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### Separation of Powers

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## SEPARATION OF POWERS

### COURT OF APPEALS

**Forti v. New York State Ethics Commission**<sup>1149</sup>  
(decided April 5, 1990)

See the case analysis under EQUAL PROTECTION.<sup>1150</sup> The court rejected plaintiffs' claim that section 78(8) of the Ethics in Government Act violated the separation of powers doctrine because only the judiciary can regulate the practice of law. The court held that the legislature routinely regulates the practice of law and that the judiciary derives its regulatory powers from the legislature.<sup>1151</sup>

**Golden v. Clark**<sup>1152</sup>  
(decided October 23, 1990)

See the case analysis under EQUAL PROTECTION.<sup>1153</sup> The court rejected plaintiff's separation of powers claim because the Conflicts of Interest Board's powers are appropriately limited under Chapter 68.<sup>1154</sup>

**People v. Ohrenstein**<sup>1155</sup>  
(decided November 27, 1990)

See case analysis under SPEECH AND DEBATE.<sup>1156</sup> The court held that the separation of powers doctrine was not implicated in this case. No duties had been performed by the legislative staff members in question, therefore, it was unnecessary for either the judiciary or the executive branch to

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1149. 75 N.Y.2d 596, 554 N.E.2d 876, 555 N.Y.S.2d 235 (1990).

1150. See *supra* notes 411-43 and accompanying text.

1151. *Id.* at 617, 554 N.E.2d at 886, 555 N.Y.S.2d at 245.

1152. 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

1153. See *supra* notes 461-504 and accompanying text.

1154. *Golden*, 76 N.Y.2d at 631, 546 N.E.2d at 618, 563 N.Y.S.2d at 8.

1155. 77 N.Y.2d 38, 565 N.E.2d 493, 563 N.Y.S.2d 744 (1990).

1156. See *supra* notes 1177-226 and accompanying text.

decide what “proper duties” were.<sup>1157</sup>

## SUPREME COURT, APPELLATE DIVISION

### THIRD DEPARTMENT

Kindlon v. County of Renselaer<sup>1158</sup>  
(decided July 5, 1990)

Kindlon, the petitioner, challenged Title 22 of the New York Code Rules and Regulations (NYCRR), section 822.4<sup>1159</sup> contending that it “was in irreconcilable conflict with County Law section 722-5 and, thus invalid.”<sup>1160</sup> The Chief Administrator of the Courts contended that the New York State Constitution “provide[d] authority for the regulation and the power exercised thereunder.”<sup>1161</sup> The court held that the rule was invalid.<sup>1162</sup>

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.<sup>1163</sup> 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.<sup>1164</sup> 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.<sup>1165</sup> The court held that 22 NYCRR 822.4 was invalid insofar as it pertained to applications

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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.