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Power of Courts

POWER OF COURTS

N.Y. CONST. art. VI, § 30:

The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised. The legislature may, on such terms as it shall provide and subject to subsequent modification, delegate, in whole or in part, to a court, including the appellate division of the supreme court, or to the chief administrator of the courts, any power possessed by the legislature to regulate practice and procedure in the courts. The chief administrator of the courts shall exercise any such power delegated to him with the advice and consent of the administrative board of the courts. Nothing herein contained shall prevent the adoption of regulations by individual courts consistent with the general practice and procedure as provided by statute or general rules.

N.Y. CONST. art. VI, sec. 7

a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

b. If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have

jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts.

COURT OF APPEALS

Met Council, Inc. v. Crosson[1]
(decided October 27, 1994)

Appellants, Met Council, Inc., et al., brought this action in the New York Supreme Court, Appellate Division, seeking to force Matthew Crosson, respondent and Chief Administrator of the Courts of the State of New York, and Silbermann, also respondent and Administrative Judge of the Civil Court of the City of New York, to remove housing judges Jack Dubinsky, Emanuel Haber, and Harriet George from office and have them go through the regular process of appointment to their positions as housing judges.[2] The application was denied and dismissed without an opinion by the appellate division.[3] Appellants appealed to this court. At issue was "whether Housing Court Judges may hold over after the expiration of their five-year term and . . . whether Housing Court Judges are subject to the reappointment authority of the Chief Administrator of the Courts."[4] The New York Court of Appeals affirmed the judgment of the lower court by holding that the relevant provision in the New York Constitution[5] takes precedence over

1. 84 N.Y.2d 328, 642 N.E.2d 1073, 618 N.Y.S.2d 617 (1994).

2. *Id.* at 331, 642 N.E.2d at 1074, 618 N.Y.S.2d at 618. Appellant's first cause of action was filed while all three Housing Judges' appointments were being temporarily extended prior to evaluation. However, after respondents reappointed each of them to five year terms, the appellants amended their petition. *Id.*

3. Met Council, Inc. v. Crosson, 191 A.D.2d 1052, 595 N.Y.S.2d 680 (1st Dep't 1993).

4. *Met Council, Inc.*, 84 N.Y.2d at 330, 642 N.E.2d at 1074, 618 N.Y.S.2d at 618.

5. N.Y. CONST. art. VI, § 28(b). Article VI, § 28(b) provides:

> The chief administrator, on behalf of the chief judge, shall supervise the administration and operation of the unified court system. In the exercise of such responsibility, the chief administrator of the courts shall have

the conflicting statutory provisions in the New York City Civil Court Act.[6] The court also held that "[a]lthough the title of Hearing Officer has been changed to Housing Judge, the nature of the position has not changed[,]" thus rejecting appellant's contention that Housing Judges serve "judicial functions."[7]

The three Housing Judges at the center of this controversy have each served more than one five-year term. The first two Housing Judges, Jack Dubinsky and Emanuel Haber, began their first terms on July 23, 1981.[8] They were both reappointed for a second five-year term on July 23, 1986.[9] Although their second terms were supposed to end on July 22, 1991, the respondents had not finished investigating their qualifications for a third term.[10] Therefore, respondent Silbermann extended their terms until September 23, 1992.[11] The third Housing Judge, Harriet George, began her first five-year term on April 1, 1977, and was subsequently reappointed to second and third five-year terms, consecutively thereafter.[12] A lack of an investigation also precipitated the extension of her fourth term past its expiration date of March 31, 1992, to September 23, 1992.[13]

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such powers and duties as may be delegated to him by the chief judge and such additional powers and duties as may be provided by law.

Id.

