorneys the restrictions of Code §§ 526, 527, and 528. But they did intend to do so on other agencies that are not regulated by existing state laws and practices.

Judge Lamar W. Davis, Jr., Chief United States Bankruptcy Judge for the Southern District of Georgia, in his recent opinion holding Attorneys at Law are not Debt Relief Agencies, considered at some length statutory interpretation. He concluded that Congress could have, but did not, include attorneys in the definition of “debt relief agencies,” thus the exclusion was intentional.

8.

Determining that an attorney is a “debt relief agency” results in illogical and conflicting interpretations of Code §§ 526 and 527. These interpretations would require an attorney to advise an “assisted person” how to specifically prepare a bankruptcy petition, then advise him he can do it himself and not hire an attorney. This again is an illogical result.

9.

Judge Davis asserted if attorneys were included in the definition of “debt relief agencies” there would be an expansion of Federal powers. Regulation of professionals has been with the states, the inclusion of attorneys as “debt relief agencies” would subject them to Federal government regulation.

10.

The restrictions imposed by BAPCPA on a “debt relief agency” should not be imposed on an attorney practicing before this Court. This Court has always adhered to the professional and ethical standards of the State Bar of Georgia. Bankruptcy Code §§ 526, 527, and 528 impose clerical burdens and unreasonable restrictions on an attorney as well as setting the stage for potential, and serious, attorney-client conflicts. The latter could adversely effect client representation in this Court.

11.

How is an attorney to advertise if he provides services other than bankruptcy? Code §§ 528(a)(4) and 528(b)(2)(B) mandates specific language to be used in advertising. If Congress intended an attorney to be a “debt relief agency” is he to exclude from his advertising that he is an attorney? This is not a logical or appropriate result. More likely Congress did not intend an attorney to be a “debt relief agency.”

For the above reasons the undersigned asks this Court to hold that attorneys who are licensed to practice law in the State of Georgia and who practice before this Honorable Court are not “debt relief agencies.” As such, they are not subject to the provisions of Bankruptcy Code §§ 101(4A), 101(12A), 526, 527, and 528.

Respectfully submitted this the 31th day of October, 2005.

/s/ John K. James
John K. James, Bar No. 388790
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Certificate of Service

This is to certify that the undersigned has this day served a copy of the Motion to Determine Attorney Status to the undersigned by hand delivery, fax, or by United States Mail with sufficient postage to ensure proper delivery.

Ms. Elizabeth A. Hardy, Assistant U.S. Trustee
433 Cherry St., Suite 510
Macon, GA 31202

Ms. Camille Hope, Chapter 13 Trustee
PO Box 954
Macon, GA 31202

This the 31th day of October, 2005.

/s/ John K. James
John K. James,
Attorney for Debtors

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