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Power of Courts: Bloom v. Crosson

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.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Bloom v. Crosson[1646]
(decided October 7, 1993)

The court of appeals, in a memorandum decision, affirmed the appellate division's decision "for the reasons stated in the opinion by Justice A. Franklin Mahoney at the appellate division."[1647] At the appellate division stage, the petitioner, Chief Administrator of the Courts, appealed a decision[1648] which held that his directive, mandating the use of electronic recording instead of stenographic transcription of all testimony and proceedings in the twelve full-time Surrogate's Courts throughout the state and in eight Court of Claims', was outside the scope of his powers under section 414

1646. 183 A.D.2d 341, 590 N.Y.S.2d 328 (3d Dep't 1992).

1647. 82 N.Y.2d 768, 771, 624 N.E.2d 175, 175, 603 N.Y.S.2d 991, 991 (1993).

1648. 152 Misc. 2d 397, 585 N.Y.S.2d 946 (Sup. Ct. Albany County 1992).

of the Session Laws[1649] and New York Constitution, article VI, section 28(b).[1650] The third department, held that the Chief Administrator's directive was within his statutory and constitutional power and reversed the holding of the lower court.[1651]

In April of 1992, a two year experimental measure was passed by the Legislature where the Chief Administrator was given the

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1649. N.Y. JUD. LAW § 411 (McKinney 1983 & Supp. 1993). Section 414 provides:

> Notwithstanding any other provision of law, the chief administrator of the courts may authorize the use of mechanical recording of testimony and of other proceedings in each cause, in lieu of the taking of stenographic minutes thereof, in: (i) a surrogate's court in any county; and (ii) the court of claims.

Id.

1650. *Bloom*, 183 A.D.2d at 344, 590 N.Y.S.2d at 330; *see also* N.Y. CONST. art. VI, § 28. Section 28 of Art. 6 of the New York State Constitution states:

> a. The chief judge of the court of appeals shall be the chief judge of the state of New York and shall be the chief judicial officer of the unified court system. There shall be an administrative board of the courts which shall consist of the chief judge of the court of appeals as chairman and the presiding justice of the appellate division of the supreme court of each judicial department. The chief judge shall, with the advice and consent of the administrative board of the courts, appoint a chief administrator of the courts who shall serve at his pleasure.
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> b. 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 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.
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> c. The chief judge, after consultation with the administrative board, shall establish standards and administrative policies for general application throughout the state, which shall be submitted by the chief judge to the court of appeals, together with the recommendations, if any, of the administrative board. Such standards and administrative policies shall be promulgated after approval by the court of appeals.

Id.

1651. *Bloom*, 183 A.D.2d at 346, 590 N.Y.S.2d at 331.

authority to implement in a Surrogate Court in any county, and the Court of Claims, a program that would have replaced stenographers. After consultation and approval from the Chief Judge regarding implementation of a plan pursuant to section 414 of the session laws, and a presentation to the Administrative Board of the Courts, the Chief Administrator launched a directive regarding the use of electronic recording in the courts.[1652] The Chief Administrator announced that on May 21, 1992, it would be mandatory to use electronic recording in "12 full-time Surrogate's Courts throughout the State and in eight Courts of Claims" for all testimony and proceedings.[1653]

In response to the mandatory directive, plaintiffs, who were "elected officials from the affected jurisdictions, court stenographers who were involuntarily reassigned, . . . members of the Bar . . . and individuals who had cases pending in Surrogate's Court" commenced an action against the Chief Administrator to prevent the implementation of the directives.[1654] The plaintiffs argued that the action taken by the Chief Administrator was not authorized by New York Constitution, article VI, section 30.[1655] According to article VI, section 30, the Legislator has the power to govern jurisdiction,

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1652. *Id.* at 343, 590 N.Y.S.2d at 329.

1653. *Id.*

1654. *Id.*

1655. *Id.* at 344, 590 N.Y.S.2d at 330; *see also* N.Y. CONST. art. VI, § 30. Section 30 of article VI states:

> 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.

Id.

practice and procedure issues dealing with the court system.[1656] This power can be delegated to the Chief Administrator, however, no exercise of this power will be valid without "the advice and consent of the administrative board of the courts."[1657] Therefore, plaintiffs argued that because no consent was given by the administrative board, the directive is invalid.[1658]

The Chief Administrator argued that the directive was not an action in practice or procedure, but rather was administrative in character and therefore, article VI, section 28 was controlling in this case.[1659] Article VI, section 28(b) states: "the Chief Administrator, on behalf of the Chief Judge, shall supervise the administration and operation of the unified court system."[1660] Under section 28(b), the Chief Administrator does not need the consent of the administrative board to take any action dealing with administrative matters of the court system.[1661]

The third department held that the directive by the Chief Administrator was administrative in character.[1662] The court, in coming to its conclusion, referred to Judiciary Law section 211.[1663] Judiciary Law, section 211, defines the administrative functions of the Chief Judge of the court of appeals and subsection (d) states that the Chief Judge shall preside over "personnel practices affecting non judicial personnel."[1664] Additionally, subsection (f) states that part of the Chief Judge's duties includes "the form, content, maintenance and disposition

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1656. *Bloom*, 183 A.D.2d at 344, 590 N.Y.S.2d at 330.

1657. *Id.*

1658. *Id.*

1659. *Id.*

1660. N.Y. CONST. art. VI, § 28(b).

1661. *Bloom*, 183 A.D.2d at 344, 590 N.Y.S.2d at 330.

