Maryland Judicial Ethics Committee

Opinion Request Number: 2006-05

Date of Issue: October 23, 2006

■ Published Opinion ☐ Unpublished Opinion ☐ Unpublished Letter of Advice

Judge May Query *Sua Sponte* Whether Collection Claim Is Time Barred

Issue: Is it permissible for a judge to query *sua sponte* whether a collection action is time barred under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("the Act")?

Answer: Yes.

Facts: Judges frequently are presented with collection actions brought by debt collectors on which the statute of limitations has expired or on which it is not clear from the complaint that the action is brought within the period of limitations.

Discussion: In Opinion Request No. 2006-01, dated April 10, 2006, the Committee concluded that a judge may not raise *sua sponte* the defense of statute of limitations on behalf of a *pro se* defendant against whom a local government seeks judgment for unpaid parking tickets and penalties. The Committee held that, in doing so, a judge would be casting doubt on his or her impartiality in violation of Maryland Code of Judicial Conduct (2005), Canon 2A.

The question now raised concerns collection actions which fall within the Act, and this response is limited to such actions. On occasion, a judge will be presented with such a claim, which appears to be time barred. The judge may be reviewing a complaint seeking judgment on affidavit or in a contested proceeding where the defendant is *pro se*.

Congress passed the Act upon finding that debt collectors were using "abusive", "deceptive" and "unfair" practices to collect debts. 15 U.S.C. § 1692(a). It therefore prohibited the use of "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. The Act is intended to protect the "least sophisticated consumer." *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1175 (11th Cir. 1985) (adopting interpretation of "deceptive" in *Exposition Press, Inc. v. FTC*, 295 F.2d 863 (2nd Cir. 1961)). In *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (D.C. Alabama, 1987), the Court held that the filing of a law suit on a debt "that appears to be time-barred, without the debt collector having first determined after a reasonable inquiry that the limitations period has been or should be tolled, is an unfair and unconscionable means of collecting the debt" and therefore violates public policy. 668 F. Supp. at 1487.

By its passage of the Act, Congress articulated a public policy to prevent collection of stale debts from unsophisticated debtors. This places on the debtor creditor the affirmative duty to document compliance with the statute of limitation. Essentially, this is part of the plaintiff's burden of proof as opposed to raising a defense. Accordingly, after a judge determines that the action is subject to the Act, the judge may query *sua*

sponte the timeliness of the action and decline to enter judgment if the creditor does not meet its burden.

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 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.