6. N.Y. CITY CIV. CT. ACT § 110(f) (McKinney 1972). The section states in relevant part: "[T]he hearing officers shall be appointed by the administrative judge. . . ." *Id.* This section further states in pertinent part: "Reappointment shall be at the discretion of the administrative judge . . . ." *Id.*

7. *Met Council, Inc.*, 84 N.Y.2d at 335, 642 N.E.2d at 1077, 618 N.Y.S.2d at 621. The court explained that the title hearing officer was changed to that of housing judge merely in an effort to "improve the statute of the officers who presided in the housing court and thereby improve the stature and effectiveness of the entire court." *Id.* at 332, 642 N.E.2d at 1075, 618 N.Y.S.2d at 619.

8. *Id.* at 330, 642 N.E.2d at 1074, 618 N.Y.S.2d at 618.

9. *Id.*

10. *Id.* at 330-31, 642 N.E.2d at 1074, 618 N.Y.S.2d at 618.

11. *Id.* at 331, 642 N.E.2d at 1074, 618 N.Y.S.2d at 618.

12. *Id.*

13. *Id.*

On July 14, 1992, the appellant began this Civil Practice Law and Rules article 78 proceeding "seeking judgment prohibiting respondents from allowing [said Housing Judges] to continue to sit as Housing Judges, directing respondents to remove them from their positions, and prohibiting their reappointment to new terms unless they were appointed in the same manner as new Housing Judges were appointed."[14] Soon thereafter, respondents reappointed all three Housing Judges to new five-year terms and appellants' amended petition followed.[15]

The appellants attacked the propriety of these reappointments[16] asserting that, according to the Civil Court Act, only the Administrative Judge, and not the Chief Judge, has the power to reappoint said Housing Judges.[17] However, according to the New York State Constitution, in the unified court system the Chief Administrator, on behalf of the Chief Judge, has supervisory power over matters of administration and operation.

In the case of *Corkum v. Bartlett*,[18] the New York Court of Appeals interpreted section 28 of article VI of the New York

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14. *Id.*

15. *Id.*

16. Appellants had claimed that the reappointment was improper because once the five-year terms had expired, these referees were no longer Housing Judges under the New York Civil Court Act § 110(i). *Id.* at 334, 642 N.E.2d at 1076, 618 N.Y.S.2d at 620. Therefore, the appellants claimed, the housing judges now had to go through the regular appointment process in order to become Housing Judges again. *Id.* The court rejected this interpretation of § 110(i). *Id.* The court held that there was no requirement that the reappointment be made before the five-year terms had expired and, regardless of that interpretation, they were still housing judges because they were not holding over unlawfully and their respective offices had not been subsequently filled. *Id.*

17. *Met Council, Inc.*, 84 N.Y.2d at 334, 642 N.E.2d at 1076, 618 N.Y.S.2d at 620. Furthermore, 22 NYCRR 80.1(b)(3) provides, in pertinent part, that the Chief Administrator shall "appoint and remove, upon nomination or recommendation of the appropriate administrative judge, supervising judge or judge of the court in which the position is to be filled or the employee works, or other administrator, all nonjudicial officers and employees . . . ." N.Y. COMP. CODES R. & REGS. tit. 22, §80.1 (1995).

18. 46 N.Y.2d 424, 386 N.E.2d 1066, 414 N.Y.S.2d 98 (1979) (involving opposition to proposed public hearings, to be held by the Chief Administrator,

Constitution to give a very broad delegation of power to the Chief Administrator. The court noted that the apparent limitation placed on the Chief Administrator's power, requiring it to flow from the Chief Judge, is actually an asset.[19] The court explained that, in the area of supervision and management, "the Constitution places no limitations on the duties the Chief Judge may delegate to the administrator. Neither consultation with the Administrative Board nor approval by the court of appeals is a prerequisite to the exercise of supervisory powers by the Chief Administrator."[20] According to *Durante v. Evans*,[21] this broad grant of power includes appointment power over non-judicial personnel.[22]

The above decisional law coupled with the linchpin case of *Glass v. Thompson*[23] which held that Housing Judges, then called hearing officers,[24] were "nonjudicial officers of the court,"[25] the court in the current case reasoned that the appointment of

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about classifications of non-judicial employees and stating that the Chief Administrator has the power to hold such public hearings).

