



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 8 | Number 1

Article 68

1991

Separation of Powers

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Civil Procedure Commons](#), [Constitutional Law Commons](#), [Courts Commons](#), [Jurisprudence Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

(1991) "Separation of Powers," *Touro Law Review*. Vol. 8: No. 1, Article 68.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss1/68>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

decide what “proper duties” were.¹¹⁵⁷

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Kindlon v. County of Renselaer¹¹⁵⁸
(decided July 5, 1990)

Kindlon, the petitioner, challenged Title 22 of the New York Code Rules and Regulations (NYCRR), section 822.4¹¹⁵⁹ contending that it “was in irreconcilable conflict with County Law section 722-5 and, thus invalid.”¹¹⁶⁰ The Chief Administrator of the Courts contended that the New York State Constitution “provide[d] authority for the regulation and the power exercised thereunder.”¹¹⁶¹ The court held that the rule was invalid.¹¹⁶²

Kindlon was appointed to serve as counsel to an indigent defendant in a criminal action and was awarded attorney fees by the county court that were in excess of the statutory maximum under County Law section 722-b.¹¹⁶³ Renselaer County requested review of this excess award by the presiding justice of the court pursuant to section 822.4 of the rules of the appellate division.¹¹⁶⁴ Kindlon brought an article 78 proceeding and a declaratory judgment action seeking 1) an order compelling payment of the award fixed by the county court, and 2) that 22 NYCRR 822.4 was in “irreconcilable conflict” with County Law section 722-b, and therefore invalid.¹¹⁶⁵ The court held that 22 NYCRR 822.4 was invalid insofar as it pertained to applications

1157. *Ohrenstein*, 77 N.Y.2d at 53, 565 N.E.2d at 500-01, 563 N.Y.S.2d at 751-52.

1158. 158 A.D.2d 178, 558 N.Y.S.2d 286 (3d Dep’t 1990).

1159. N.Y. COMP. CODES R. & REGS. tit. 22, § 822.4 (1990).

1160. 158 A.D.2d at 179-80, 558 N.Y.S.2d at 287-88.

1161. *Id.* at 180, 558 N.Y.S.2d at 288.

1162. *Id.* at 181, 558 N.Y.S.2d at 289.

1163. N.Y. COUNTY LAW § 722-b (McKinney 1972 & Supp. 1990).

1164. N.Y. COMP. CODES R. & REGS. tit. 22, § 822.4 (1990).

1165. *Kindlon*, 158 A.D.2d at 179-80, 558 N.Y.S.2d at 287-88.

pursuant to County Law section 722-b.¹¹⁶⁶

The court began its analysis by stating that 22 NYCRR 822.4 conflicts with County Law section 722-b, "inasmuch as it affords respondents an avenue of administrative review not provided for in the statute."¹¹⁶⁷ The court found that the rule was "inconsistent with the general State-wide procedure provided by the County Law [and] must yield to the statute unless the NY Constitution provides authority for its promulgation."¹¹⁶⁸

In determining whether authority existed under the New York State Constitution to promulgate rule 822.4, the court first noted that the 1978 amendments to the New York State Constitution provided the Chief Administrator of the Courts and the Chief Judge with complete control and complete administrative power over the trial courts.¹¹⁶⁹ The court found that while the legislature may initially prescribe duties with regard to administrative acts affecting the courts, it cannot, by statute, take away the authority of court administrators derived from article VI, section 28 of the New York State Constitution.¹¹⁷⁰

Based on the above, the court found that the Chief Judge and the Chief Administrator may "exercise administrative powers in excess of those provided by statute, including the power to review awards of compensation to assigned attorneys"¹¹⁷¹ However, that power was not effectively delegated to the presiding justice of the Supreme Court, Appellate Division, Third Department. Therefore, the court held "that 22 NYCRR 822.4 is invalid insofar as it pertains to applications pursuant to County Law § 722-b."¹¹⁷²

The county had argued that the presiding justice of the third department had the power delegated to it by the Chief Administrator of the Courts under 22 NYCRR 103.1¹¹⁷³ that

1166. *Id.* at 181-82, 558 N.Y.S.2d at 289.

1167. *Id.* at 180, 558 N.Y.S.2d at 288.

1168. *Id.* at 180-81, 558 N.Y.S.2d at 288.

1169. *Id.* at 180, 558 N.Y.S.2d at 288; *see* N.Y. CONST. art. VI, § 28.

1170. *Kindlon*, 158 A.D.2d at 181, 558 N.Y.S.2d at 288.

1171. *Id.*

1172. *Id.* at 182, 558 N.Y.S.2d at 289.

1173. N.Y. COMP. CODES R. & REGS. tit. 22, § 103.1 (1990).

provides that “[a]ll administrative regulations, rules, orders and directives for the efficient and orderly transaction of business in the trial courts . . . in effect on March 31, 1978 . . . are continued in effect until superseded, repealed or modified.”¹¹⁷⁴ The court, however, found that as rule 822.4 “was not in effect in its present form on March 31, 1978 . . . [it] could not have been included under the adoptive provision of the 22 NYCRR 103.1.”¹¹⁷⁵

Because there was no clear delegation of authority to the presiding justice of the supreme court, appellate division, to promulgate rules governing the trial courts, the court held that rule “822.4 [was] invalid insofar as it pertains to applications pursuant to County Law § 722-b.”¹¹⁷⁶

1174. *Kindlon*, 158 A.D.2d at 181, 558 N.Y.S.2d at 288.

1175. *Id.* at 181, 558 N.Y.S.2d at 289.

1176. *Id.* at 181-82, 558 N.Y.S.2d at 289.