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Judicial Conduct

JUDICIAL CONDUCT

COURT OF APPEALS

N.Y. CONST. art. VI, § 22 (d):

In reviewing a determination of the commission on judicial conduct, the court of appeals may admonish, censure, remove or retire, for the reasons set forth in subdivision a of this section, any judge of the unified court system. In reviewing a determination of the commission on judicial conduct, the court of appeals shall review the commission's findings of fact and conclusions of law on the record of the proceedings upon which the commission's determination was based. The court of appeals may impose a less or more severe sanction prescribed by this section than the one determined by the commission, or impose no sanction.

In re LaBelle[793]
(decided April 3, 1992)

Petitioner claimed that the Commission on Judicial Conduct (Commission) incorrectly interpreted Criminal Procedure Law (CPL) section 530.20(1)[794] as necessitating that a judge "order recognizance or bail in all nonfelony cases," or, in the alternative, if the interpretation was correct, this requirement on the part of a judge is "sufficiently arguable that his actions in

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793. 79 N.Y.2d 350, 591 N.E.2d 156, 582 N.Y.S.2d 970 (1992).

794. N.Y. CRIM. PROC. LAW § 530.20(1) (McKinney 1984). Section 530.20(1) states in relevant part:

> When a criminal action is pending in a local criminal court, such court, upon application of a defendant, must or may order recognizance or bail as follows:
>
> 1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

Id.

accord with a contrary interpretation amount only to an error of law, not misconduct."[795]

Petitioner LaBelle, Judge of the Saratoga Springs City Court, requested that the court of appeals, pursuant to the authority granted it by the New York State Constitution,[796] review the finding of the State Commission on Judicial Conduct that he had "engaged in misconduct by abusing the bail process," and that such misconduct warranted removal from office.[797] Specifically, Judge LaBelle argued that, according to CPL section 530.20(1), he was required to order bail or recognizance only if "an application is made by the defendant," and that no such request had been made by any of the defendants in the cases being questioned.[798]

Upon review of the Commission's determination, the court of appeals held that the judge "knowingly committed legal error and engaged in sanctionable conduct."[799] The court, however, disagreed with the Commission's finding that the judge's misconduct warranted removal from office, and instead, found the sanction of censure to be appropriate.[800]

The Commission investigated nonfelony cases involving approximately fifty defendants. These incidents occurred between 1986 and 1989 when petitioner LaBelle, a Saratoga Springs City Court Judge, was presiding.[801] Specifically, the investigation focused on petitioner's bail decisions in certain cases where the Commission found that each of the above-mentioned defendants "had . . . been committed to jail without bail at some point during the pendency of the criminal action."[802] Judge LaBelle answered the Commission's questions about his bail decisions in these cases during two days of testimony before a member of the

795. *LaBelle*, 79 N.Y.2d at 357, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973.

796. N.Y. CONST. art. VI, § 22(d).

797. *Id.* at 355, 591 N.E.2d at 1158, 582 N.Y.S.2d at 971-72.

798. *Id.* at 357, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973.

799. *Id.* at 358, 591 N.E.2d at 1160, 582 N.Y.S.2d at 974.

800. *Id.* at 355, 591 N.E.2d at 1158, 582 N.Y.S.2d at 972.

801. *Id.*

802. *Id.*

Commission.[803] Subsequently, the Commission served a formal complaint upon the Judge that contained "seven charges of misconduct," and alleged that he had violated the Rules Governing Judicial Conduct (22 NYCRR), sections 100.1,[804] 100.2,[805] 100.3(a)(1)[806] and (4),[807] and Canons 1,[808] 2,[809] and 3(A)(1)[810] and (4)[811] of the Code of Judicial Conduct."[812]

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803. *Id.*

804. N.Y. COMP. CODES R & REGS. tit. 22 § 100.1 (1989). Section 100.1 states in relevant part:

> Every judge shall participate in establishing, maintaining, and enforcing, and shall himself or herself observe, high standards of conduct so that the integrity and independence of the Judiciary may be preserved.

Id.

