

Reaching Out or Overreaching

Judicial Ethics and the Self-Represented Litigant



Premises

- Procedural rules should work to do substantial justice
- Cases should be decided on merits
- Judge is not mere moderator, referee, spectator
- Judge shall promote public confidence in courts

Thesis

Without raising reasonable questions about impartiality, judges may exercise discretion

- To make equitable, procedural accommodations
- To provide self-represented litigants reasonable opportunity to have cases fully heard

Practices

- Liberally construe pleadings
 - Overlook failure to cite correct legal theory
 - Look behind label of document
 - Overlook poor syntax, sentence construction, irrelevant details
 - Consider other submissions
 - Freely allow amendment

Practices

- Allow reasonable continuances to hire lawyer, prepare case
- Explain basis for rulings
 - Inform of defects in pleading
- Ensure orders are clear
 - Use plain English

Requirements

- Treat pro se litigants with courtesy, dignity, and respect
- Treat pro se litigants fairly and equally

Demeanor

- Do not
 - Use disdainful comments, tone
 - Needlessly interrupt
 - Make negative comments about self-representation
 - Treat attorneys with familiarity
 - Address pro se litigants less formally than counsel

Demeanor

- “If you want to lose, annoy me”
- Chastised, belittled, berated some pro se litigants
- Interrupted without justification

In re Eiler, Stipulation, Agreement and Order (Washington Commission 2005)



Demeanor

- Listen and act as if you are listening
- Require courteous treatment
 - From staff
 - From litigants and attorney

Accommodations

- Direct litigant to resources
- Give basic introduction to courtroom protocol
- Do not dismiss based on technical rules

Accommodations

- Before approving settlement, determine that waiver of substantive rights is knowing and voluntary
- Instruct pro se litigant on how to achieve action litigant is obviously attempting

Accommodations

- Abuse of discretion not to explain to pro se litigant how to intervene
 - Had right
 - Sent letter

Breck v. Ulmer, 745 P.2d 66
(Alaska 1987)



Accommodations

- Explain process, elements, burden of proof, evidence
- Ask questions for clarification
- Call attention to omissions in evidence
- Relax rules of evidence

Statute of Limitations

- Pro se litigant does not have legal training to recognize and put correct name to absolute defense
- “Skeletal argument”
- No prejudice



Cottrill v. Cottrill
631 S.E.2d 609 (West Virginia 2006)

Statute of Limitations

- Judge may not sua sponte raise defense of statute of limitations on behalf of pro se defendants
 - Brings court's impartiality into question



Maryland Advisory Opinion 06-1

Statute of Limitations

- Judge may sua sponte raise statute of limitations on behalf of pro se defendants in action under Fair Debt Collection Practices Act



Maryland Advisory Opinion 06-5

Unreasonable Accommodations

- Create claims, defenses
- Amend or redraft pleadings
- Assume facts
- Disregard substantive law, requirements of jurisdiction

Diligent Litigant

- Attempts to
 - Acquire familiarity with rules
 - Comply with procedures, orders
 - Request assistance
 - File pleading
 - Offer support for argument

Non-Diligent Litigant

- Abuses dignity of courtroom
- Is grossly negligent, lacks good faith
- Engages in pattern of delay
- Deliberately fails to comply with clear, specific order

Arguments Against

- Encourages self-representation
- Litigant who chooses to represent self must be held to same standards
- Favors unrepresented litigants
 - Over badly represented ones
 - Over represented parties

Arguments Against

- Invites undesirable, open-ended participation by judge
- Judge should not become advocate for one side

Thesis

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