PUBLICATIONS

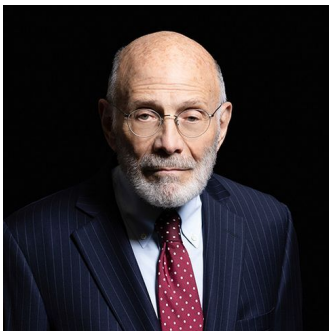
Third Circuit Rejects Side-Switching Disqualification Claim

July 2022

In "Third Circuit Rejects Side-Switching Disqualification Claim," an article published in the July 2022 issue of *The Bankruptcy Strategist*, Michael Cook examines the Third Circuit's decision in *Boy Scouts of America* as an example of why law firms with many clients must address the chronic problem of conflicts of interest among their clients.

The Third Circuit recently affirmed the bankruptcy court's approved retention of the debtor's counsel ("S") when that "law firm dropped an existing client to avoid conflicts that would prevent it from taking on a more lucrative client [i.e., the debtor]." *In re Boy Scouts of America*, 2022 WL 1634643, *7 (3d Cir. May 24, 2022) (*BSA*). According to the court, there were "not enough facts to put [the so-called "hot potato" doctrine] into play" and disqualify S under the Rules of Professional Conduct. *Id.* Moreover, because S's representation of the debtor "did not prejudice [the objecting former client], but disqualifying [S] would have been a significant detriment to [the debtor], it was well within the [bankruptcy] court's discretion to determine that the drastic remedy of disqualification was unnecessary." *Id.* Particular facts of the case, highlighted by the court, supported its finding that there was "nowhere close to an abuse of discretion" by the bankruptcy court's applying Bankruptcy Code (Code) §327(a) to approve S's retention.

Related People



Michael Cook

Of Counsel

New York

Practices

BUSINESS REORGANIZATION

Attachments

Download Publication