805. N.Y. COMP. CODES R & REGS. tit. 22 § 100.1 (1989). Section 100.2 states in relevant part:

> (a) A judge shall respect and comply with the law and shall conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Id.

806. N.Y. COMP. CODES R & REGS. tit. 22 § 100.1(a)(1) (1989). Section 100.3(a)(1) states in relevant part:

> A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interest, public clamor, or fear of criticism.

Id.

807. N.Y. COMP. CODES R & REGS. tit. 22 § 100.1(a)(4) (1989). Section 100.3 (a)(4) (1989). Section 100.3(a)(4) states in relevant part:

> A judge shall accord to every person who is legally interested in a matter . . . full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending matter.

Id.

808. N.Y. CODE OF JUDICIAL CONDUCT Canon 1 (McKinney 1992). Canon 1 states in relevant part:

> A judge should participate in establishing maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Id.

809. N.Y. MODEL CODE OF JUDICIAL CONDUCT 2 (McKinney 1992). Canon 2 states in relevant part:

The charges specifically alleged that the petitioner, in a number of nonfelony cases, "committed defendants to jail, prior to trial, without setting bail, in violation of CPL 530.20(1)."[813] Furthermore, the Commission also charged the petitioner with setting "bail at the time arrest or bench warrants were issued, without giving defendants an opportunity to be heard and without considering factors set forth in CPL 510.30(2)(a)."[814]

A. A judge shall respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment.

Id.

810. N.Y. CODE OF JUDICIAL CONDUCT Canon 3(A)(1) (McKinney 1992). Canon 3(A)(1) states in relevant part:

A judge should be faithful to the law and maintain professional competence in it.

Id.

811. N.Y. CODE OF JUDICIAL CONDUCT Canon 3(A)(4) (McKinney 1992). Canon 3(A)(4) states in relevant part:

A judge should accord to everyone who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding.

Id.

812. *LaBelle*, 79 N.Y.2d at 355-56, 591 N.E.2d at 1158, 582 N.Y.S.2d 972.

813. *Id.* at 356, 591 N.E.2d at 1158, 582 N.Y.S.2d at 972.

814. *LaBelle*, 79 N.Y.2d at 356, 591 N.E.2d at 1158, 582 N.Y.S.2d at 972; CRIM. PROC. LAW § 510.30 (2)(a) (McKinney 1984). Section 510.30 (2)(a) provides:

2. To the extent that the issuance of an order or recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

a. With respect to any principal, the court must consider the kind and degree of control and restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

After the complaint was served, petitioner, his attorney, and the Administrator of the Commission, pursuant to Judiciary Law section 44(5),[815] agreed to the Judge's waiver of the hearing afforded him by Judiciary Law section 44(4).[816] All parties agreed that the Commission would make its decision based on the "agreed-upon facts and various exhibits including . . . petitioner's prior testimony."[817] The parties also agreed that the petitioner had committed the forty-four defendants "in over [fifty] nonfelony cases" (some defendants had appeared before him on

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(iii) His family ties and the length of his residence if any in the community; and
(iv) His criminal record if any; and
(v) His record of previous adjudication as a juvenile delinquent as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and
(vi) His previous record if any in responding court appearances when required or with respect to flight to avoid criminal prosecution; and
(vii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and
(viii) If he is a defendant, the sentence which may be or has been imposed upon conviction.

Id.

815. N.Y. JUD. LAW § 44(5) (McKinney 1983) Section 44(5) provides:
Subject to the approval of the commission, the administration and the judge may agree on a statement of facts and may stipulate in writing that the hearing shall be waived. In such a case, the commission shall make its determination upon the pleadings and the agreed statement of facts.

Id.

816. *LaBelle*, 79 N.Y.2d at 356, 591 N.E.2d at 1158, 582 N.Y.S.2d at 972; N.Y. JUD. LAW § 44(4). Section 44(4) states in relevant part:
If in the course of an investigation, the commission determines that a hearing is warranted, it shall direct that a formal written complaint signed and verified by the administrator be drawn and served upon the judge involved . . . .

