



## Separation of Powers: When Statutes and Court Rules Conflict

***What is meant by “separation of powers” and what does it require?***

Both the United States and Minnesota Constitutions provide for the separation of powers of the legislative, executive, and judicial branches. The branches of government are co-equal. If one branch takes action that infringes too greatly on another branch of government, the courts may rule this action unconstitutional because it violates the constitutional separation of powers.

Article 3, section 1, of the Minnesota Constitution sets forth the separation of powers in this state and provides:

*The powers of government shall be divided into three distinct departments: legislative, executive, and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.*

***Which branch of government has authority over the rules governing criminal proceedings?***

The Minnesota Constitution is silent on which branch of government has authority over the rules governing criminal proceedings, thereby leaving the matter to the courts for resolution. The Minnesota Supreme Court has determined that, when a particular function comes within its “inherent judicial power,” only the court may govern that function.

Although the term “inherent judicial power” is often used without being defined, the court has stated the following about this power:

*Inherent judicial power governs that which is essential to the existence, dignity, and function of a court because it is a court. Its source is the constitutional separation of powers as expressed and implied in our constitution. Its scope is the practical necessity of ensuring the free and full exercise of the court’s vital function—the disposition of individual cases to deliver remedies for wrongs and “justice freely and without purchase; completely and without denial; promptly and without delay; conformable to the laws.”*

Applying this rule, the Minnesota Supreme Court has determined that it has inherent and ultimate power to determine procedural rules in judicial proceedings. If a rule is procedural, as opposed to substantive, it falls within the judiciary’s inherent judicial power.

***What happens if the legislature passes a law that conflicts with a court rule?***

If the legislature passes a law that conflicts with a court rule, the court will uphold that law if it is substantive. If, however, the law deals with procedural rules that apply in court proceedings, the court will find the statute unconstitutional on separation of powers grounds. In certain cases, however, the court may tolerate the legislature's action in an area it views as procedural (i.e., judicial), provided the infringement on the judicial function is minimal. In these situations, the court may enforce the legislative action as a matter of comity (mutual respect for another branch of government).

***What makes a law procedural versus substantive?***

The question of whether a law is procedural or substantive is often a difficult one to resolve. The Minnesota Supreme Court has looked at several ways of distinguishing substantive laws from procedural ones and relied primarily on the following test:

1. Substantive laws define **which acts** are criminal and what the **punishment** is for violating them
2. Procedural laws regulate **the steps** by which the guilt or innocence of one who is accused of a crime is determined

Another test used to distinguish between substantive and procedural laws, particularly outside the criminal law context, states that “substantive law is that part of the law which creates, defines, and regulates rights, as opposed to . . . remedial law, which prescribes method [sic] of enforcing the rights or obtaining redress for their invasion.”

***What types of statutes have been found to violate separation of powers?***

The following statutes have been ruled unconstitutional due to a conflict with a court rule:

- A statute allowing a prosecutor to certify an offense as a petty misdemeanor without the defendant's consent
- A statute prescribing the order of final argument in criminal cases (although the court enforced the statute in the case before it as a matter of comity, while instructing courts to follow the Minnesota Rules of Criminal Procedures in future proceedings)
- A statute on the assignment and removal of judges

***What types of statutes have been found to impair the court's function only minimally and enforced based upon comity?***

The following statutes have been upheld as they impair the court's function only minimally and the court has been willing to enforce the statute based on comity:

- A statute determining venue when a crime is committed in a municipality located in more than one county
- Statutory rules of evidence deemed reasonable that do not conflict with the Minnesota Rules of Evidence
- Statutory interest rates for condemnation actions

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