

**Eighth Circuit Court of Appeals Upholds and Reverses
Milavetz Decision - United States Supreme Court to hear
case.**

On September 4, 2008, the Eighth Circuit Court of Appeals ruled Judge Rosenbaum's decision holding §526 (a)(4) of the BAPCPA, which prohibits debt relief agencies from advising persons considering bankruptcy to incur more debt, is unconstitutional. As Judge Rosenbaum had stated, there are many situations in which it benefits creditors and debtors if debtors incur debt before bankruptcy. If a client can refinance a mortgage at a lower rate the client will be able to pay more to creditors. If a client finances a reliable car, he or she can get to work to earn money to pay the debts in a chapter 13 bankruptcy. Attorneys should be able to provide this critical information to clients considering bankruptcy.

Although that part of the Milavetz decision was affirmed, the Court of Appeals disagreed with Judge Rosenbaum on two other issues. It determined attorneys are "debt relief agencies" under BAPCPA and attorneys have to include a statement in advertising noting they are "debt relief agencies." In my opinion, Judge Rosenbaum got those issues right. In particular, forcing attorneys to advertise that they are "debt relief agencies," a meaningless term made up by the lobbyists who wrote the bill, forces attorneys to confuse the public in advertising. What is a "debt relief agency?" Are they licensed like attorneys? Does the federal government or state of Minnesota regulate them? As an attorney does this mean to the public I probably help people with debt management plans? (I do not, like most bankruptcy attorneys.) The Court of Appeals stated the language is rational because it informs the public we help people file for bankruptcy. To the contrary, including the language about debt relief agency completely muddles up the message. The consumer is left confused about the services a bankruptcy attorney can provide.

Now the United States Supreme Court has decided to review the case during the upcoming 2009-10 term beginning in October. On June 8, 2009, the Court agreed to hear the case and the challenges by the parties as to all the issues decided by the Eighth Circuit Court of Appeals. By June 2010 we should have the final ruling on the constitutionality of BAPCPA.

Wayne G. Nelson

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