Id.

817. *LaBelle*, 79 N.Y.2d 356, 591 N.E.2d at 1158, 582 N.Y.S.2d 972.

more than one occasion) to jail without setting the required bail, pursuant to section 530.20(1) of the CPL,[818] that the "Public Defender's office and the Sheriff's department had informed [him on several occasions] that commitments without bail in such cases were improper,"[819] and, finally, that on twelve occasions, he had set bail "at times when the defendants were not before him and without considering the factors set forth in CPL 510.30(2)(a)."[820]

After oral argument, the Commission decided that the charges against defendant warranted his removal from office.[821] Judge LaBelle petitioned the court of appeals for review of the Commission's determination, invoking the court of appeals' authority to review the Commission's findings, pursuant to New York Constitution article VI, section 22(d).[822]

The court of appeals disagreed with petitioner's contention that his conduct only amounts to "an error of law, [and] not misconduct."[823] According to Judge LaBelle's interpretation of CPL section 530.20(1), he had a duty to order recognizance or bail only when the defendant applied for it.[824] The court rejected his argument, pointing to CPL section 170.10(7),[825] which provides

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818. N.Y. CRIM. PROC. LAW § 530.20 (1) (McKinney 1989).

819. *LaBelle*, 79 N.Y.2d at 356, 591 N.E.2d at 1158, 582 N.Y.S.2d 972.

820. *Id.*; N.Y. CRIM. PROC. LAW § 510.30(2)(a).

821. *LaBelle*, 79 N.Y.2d at 357, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973; *see also* N.Y. CONST. art. VI § 22(a) (providing for a Commission on Judicial Conduct which shall investigate conduct and fitness complaints on any judges, giving it power to determine appropriate sanction and requiring it to forward such determination to court of appeals).

822. *LaBelle*, 79 N.Y.2d at 357, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973; N.Y. CONST. art. VI, § 22(d) states: "In reviewing a determination of the commission on judicial conduct, the court of appeals may admonish, censure, remove or retire . . . any judge of the unified court system."

823. *LaBelle*, 79 N.Y.2d at 357, 591 N.E.2d at 1159, 582 N.Y.S.2d 973.

824. *Id.*

825. N.Y. CRIM. PROC. LAW § 170.10(7) (McKinney 1982). Section 170.10 (7) provides in relevant part:

> Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in subdivision one of section 530.2, issue a securing order either releasing

that upon "arraignment, the court, . . . must, as provided in subdivision one of section 530.20, issue a securing order either releasing the defendant on his own recognizance or fixing bail for his future appearance in the action."[826] Disagreeing with petitioner's argument that section 170.10(7) incorporates the entire section 530.20 in the above statement, the court declared that section 170.10(7) only refers to subdivision (1) of 530.20, and not the part of that section of CPL 530.20 requiring an application by the defendant.[827] According to the court, if 170.10(7) likewise required an application, this section would simply be a useless repetition of 530.20.[828]

The court further reasoned that it would be senseless to require an application for bail by the defendant at a time when he would not likely be represented by an attorney.[829] Another reason that the court stated while disagreeing with the petitioner's interpretation of CPL 530.20(1) was that during his testimony to the Commission, the petitioner agreed that generally, "defendants are entitled to recognizance or bail in nonfelony cases."[830] According to the court, the Judge was therefore aware of the requirement that bail "'be set on a non-felony charge,'" and had never claimed to the Commission that his actions were justified because of the lack of defendants' application.[831] Due to these reasons, the court agreed with the Commission that "petitioner knowingly committed legal error and engaged in sanctionable conduct."[832]

But, the court of appeals disagreed with the Commission on the point of the actual sanction to be imposed, because it found the "Commission's determination overstates both the number and the

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> the defendant on his own recognizance or fixing bail for his future appearance in the action . . . .

Id.

826. *LaBelle,* 79 N.Y.2d at 358, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973.

827. *Id.*

828. *Id.*

829. *Id.*

830. *Id.*

831. *Id.* at 358, 591 N.E.2d at 1159-60, 582 N.Y.S.2d at 973-74.