19. *Id.* at 429, 386 N.E.2d at 1067-68, 414 N.Y.S.2d at 100.

20. *Id.* at 429, 386 N.E.2d at 1068, 414 N.Y.S.2d at 100.

21. 94 A.D.2d 141, 464 N.Y.S.2d 264 (3d Dep't 1983), *aff'd*, 62 N.Y.2d 719, 465 N.E.2d 367, 476 N.Y.S.2d 828 (1984). In this case, the New York City county clerks claimed they had full power to appoint counsel and deputy clerks. The court disagreed and held that the "Chief Administrative Judge has the exclusive power of appointment[]" according to the pertinent amendments in the New York State Constitution. *Id.* at 141, 464 N.Y.S.2d at 265.

22. *Id.* at 144, 464 N.Y.S.2d at 266. "[T]he power granted thereby is 'complete,' and has been interpreted to embrace 'the power to deal with all personnel matters.'" *Id.* at 144, 464 N.Y.S.2d at 266 (quoting Corkum v. Bartlett, 46 N.Y.2d 424, 429, 386 N.E.2d 1066, 1068, 414 N.Y.S.2d 98, 100 (1979) and *In re* Blyn v. Bartlett, 39 N.Y.2d 349, 357, 348 N.E.2d 555, 559, 384 N.Y.S.2d 99, 103 (1976)).

23. 51 A.D.2d 69, 379 N.Y.S.2d 427 (2d Dep't 1976) (holding that compulsory reference to a referee under the New York Civil Court Act was constitutional, absent a valid demand for jury trial).

24. The court went into depth about how the amendments to the New York Civil Court Act in 1978 and 1984, which changed the title from Hearing Officer to Housing Judge, did nothing more than simply change the name, not the position and powers. *Met Council, Inc.*, 84 N.Y.2d 328, 642 N.E.2d 1073, 618 N.Y.S.2d 617.

25. *Glass*, 51 A.D.2d at 74, 379 N.Y.S.2d at 432.

Housing Judges was covered by the New York State Constitution.[26] Therefore, because the section on appointment power in the New York Civil Court Act conflicts with the New York Constitution, the constitutional amendment prevails.[27]

All of the aforementioned common law steps in logic indicate that the Chief Administrator has the power to appoint Housing Judges. Under the New York State Constitution this power is derived from the Chief Judge and is virtually without limit in this area. Furthermore, due to the supremacy of the New York State Constitution over New York statutes, the proper reading of the New York Civil Court Act and the amendments thereto require overriding supplementation by the applicable amendments to the New York Constitution.

People v. Perez[28]
People v. Vasquez
(decided March 17, 1994)

The issue decided on appeal was whether the trial court exceeded its authority by amending a criminal indictment to include a count that had been properly designated by the grand jury but left out of the original indictment as a result of a clerical error.[29] The New York Court of Appeals held that such a measure was not within the constitutional parameters of the trial court, as such alteration in the indictment was an impermissible change of substance, not in form.[30]

The case on appeal was a consolidation of two separate proceedings with the same legal issue.[31] In both cases, the

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26. *Met Council, Inc.*, 84 N.Y.2d at 335, 642 N.E.2d at 1077, 618 N.Y.S.2d at 621.

27. Durante v. Evans, 94 A.D.2d 141, 144, 464 N.Y.S.2d 264, 266 (3d Dep't 1983) ("[T]he constitutional amendments abrogate the existing statute."), *aff'd*, 62 N.Y.2d 719, 465 N.E.2d 367, 476 N.Y.S.2d 828 (1984)).

28. 83 N.Y.2d 269, 631 N.E.2d 570, 609 N.Y.S.2d 564 (1994).

29. *Id.* at 272, 631 N.E.2d at 570-71, 609 N.Y.S.2d at 564-65.

30. *Id.* at 276, 631 N.E.2d at 573, 609 N.Y.S.2d at 567.

31. *Id.* at 272, 631 N.E.2d at 570, 609 N.Y.S.2d at 564-65.