

Maryland Judicial Ethics Committee

Opinion Request Number: 2006-01

Date of Issue: April 10, 2006

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Raise Defense *Sua Sponte*

Issue: Is it permissible for a judge to *sua sponte* raise the defense of statute of limitations on behalf of *pro se* defendants?

Answer: No.

Facts: The County Bureau of Finance in the jurisdiction where the judge presides has filed hundreds of complaints seeking judgements for unpaid parking tickets and penalties. Many of these cases are filed beyond the one year statute of limitations, and most defendants are unrepresented. The judge inquires if it is ethically permissible for the judge to raise the defense of the statute of limitations.

Discussion: Canon 2A of the Maryland Code of Judicial Conduct (2005) provides in pertinent part that: “[A] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the impartiality and integrity of the judiciary.”

In discussing the parameters of judicial assistance to unrepresented litigants, Cynthia Gray in “Reaching Out or Overreaching Judicial Ethics and Self-Represented Litigants” (AJS 2005), concludes that:

[U]nder the code of judicial conduct, no reasonable question is raised about a judge’s impartiality when the judge, in an exercise of discretion, makes procedural accommodations that will provide a self-represented litigant acting in good faith the opportunity to have his or her case fairly heard – and, therefore, that a judge should do so.” (Emphasis added.)

The action in question is not a procedural accommodation, but rather is the court’s assertion of an affirmative defense that could be waived. In addition, numerous courts have found that it should not be considered *sua sponte* in civil proceedings. *Erline Co. v. Johnson*, 440 F.3d 648, WL 667063 (4th Cir. (N.C.) 2006); *Haskell v. Washington Township*, 864 F.2d 1266, 1273 (6th Cir. 1988); *Davis v. Bryan*, 810 F.2d 42, 44-45 (2nd Cir. 1987); *Wagner v. Fawcett Publications*, 307 F.2d 409, 412 (7th Cir. 1962), *cert. denied*, 372 U.S. 909, 83 S.Ct. 723, 9 L.Ed.2d 718 (1963).

The Committee is persuaded that raising the defense of statute of limitations under the circumstances described brings the court’s impartiality into question, and this is not permitted under the Maryland Code of Judicial Conduct.

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of your compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage

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of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.