832. *Id.* at 358, 591 N.E.2d at 1160, 582 N.Y.S.2d at 974.

nature of [the judge's] acts."[833] According to the Commission's findings, petitioner committed forty-four defendants without bail "on 96 occasions in 59 cases."[834] To demonstrate the inaccuracy of the findings, the court of appeals described one case in particular, that of defendant Rawling, who was committed without bail. The case was then adjourned to await the outcome of a psychiatric evaluation of the defendant's ability to "understand the proceedings against him."[835] It was adjourned once again due to the fact that the results of the evaluation were, for some reason, unavailable to Judge LaBelle, and adjourned yet again for an additional week, until, finally, the defendant appeared in court with counsel, and entered a plea of guilty.[836] After the plea agreement, the matter was adjourned for the last time — an additional week — after which, the defendant was finally "released on a conditional discharge."[837] According to the "agreed statement of facts" between the Commission and the petitioner, Rawling was charged with "petit larceny, two counts of harassment, and two weapons possession charges."[838] Out of the fifty-nine cases in which the Commission found the petitioner to have abused the bail process, the Commission considered the Rawling episode as five separate cases, based on the five charges against the defendant.[839] In finding that the petitioner had ninety-six instances of misconduct, the Commission treated each of the times the Rawling status was continued (after his appearance before the judge) as a separate instance of misconduct on the part of the petitioner — a total of seven times.[840] According to the court of appeals, even though that the Rawling "confinement was improper, it was a single episode relating to all of the charges,"

833. *Id.*
834. *Id.*
835. *Id.*
836. *Id.*
837. *Id.*
838. *Id.*
839. *Id.*
840. *Id.*

rather than multiple instances of misconduct on the part of the Judge.[841]

In addition to "inflat[ing] the numbers," according to the court, the Commission also failed to look at each case "individually and in context."[842] For example, in the *Rawling* case, the Commission judged the entire two-month period of confinement to be unlawful, but in reality, it overlooked the fact that the majority of that time, from guilty plea to release, was "postconviction confinement."[843] During this period, the court of appeals declared that "it is not unusual or unlawful for a defendant, anticipating a period of incarceration, to choose to remain in jail to accumulate credit toward satisfaction of the impending sentence."[844] Furthermore, according to the petitioner's testimony and his memory of events, this is what happened in the case.[845]

In other cases, defendants were held on other charges and "bail was not considered, at the request . . . [of] counsel," since, in such instances, "[d]efendants commonly eschew bail" in order to receive "maximum jail time credit,"[846] pursuant to Penal Law sections 70.30(3)[847] and 70.40(3)(c).[848] In these cases, the court considered petitioner's "failure to set bail" to be "a tactical ma-

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841. *Id.*

842. *Id.*

843. *Id.* at 359-60, 591 N.E.2d at 1160, 582 N.Y.S.2d at 974.

844. *Id.* at 360, 591 N.E.2d at 1160, 582 N.Y.S.2d at 974.

845. *Id.*

846. *Id.* at 360, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

847. N.Y. PENAL LAW § 70.30(3) (McKinney 1987). Section 70.30(3) provides in relevant part:

> The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence.

Id.

848. N.Y. PENAL LAW § 70.40(3)(c) (McKinney 1987). Section 70.40(3)(c) states in relevant part: "Any time spent by a person in custody from the time of diligency to the time service of the sentence resumes shall be credited against the term or maximum term of the interrupted sentence . . . ." *Id.*

neuver for the benefit of the defendants," rather than misconduct.[849]

According to the court, the Commission also erred in finding improper behavior on the part of petitioner when he committed Rawling to jail in another case for violating "the conditions of the conditional discharge previously granted."[850] Such commitment is expressly allowed by CPL 410.60.[851] In other cases, such as in the case where defendant "failed to pay court-ordered restitution,"[852] and where another defendant "violated a condition attached to an adjournment in contemplation of dismissal,"[853] the

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849. *LaBelle*, 79 N.Y.2d at 360, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

850. *Id.*

851. N.Y. CRIM. PROC. LAW § 410.60 (McKinney 1983). Section 410.60 states in relevant part:

> A person who has been taken into custody . . . for violation of a condition of a sentence of probation or a sentence of conditional discharge must forthwith be brought before the court that imposed the sentence. If the court has reasonable cause to believe that such person has violated a condition of the sentence, it may commit him to the custody of the sheriff or fix bail or release such person on his own recognizance for future appearance at the hearing . . . .

