The Inherent Power of the Florida Courts

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The Inherent Power of the Florida Courts

ROGER A. SILVER*

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I. Introduction

In addition to the powers expressly conferred by law, courts have certain inherent or implied powers. The inherent powers doctrine establishes the implicit right of the judiciary to accomplish all objectives naturally within its realm, thereby making it possible for courts to carry out their constitutional responsibilities as an independent branch of government.1 The courts, in exercising their inherent powers, must be careful not to invade the sphere of operation of the other branches of government.2 Before a court uses its inherent power, it must weigh the benefit to be achieved against the harm that may result from the use of such power.

This Article analyzes the inherent powers doctrine of the Florida courts. The inherent powers doctrine is a judicial creature that the United States Supreme Court authoritatively established in this country in one of its earliest and most important interpretations of the federal Constitution. The doctrine has evolved in Florida as a result of changing judicial perceptions of the scope of the judiciary's powers and authority.

II. Historical Development of the Courts' Use of Inherent Powers

A. The Separation of Powers Doctrine

1. The Doctrine's Application in the Federal System

The courts' inherent powers derive from the related concepts of separation of powers and judicial independence.3 The doctrine of separation of powers rests on a theory of balance of power; it evolved from the fear that concentration of power leads to tyranny. The framers of the United States Constitution were the first to apply the doctrine, which is rooted in the political thought of A理-

1. In United States v. Hudson, 11 U.S. (7 Cranch) 32 (1812), the Supreme Court held that the courts have certain "implied powers." To exercise their judicial powers effectively, courts must have certain implied (or inherent) powers, such as the power "[t]o fine for contempt — imprison for contumacy — enforce the observance of order, ..." Id. at 34. Such powers "cannot be dispensed with in a Court, because they are necessary to the exercise of all others . . . ." Id.; see State ex rel. Ross v. Call, 39 Fla. 504, 22 So. 748 (1897) (supreme court power to adopt rules of practice necessary to the administration of law is an inherent power necessarily resulting from the nature of the institution); see also McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), construed in Girardeau v. State, 403 So. 2d 513, 515 (Fla. 1st DCA 1981) (specific grants of power carry with them inherent powers to facilitate the exercise of express powers).

2. See White v. Johnson, 59 So. 2d 532, 534 (Fla. 1952).

3. Rose v. Palm Beach County, 361 So. 2d 135, 137 (Fla. 1978).
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8. *Id.* (favoring a system of checks and balances).

be exposed to arbitrary control, for the judge would then be the legislator." 10 Madison quoted Montesquieu, the celebrated judge and philosopher: "There can be no liberty . . . if the power of judging be not separated from the legislative and executive powers!" 11

In The Federalist Papers, which were written to defend the newly proposed constitution, Alexander Hamilton suggested that the courts should not be forced to depend on the legislature. 12 In observing that "a power over a man's subsistence amounts to a power over his will," 13 Hamilton argued that the complete separation of judicial from legislative power could not be realized if the judiciary were left dependent for "pecuniary resources" on the occasional grants of the legislature. 14

Madison recognized the danger that the legislature might encroach on the judiciary by virtue of its power of the purse. He reasoned that:

[As the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.] 15

Madison concluded that the "mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands." 16

11. Id. at 140. This concept is said to lie at the heart of Montesquieu's contribution to political philosophy. Vanderbilt, supra note 4, at 98. Montesquieu recognized that of the three branches, the judiciary is the least powerful. Sharp, supra note 4, at 390. Because Montesquieu recognized the relative weakness of the judiciary, he appreciated the importance of its independence. Vanderbilt, supra note 4, at 97. This may have influenced Alexander Hamilton when he wrote that "the judiciary is beyond comparison the weakest of the three departments of power . . . it can never attack with success either of the other two; and . . . all possible care is requisite to enable it to defend itself against their attacks." The Federalist No. 78, at 277 (A. Hamilton) (R. Fairchild ed. 1981).
14. Id.
16. Id. at 151. Although the federal Constitution has no express separation of powers clause, case law firmly establishes that one branch of government cannot usurp or interfere
2. THE POWER OF JUDICIAL REVIEW

The founding fathers also debated whether courts should have the power of judicial review. The issue of judicial review was not finally laid to rest until the Supreme Court’s historic decision in Marbury v. Madison, which involved a separation of powers confrontation. The facts were as follows: William Marbury and three others moved the Supreme Court of the United States for a rule to show cause why a mandamus should not issue commanding James Madison, Secretary of State, to deliver their commissions as justices of the peace in the District of Columbia. Affidavits supporting the motion showed that President Adams nominated the applicants and that, upon the advice and consent of the Senate, the President signed the commissions and the Secretary of State affixed the seal of the United States. The commissions, however, were not delivered prior to the inauguration of President Thomas Jefferson, and Mr. Madison failed to respond to requests to deliver them.

