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Articles

Is Judicial Discipline in New York State a Threat to Judicial Independence?

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riod under four major subheadings:

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B. Disciplining judges for off-bench conduct: Does the system intrude into a judge's private life?

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As the relevant court decisions over the past 100 years demonstrate, judges have been disciplined for conduct relating to both their official duties and their private lives. A fair review of these decisions discloses that (a) courts reviewing judges' conduct traditionally have been sensitive to the delicate balance between judicial discipline and judicial independence and (b) recent improvements in the disciplinary system have not resulted in either the loss or impairment of judicial independence. Prior to the establishment of the Commission on Judicial Conduct in 1975, two major factors saved a number of judges from public discipline: the absence of formal disciplinary sanctions less severe than removal and the lack of an integrated, comprehensive investigative capability.

Making the system more efficient resulted in exposing more misconduct, but as the reported disciplinary cases reveal, a more efficient and perhaps more aggressive system does not necessarily result in a concomitant loss of judicial authority (unless that term is defined to include inappropriate conduct). Perhaps the most dramatic development has been the disciplining of judges for extreme violations of undisputed civil liberties or statutory rights. Several recent decisions disciplining judges reflect the growing sensitivity of the courts to civil rights and liberties.[27]

Judges today are also held to stricter standards than in earlier years with respect to their courtroom demeanor; lack of courtesy is less acceptable today than it was in past years, especially the use of demeaning language towards certain classes of litigants. Expression of racial bias, for example, is intolerable, whereas in the past, when racism was more accepted by our society, our culture, and even our laws, racist comments by judges may not have been regarded as especially egregious. Similarly, gender bias is far less apt to go unnoticed today than in years past, and judges who employ insulting language toward women will likely find themselves in difficulty with the disciplinary authorities. Notwithstanding these changes, judicial independence and respect for judges' privacy rights are very much intact.

27. *See infra* notes 136-56 and accompanying text.

II. The Issues Raised in the Disciplining of Judges

A. *Disciplining Judges for On-Bench Conduct: Can "Legal Error" Constitute Misconduct?*

1. *Determining Generally When "Error" is Misconduct*

When judges abuse their discretion and overlook and misinterpret statutes, ordinances and appellate court decisions, their rulings and decisions are subject to review within the courts, and the universal view is that judges should not be disciplined for acting in good faith within a wide range of discretion. Yet legal error and judicial misconduct are not mutually exclusive; a judge is not immune from being disciplined merely because the judge's conduct also constitutes legal error. From earliest times it has been recognized that "errors" are subject to discipline when the conduct reflects bias, malice or an intentional disregard of the law.[28] These standards have been refined in recent years to remove from office or otherwise discipline judges who abuse their power and disregard fundamental rights.[29] Clearly, no sound argument can be made that a judge should be immune from discipline for conduct demonstrating lack of fitness solely because the conduct also happens to constitute legal error.[30]

28. *See In re* Quigley, 32 N.Y.S. 828 (Sup. Ct. 2d Dep't 1895); *In re* Capshaw, 258 A.D. 470, 17 N.Y.S.2d 172 (1st Dep't), *mot. denied*, 258 A.D. 1053, 18 N.Y.S.2d 741 (1st Dep't 1940).

29. *See In re* Sardino, 58 N.Y.2d 286, 448 N.E.2d 83, 461 N.Y.S.2d 229 (1983); *In re* McGee, 59 N.Y.2d 870, 452 N.E.2d 1258, 465 N.Y.S.2d 930 (1983); *In re* Reeves, 63 N.Y.2d 105, 469 N.E.2d 1321, 480 N.Y.S.2d 463 (1984).