Id.

852. Commitment without bail for failing to pay restitution is authorized by N.Y. CRIM. PROC. LAW § 420.10(3) (McKinney 1993). Section 420.10(3) provides in relevant part: "Where the court imposes . . . restitution . . . the sentence may provide that if the defendant fails to pay the . . . restitution in accordance with the direction of the court, the defendant must be imprisoned until the . . . restitution . . . is satisfied." *Id.*

853. N.Y. CRIM. PROC. LAW § 530.13(1) (McKinney Supp. 1993). Commitment without bail is allowed when defendant violates a condition attached to an adjournment in contemplation of dismissal.

> When any criminal action is pending, and the court has not issued a temporary order of protection . . . the court in addition to the other powers conferred upon it by this chapter, may for good cause shown a temporary order of protection as a condition of a pre-trial release, or as a condition of release on bail or an adjournment in contemplation of dismissal.

Id. See also N.Y. CRIM. PROC. LAW § 530.13(8)(a) (McKinney Supp. 1993) which provides:

> If a defendant is brought before the court for failure to obey any lawful order issued under this section and if, after hearing, the court is satisfied

Commission likewise failed to consider specific laws allowing commitment without bail.[854]

In another group of cases, involving approximately sixteen defendants, the court of appeals found the Commission's interpretation of the law to be "sufficiently debatable" that petitioner's differing interpretation could not be seen as misconduct.[855] In this set of cases, petitioner committed defendants without setting bail because a psychological examination was necessary to determine if defendants were able to proceed, and defendants' behavior did not indicate to the judge that they could be relied on to attend such examinations.[856] On the topic of these particular cases, the Commission argued that CPL 170.10(7) and 530.20(1) require that the defendant in a nonfelony case be "released on his own recognizance or be given the opportunity to be released on bail."[857] On the other hand, the petitioner argued that CPL 730.20 (2)[858] and (3)[859] "vested [him] with discretion to deter-

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by competent proof that the defendant has willfully failed to obey any such order, the court may: revoke an order of recognizance or bail and commit the defendant to custody.

Id.

854. *LaBelle*, 79 N.Y.2d at 360, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

855. *Id.*

856. *Id.* at 360-61, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

857. *Id.* at 361, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

858. N.Y. CRIM. PROC. LAW § 730.20(2) (McKinney 1984). Section 730.20(2) provides:

When the defendant is not in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective examination, the sheriff must deliver the defendant to a hospital designated by the director and hold him in custody therein, under sufficient guard, until the examination is completed.

Id.

859. N.Y. CRIM. PROC. LAW § 730.20(3) (McKinney 1984). Section 730.20(3) provides in relevant part:

When the defendant is in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective

mine whether a defendant should be confined, either in jail or in a hospital, pending a psychiatric report."[860] The court's view was that an ambiguity does exist, and so the petitioner's interpretation of the statutes, on this point, "cannot constitute misconduct."[861]

In another small group of cases, the court concluded that the misconduct charges cannot stand since the record shows that the petitioner either had set bail, and such was not reflected in the documents, or the failure was a simple case of "inadvert[ence]."[862] Therefore, according to the court, out of the fifty-nine cases of misconduct cited by the Commission, the petitioner really "failed to set bail without legal justification" in twenty-four cases.[863] Relating to these cases, the petitioner stated his reason for not setting bail to have been either his knowledge of the defendants and their preference to stay in jail (in the case of homeless, for instance), or the lack of satisfactory identification on the part of a defendant (such as personal history and ties to the community).[864] In reviewing such justifications for not setting bail, the court declared that it could not "find fault with these concerns, [but that these justifications] do not justify petitioner's failure to abide by the statutory requirement that the at least set bail, if only in a nominal amount."[865]

The court of appeals, as a final point, took note of the fact that the petitioner did not act in furtherance of his own interests "over those of the defendants."[866] According to the court, the defendant rather showed his compassion for "those whose problems do

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examination, the sheriff must deliver the defendant to a hospital designated by the director and hold him in custody therein, under sufficient guard, until the examination is completed.