1662. *Id.*; *see also* Yeager v. Quinn, 767 P.2d 766 (1988) (upholding Chief Justice's directive of replacing county court reporters with electronic recording devices stating that it was administrative in nature); Licter v. County of Monmouth, 276 A.2d 382 (1971) (upholding Chief Administrator's decision to install sound recording devices stating that directive was statutorily authorized and administrative in nature).

1663. *Bloom*, 183 A.D.2d at 344, 590 N.Y.S.2d at 330.

1664. 183 A.D.2d at 344, 590 N.Y.S.2d at 330; JUD. LAW § 211(d).

of court records."[1665] Relying on the wording of the statute, the court concluded that the Chief Administrator's plan was administrative in nature.[1666]

The court's conclusion that the directive was administrative in nature did not, however, end the dispute.[1667] The issue then became whether the Chief Administrator had the authority to deal with this challenged action.[1668] In deciding this issue, the court turned again to article VI, section 28(b) of the New York Constitution. The court stated that "[u]nder . . . article VI, § 28(b), the Chief Administrator's authority to deal with administrative matters derives from two sources: 1. authority delegated by the Chief Judge who constitutionally is imbued with plenary authority over matters of administration and 2. authority conferred by some other provision of law."[1669] The plaintiffs strongly argued that the directive was not a power delegated to the Chief Judge and therefore the Chief Administrator did not have authority to act in this case.[1670]

However, the court did not pass on the issue of whether the Chief Administrator was imbued with powers delegated by the Chief Judge. Instead, the court held that the Chief Administrator was given authority to deal with administrative functions conferred to him by a provision of law.[1671] The court stated that New York Session Law 1992, chapter 55, section 414 was independent law conferring authority to the Chief Administrator

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1665. *Id.* at 344, 590 N.Y.S.2d at 330; JUD. LAW § 211(f).

1666. *Id.* at 344, 590 N.Y.S.2d at 330.

1667. *Id.* at 344-45, 590 N.Y.S.2d at 330.

1668. *Id.*

1669. *Id.* at 345, 590 N.Y.S.2d at 330; N.Y. CONST. art. VI, §28(b). For a case where the New York Court of Appeals held that the administrator's authority derived from delegated powers of the Chief Judge, see Corkum v. Bartlett, 46 N.Y.2d 424, 386 N.E.2d 1066, 414 N.Y.S.2d 98 (1979), in which the court held that public hearings set up by the Chief Administrator dealing with proposed classification of nonjudicial employees was a power properly delegated by the Chief Judge.

1670. *Id.* at 345, 590 N.Y.S.2d at 330.

1671. *Id.*

to deal with the administrative issue at bar.[1672] Section 414 states:

> Notwithstanding any other provision of law, the Chief Administrator of the courts may authorize the use of mechanical recording of testimony and of other proceedings in each cause, in lieu of the taking of stenographic minutes thereof, in (i) a Surrogate's Court in any county; and (ii) the Court of Claims.[1673]

In holding that section 414 gave the Chief Administrator power to make the directive at issue, the court reasoned that the "overall spirit and purpose" of the law was to cut costs of the expensive judicial process.[1674] The court referred to the 1992 New York State Legislative Report of the Fiscal Committees on the Executive Budged which contemplated the 2.6 million dollar cost savings with the implementation of mechanical recording in the courtroom.[1675] Specifically, the court stated that the Legislature noted in the Report that "the full implementation" of section 414 was needed in order to realize the savings proposed.[1676] Therefore, the court concluded that the Chief Administrator had the power to make the program at issue mandatory.[1677]

In the federal court system, however, there is no position held that is analogous to the Chief Administrator of the New York court system. The United States Constitution confers authority over the federal court system to Congress.[1678] In 1982, Congress

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1672. *Id.* at 345, 590 N.Y.S.2d at 331; *see* 1992 N.Y. Laws 55.

1673. N.Y. JUD. LAW § 414 (McKinney 1983 & Supp. 1993).

1674. 183 A.D.2d at 345, 590 N.Y.S.2d at 331; *see also* Sutka v. Conners, 73 N.Y.2d 395, 538 N.E.2d 1012, 541 N.Y.S.2d 191 (1989) (stating that when a statute is being interpreted legislative intent may be found in the text's overall "spirit and purpose").

1675. *Id.* at 345-46, 590 N.Y.S.2d at 331.

1676. *Id.* at 346, 590 N.Y.S.2d at 331.

1677. *Id.*

1678. U.S. CONST. art. III, § 1. Article III, section 1 provides:

> The judicial power of the United States, shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their Offices during Good Behavior, and shall, at

passed the Federal Court Improvement Act[1679] in which the use of mechanical and electronic reporting of testimony was allowed as a substitute for stenographic recording of testimony.[1680] Section 753(b) of the United States Code states that all proceedings of the court "shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge."[1681] Thus, each individual judge has great discretion as to how the recording of testimony will be taken in that judge's courtroom.[1682] In New York, the Constitution empowers the Chief Administrator with authority over judicial administration including recording of courtroom proceedings while the federal system empowers Congress with judicial administration and gives great discretion to each judge as to how testimony will be recorded.

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stated Times, receive for their services, a Compensation, which shall not be diminished during their continuance in Office.

Id.

1679. 28 U.S.C. § 753(b) (1993).

1680. *See* 28 U.S.C. § 753(b); *see also* United States v. Sims, 719 F.2d 375, 377 (11th Cir. 1983), *cert. denied*, 465 U.S. 1034 (1984) (testimony recorded by electronic devices pursuant to an experimental program passed by Congress).

1681. 28 U.S.C. § 753(b).

1682. *See Sims*, 719 F.2d at 379.