30. Despite clear authority to discipline judges for conduct that may also be subject to appellate review, the mistaken belief persists that disciplinary authorities have no jurisdiction over an event or series of events that may be "reversible error." *See, e.g.*, Overton, *Grounds for Judicial Discipline in the Context of Judicial Disciplinary Commissions*, 54 CHI[-]KENT L. REV. 59, 65-66 (1977) ("In the absence of fraud or a corrupt motive, a commission must avoid taking action against a judge for reaching an erroneous

Determining whether legal error constitutes misconduct often depends on the procedures and resources made available for investigations. Only a comprehensive investigation can reveal whether the misconduct was an isolated event or part of a pattern. The primary failing of the system for most of New York State's history was the absence of uniform and efficient investigations.

From the latter part of the nineteenth century through the 1960's, the courts that had jurisdiction to discipline judges were likely to conclude that judicial acts in violation of law and abuses of judicial discretion did not constitute misconduct because they were not the result of improper motives or an intentional disregard of law.[31] Without evidence of a pattern of violations of law or numerous abuses of discretion, doubts about the judges' conduct were resolved in favor of the judge. Another impediment to the development of an appropriate disciplinary system was the absence of disciplinary sanctions other than removal from office. In at least some of the cases, the courts seemed willing to criticize the questionable conduct but apparently were reluctant to do so because of the absence of clear statutory authorization.

Over the past few years, a major contribution by the Commission on Judicial Conduct and the Court of Appeals has been the development of a body of case law condemning tyrannical conduct by judges.[32] Providing the right to appellate review for egregious violations of rights was simply an inadequate deterrent. Moreover, the right to appeal does not address the possible misconduct of the trial court and does not grant the appellate court the power to discipline the judge. Judicial "independence" encompasses making mistakes and committing "error," but was not intended to afford protection to judges who ignore the law or

legal conclusion or misapplying the law.") (footnote omitted). Obviously, a disciplinary body must avoid being in conflict with court decisions in the interpretation of law, and if a matter is under appeal, it is the wiser, more prudent course to await the outcome of the appeal. Close questions of law are not the proper subject of disciplinary proceedings. Nor is it the function of a disciplinary body to determine whether the judge misapplied the law. A Commission on Judicial Conduct that disciplines judges for egregious errors (e.g., ignoring clear law to the serious detriment of an individual's basic rights) is unlikely to be in conflict with the courts' interpretations of law.

31. *See infra* notes 37-44, 64-73 and accompanying text.

32. *See infra* notes 136-56 and accompanying text.

otherwise pose a threat to the administration of justice.

The recent disciplinary decisions do not support the view that the Commission on Judicial Conduct has exceeded its authority or unduly inhibited judges from exercising their discretion. In fact, the persuasiveness of some dissenting opinions by Commission members indicates that the Commission may have been too lenient in some of its sanctions for on-bench misconduct.

2. *Bias*

Extreme leniency by judges toward defendants in criminal cases has occasionally created doubts about whether the judges' decisions were on the merits. Ascertaining from judges' decisions that they are biased obviously is fraught with danger. Judges must be free to act within a wide range of discretion without having their motives questioned. Yet, at times, judges' motives have been questioned when their decisions have been inconsistent with the overwhelming evidence in the case. In earlier years, a number of judges were charged with misconduct for being partial toward certain defendants in criminal proceedings.

In the 1890's the Mayor of the City of Brooklyn filed a petition for the removal of James F. Quigley, a City Police Justice.[33] The petition charged the judge with exhibiting bias in favor of three striking trolley car workers who allegedly had assaulted a motorman, pelted the trolley car with stones, and forcibly removed two passengers. Judge Quigley dismissed criminal charges despite substantial evidence against the strikers, and, apparently portraying pro-labor sentiments, he announced that they had a clear right to remove passengers from the trolley car in an orderly manner. In justifying Judge Quigley's removal from office in 1895, the Supreme Court (which then had jurisdiction to remove lower court judges) stated that the judge had engaged in a pattern of biased conduct in which he ignored clear evidence of criminal charges and expressed sympathy with the defendants' goals.

The court took cognizance of the "great latitude" given to judges and "the discretion the law gives to a magistrate on mat-

33. *In re* Quigley, 32 N.Y.S. 828 (Sup. Ct. 2d Dep't 1895).