Id.

860. *LaBelle*, 79 N.Y.2d at 361, 591 N.E.2d at 1161, 582 N.Y.S.2d at 975.

861. *Id.*

862. *Id.*

863. *Id.*

864. *Id.* at 362, 591 N.E.2d at 1162, 582 N.Y.S.2d at 975.

865. *Id.*

866. *Id.* at 363, 591 N.E.2d at 1162, 582 N.Y.S.2d at 976.

not belong in the criminal courts."[867] Finally, the court found the petitioner LaBelle to have been "forthright, cooperative and contrite," during the Commission's proceedings.[868] Therefore, the court of appeals, pursuant to the powers delegated to it by New York Constitution, Article 6, section 22(d),[869] found that the sanctions of removal was too harsh, and ordered the sanction of censure to be imposed instead.[870]

Judge Kaye concurred in part and dissented in part in *Matter of LaBelle*, expressing her willingness to "accept the determined sanction of removal."[871] She put great emphasis on the fact that, in spite of the exaggerated numbers, the court agreed with the Commission that "on at least twenty-four occasions," the petitioner, with knowledge of the law and its requirement that bail be set, committed defendants without setting bail.[872] Accordingly, he, denied these defendants "'a benefit of obvious importance and to which [he] is entitled as a matter of right."[873] Furthermore, the denial of bail was done at a time when an attorney is not likely to be representing the defendant.[874] Regardless of his motivations or his contriteness, the petitioner's actions were knowing and willful, and according to Judge Kaye, "far less egregious misconduct has warranted removal in the past."[875]

Such previous court of appeals cases as *Matter of Kiley*,[876] and *Sardino v. State Commission on Judicial Conduct*[877] provide

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867. *Id.*

868. *Id.*

869. N.Y. CONST., art VI, § 22(d).

870. *LaBelle*, 79 N.Y.2d at 363, 591 N.E.2d at 1162, 582 N.Y.S.2d at 976.

871. *Id.* (Kaye, J., concurring in part, dissenting in part).

872. *Id.* at 363, 591 N.E.2d at 1162-63, 582 N.Y.S.2d at 976-77 (Kaye, J., concurring in part, dissenting in part).

873. *Id.* at 363, 591 N.E.2d at 1162, 582 N.Y.S.2d 977 (Kaye, J., concurring in part, dissenting in part) (quoting majority opinion at 358, 591 N.E.2d at 1159, 582 N.Y.S.2d at 973).

874. *Id.* (Kaye, J., concurring in part, dissenting in part).

875. *Id.* at 364, 591 N.E.2d at 1163, 582 N.Y.S.2d at 977 (Kaye, J., concurring in part, dissenting in part).

876. 74 N.Y.2d 364, 546 N.E.2d 916, 547 N.Y.S.2d 623 (1989) (per curiam).

support for the court of appeals' decision in *LaBelle.* In *Kiley*, the court found that petitioner's behavior, in interceding on behalf of criminal defendants and lending the prestige of his position to aid them, warranted censure rather than removal.[878] The court declared that "removal is the ultimate sanction and should be imposed only in the event of truly egregious circumstances."[879] According to the court, "poor judgment or even extremely poor judgment" does not qualify as an adequate reason for removal.[880] In deciding that censure is the appropriate remedy, the court looked at the mitigating factors involved in this case, such as the fact that the judge's actions seem to be motivated by compassion (in one of the cases involved), that he was not personally motivated, and that his conduct had no "element of venality, selfish[ness or dishonor]."[881] Finally, the Court seemed to advise care on the part of the Commission in relying on the judge's "lack of candor" (in justifying his behavior) as a factor warranting removal[882] because it may "unfairly [deprive]

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877. 58 N.Y.2d 286, 448 N.E.2d 83, 461 N.Y.S.2d 229 (1983) (per curiam).

