

**UNITED STATES DISTRICT COURT
FOURTH DIVISION
DISTRICT OF MINNESOTA**

Milavetz, Gallop and Milavetz PA., Robert Milavetz,
Barbara N. Nevin,

Civil No.: 05-CV-2626 RHK/AJB

John Doe and Mary Doe

AFFIDAVIT OF BARBARA NEVIN

Plaintiffs,

vs.

United States of America,

Defendant.

1. Barbara N. Nevin, being first duly sworn upon oath deposes and states:
2. I have reviewed the complaint and amended complaint of which I am one of the Plaintiffs. Everything is true and correct in those complaints to the best of my knowledge. Mr. Robert Milavetz also reviewed the complaint and amended complaint in this matter. We directed Mr. Alan Milavetz to sign the complaint and the amended complaint.
3. I am an attorney who has been licensed since 1979 in the State of Minnesota. I have also been licensed since 1980 in Federal Court for the District of Minnesota. I am an associate attorney employed by Milavetz, Gallop and Milavetz P.A.
4. Mr. Robert Milavetz is an attorney who has been licensed in the State of Minnesota since 1963, and was admitted to the Federal Court for the District of Minnesota in 1966. He was also admitted to practice in the United States Supreme Court in 1971. Mr. Milavetz is a director and supervisor of attorneys at Milavetz, Gallop and Milavetz P.A.
5. Both Mr. Milavetz and myself represent "assisted persons" in bankruptcy matters. We

are the Plaintiffs in this matter.

6. Both of us have consulted with clients, since BAPCPA took effect on October 17, 2005.

7. Part of Plaintiff's practice includes working in the field of consumer bankruptcy. Plaintiff's law firm filed approximately 180 Chapter 7 and Chapter 13 bankruptcies for its clients last year. We reviewed each of the petitions that we filed and also advised the clients in those cases.

8. Our law firm has also represented creditors in bankruptcy.

9. Part of my practice as an attorney in this field, is to counsel clients prior to filing bankruptcy. We counsel clients on such matters as obtaining loans on homesteads or cars, prior to filing bankruptcy.

10. I have spoken with at least two clients since BAPCPA has been passed. One client wanted to know if they could refinance their home prior to filing. Another client indicated that they might need a new car. I have also advised numerous clients that they must pay for credit counseling prior to filing.

11. I have reviewed BAPCPA and I have attended at least three seminars regarding BAPCPA. I also spoke at a National Bankruptcy Institute Conference on February 10, 2006 regarding BAPCPA.

12. I have reviewed the section of BAPCPA which prohibits, lawyers/ debt relief agencies, from doing the following:

526 (a) (4) advise an assisted person or prospective assisted 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 fee or charge for services performed as part of preparing for or representing

a debtor in a case under this title.

This law states I cannot advise an assisted person or prospective assistant person that they can incur more debt in contemplation of that person filing bankruptcy.

13. The advise that I would give the client would not be intended to have the client discharge the indebtedness in bankruptcy.

14. I am aware, concerned, and vigilant that attorneys such as myself refrain from advising our clients to commit fraudulent acts. I have not and would not counsel a client to commit a fraudulent act.

15. In all of the cases our office filed last year, I am not aware of any case our office filed where a discharge was set aside due to fraud.

16. Also, the following definitions define the role of a debt relief agency under the definition section of 101 of BAPCPA:

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 [11 USCS § 110], but does not include-- any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 [26 USCS § 501(c)(3)];

a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

a depository institution (as defined in section 3 of the Federal Deposit Insurance Act [12 USCS § 1813]) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act [12 USCS § 1752]), or any affiliate or subsidiary of such depository institution or credit union; or

an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

The term "bankruptcy assistance" means any 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.

17. Under the new law, A family law attorney for example, could be swept into the definition of being characterized as a debt relief agency.¹ Please see the article, *Nine Traps, and One Slap, Attorney Liability Under the New Bankruptcy Law*, by Catherine E. Vance and Corrine Cooper, 79 Am. Bankr. L.J. 283 (Spring 2005).

18. I, as well as many of my colleagues, are uncertain, given the new law, as to when we are required to hold ourselves out to the public as "Debt Relief Agencies."

19. I am attaching as a true and correct copy of the congressional records dated March 9, 2005. In this record, Senator Russell Feingold explains his concerns regarding BAPCPA. More, he cites the support given his amendments to this act, by the American Bar Association.

20. A letter is referenced in this portion of the Congressional Record, by Thomas R. Schuck, National President of the American Bar Association that states in part, "In our view, the above-referenced provisions of the proposed legislation pose a serious threat to the efficient operation of the bankruptcy laws and the bankruptcy courts. We are joined in this opinion by

¹Imagine a woman goes to an attorney and says, "My ex-husband has just filed for bankruptcy. How will this affect me?" Like most folks, this woman's own debts are primarily consumer obligations, and her non-exempt assets are worth less than \$ 150,000. Now, suppose the attorney:

. Looks over the property and debt allocation in the divorce decree and tells the woman which items might be excepted from the ex-husband's discharge.

. Attends the ex-husband's 341 meeting of creditors.

. Files a complaint to determine the dischargeability of any of the divorce debts.

Under the plain language of the definitions, the woman is an "assisted person" and the attorney has rendered "bankruptcy assistance." This attorney is a "debt relief agency" and must comply with all the mandates of Code 526-528.

Suppose all the attorney says to the woman is, "Let me look over the papers and I'll get back to you." That might be enough to become a DRA; the definition of "bankruptcy assistance" includes "services sold or otherwise provided ... with the express or implied purpose of providing information, advice, [or] counsel." 79 Am. Bankr. L.J. 283, 293

many state and national bar associations and bankruptcy practitioners. “ (please see attached exhibit A.)

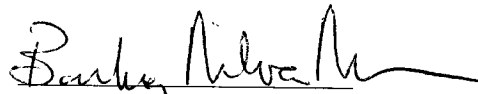
21. Part of Plaintiff's practice also includes working in the field of personal injury. In many personal injury claims, we have been faced with the issues that arise where a personal injury claimant, who is a client of Plaintiff's law firm, is injured. Between the time the individual is injured and the time the case settles, the client may have no alternative but to consider bankruptcy options.

22. A severely injured person may exhaust, for instance, no fault insurance and may continue to require medical care. The question will, naturally, arise for that individual whether or not their bankruptcy attorney can provide advice on incurring debt, for instance, for future necessary medical treatment, surgery or other procedures.


23. Likewise, during the course of the year and the course of representation of injured individuals, it is a frequent occurrence that either the defendant or occasionally the defendant's insurance company will file bankruptcy and the injured party becomes the creditor.

FURTHER YOUR AFFIANT SAITH NOT.

Dated March 14-06


Barbara Nilva Nevin

Subscribed and sworn to before me
this 14th day of March, 2006.


Notary Public