878. *Kiley*, 74 N.Y.2d at 366, 368, 546 N.E.2d at 917, 918, 547 N.Y.S.2d at 624, 625; *see also In re* Dixon, 47 N.Y.2d 523, 393 N.E.2d 441, 419 N.Y.S.2d 445 (1979) (per curiam) (finding that a judge's intervention in a case before another judge to request special treatment of two defendant's guilty of traffic violations warranted censure rather than dismissal). *But see In re* Conti, 70 N.Y.2d 416, 516 N.E.2d 1207, 522 N.Y.S.2d 93 (1987) (per curiam) (holding that the fixing of speeding tickets of a judge's own attorney warranted removal); *In re* Seiffert, 65 N.Y.2d 278, 480 N.E.2d 734, 491 N.Y.S.2d 145 (1985) (per curiam) (holding that a judge's intervention in cases not before him in order to seek favored treatment for defendant's with whom he had personal relationship warranted removal).

879. *Kiley*, 74 N.Y.2d at 369, 546 N.E.2d at 918, 547 N.Y.S.2d at 625 (citations omitted); *see also In re* Myers, 67 N.Y.2d 550, 496 N.E.2d 207, 505 N.Y.S.2d 48 (1986) (per curiam) (holding that preparation of a criminal summons by a town justice for a dispute in which he had personal interest, and attempts by said town justice to conceal such illegal activity in order to hinder the Commission's investigation warranted removal).

880. *Kiley*, 74 N.Y.2d at 370, 546 N.E.2d at 918, 547 N.Y.S.2d at 625.

881. *Id.* at 370, 546 N.E.2d at 919, 547 N.Y.S.2d at 626.

882. *Id.*; *see also In re Gelfand*, 70 N.Y.S.2d 211, 512 N.E.2d 533, 518 N.Y.S.2d 950 (1987) (per curiam) (finding that misuse of the judge's position, in threatening court officials in order to continue a sexual relationship,

an investigated judge of the opportunity to advance a legitimate defense."[883]

In *Sardino,* on the other hand, the court agreed with the Commission that the sanction of removal was appropriate where the judge *consistently* failed to inform the defendants of their right to counsel, did nothing to help them obtain counsel, and *regularly* abused his authority in setting bail.[884] According to the Commission's finding, Judge Sardino often committed the defendants without bail, "with no express or apparent legal or rational justification."[885] The *Sardino* court found that "abuse of judicial power and intemperate displays of evident bias in sixty-two cases over a two-year period can hardly be viewed as an isolated incident."[886] In this case, unlike in *LaBelle,* the court saw a clear abuse of judicial authority, and therefore ordered removal.[887]

Accordingly to *Labelle,* as well as other court decisions such as *Sardino* and *Kiley,* the court of appeals, in reviewing the Commission's determination, must weigh the relevant factors involved in a judge's alleged misconduct. If mitigating factors exist in a particular case, the *LaBelle, Sardino,* and *Kiley* decisions seem to recommend that the court of appeals impose the sanction of censure, rather than of removal.

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combined with his lack of candor during the Commission's investigation, warranted removal).

883. *Kiley,* 74 N.Y.2d at 370, 546 N.E.2d at 919, 547 N.Y.S.2d at 626.

884. *Sardino,* 58 N.Y.2d at 289, 448 N.E.2d at 84, 461 N.Y.S.2d at 230.

885. *Id.* at 290, 448 N.E.2d at 84, 461 N.Y.S.2d at 230.

886. *Id.* at 291, 448 N.E.2d at 85, 461 N.Y.S.2d at 231.

887. *Id.* at 291-92, 448 N.E.2d at 85, 461 N.Y.S.2d at 231.