The Supreme Court, in a decision that Chief Justice Marshall authored, held that Mr. Marbury had a right to the commissions and that he was entitled to a legal remedy; and although Congress expressly granted to the Court the power to issue a writ of mandamus, the Court held that the Constitution of the United States did not confer such power upon the Court. The Marbury decision established the court’s power of judicial review and thereby clearly fixed the independence of the judiciary. Marbury also established the court’s implied or inherent power to interpret with the power of another branch. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), construed in Girardeau v. State, 403 So. 2d 513, 515 ( Fla. 1st DCA 1981).

17. The framers considered the power of judicial review a critical check on the legislature. But it is still debated whether the framers intended that the Supreme Court possess the power to pass upon the constitutionality of acts of Congress. Compare C. Beard, The Supreme Court and the Constitution (1962) (concluding that the framers of the Constitution did not intend to give the Supreme Court the power of judicial review) with Sharp, supra note 4, at 425, 430 (asserting that all those present at the constitutional convention who referred to the question, including John Marshall, recognized and approved the doctrine of judicial review).

18. 5 U.S. (1 Cranch) 137 (1803).
19. The separation of powers clash manifested an underlying political struggle between the new president, Thomas Jefferson, and the Federalists.
20. Marbury, 5 U.S. (1 Cranch) at 151.
21. Id. at 155.
22. Id.
23. Id. at 162.
24. Id. at 168.
25. Id. at 176.
the Constitution, even though the Constitution did not expressly grant such power to the judiciary. *Marbury* founded the rule that "an act of the legislature, repugnant to the Constitution, is void."26

In Florida, as in the federal judiciary, the power of judicial review or of constitutional interpretation developed as a compelling feature of the court’s power to confront encroachments of other departments of government.27

3. THE SEPARATION OF POWERS DOCTRINE IN FLORIDA

The separation of powers doctrine is as much a fundamental principle of government in Florida as it is in the federal system.28 The Florida Constitution, which is a limitation of power as opposed to a grant of power,29 divides the government into three separate branches: the legislative, the executive, and the judicial. It also states that no person belonging to one branch may exercise any powers belonging to another branch unless the constitution expressly provides for it.30 A fundamental principle of constitutional law is that each branch of government has, without any express grant, the "inherent right" to accomplish all objects naturally within its orbit.31 Each branch, however, must be cautious not to encroach upon the power of another.32 It is the duty of the judicial

26. Id. at 177. *Contra Beard*, supra note 17 (refuting the proposition that the framers intended to grant such power to the Supreme Court).

27. In City of Miami Beach v. Lachman, 71 So. 2d 148, 150 (Fla. 1954), the court relied on *Marbury v. Madison* to conclude that courts have the inherent power to declare a zoning ordinance unconstitutional. See also Girardeau v. State, 403 So. 2d 513, 516 n.4 (Fla. 1st DCA 1981) ("it is the province and duty of the judicial branch to 'say what the law is'") (quoting United States v. Nixon, 418 U.S. 683, 704 (1974)); Amos v. Mathews, 99 Fla. 1, 126 So. 308 (1930) (implied provisions of law are as effective as express ones when they are judicially declared to exist); Getzen v. Sumter County, 89 Fla. 45, 103 So. 104 (1925) (constitution vests power in courts to interpret its provisions and determine whether other state laws are in accord with the constitution); State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739 (1924) (function of the judiciary alone to interpret the law).

28. See Otto v. Harllee, 119 Fla. 266, 161 So. 402 (1935); Ponder v. Graham, 4 Fla. 23 (1851); Fla. Const. art. II, § 3.


30. Fla. Const. art. II, § 3.

31. Peters v. Meeks, 163 So. 2d 753, 755 (Fla. 1964) (quoting Sun Insurance Office, Ltd. v. Clay, 133 So. 2d 735, 742 (Fla. 1961)).

32. See White v. Johnson, 59 So. 2d 532, 534 (Fla. 1952) (en banc.). The supreme court observed the following in Pepper v. Pepper, 66 So. 2d 280 (Fla. 1953):

[The courts] have been firm in preventing the encroachment by the Executive Department upon the Legislative or Judicial Departments of the Government, [sic] The Courts should be just as diligent, indeed, more so, to safeguard the powers vested in the Legislature from encroachment by the Judicial branch of the Government.
branch, more than any other, to maintain the separation of three branches of government. Yet, it is difficult to delineate a complete separation of power because there inevitably is some overlap of function between the branches of government. Therefore, each branch of government has a responsibility to "cooperate" with the other branches to effectuate each of their respective constitutional functions.

III. The Scope of Inherent Powers in the Florida Courts

The Florida courts, in addition to powers expressly conferred by law, "have certain inherent or implied powers." In other words, the express grants of power conferred upon the judiciary carry with them the inherent powers to facilitate the exercise of such express grants. A court's inherent powers arise from its existence as a court, while its express powers depend upon constitutional or statutory authorization for their exercise. All courts in Florida possess the inherent powers to do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws and constitutional provisions. Such powers should be exercised with sound

Id. at 284.
33. Pepper, 66 So. 2d at 284.
35. Forbes v. Earle, 298 So. 2d 1, 5 (Fla. 1974).
36. In re Florida Bar, 61 So. 2d 646, 647 (Fla. 1952); State ex rel. Ross v. Call, 39 Fla. 504, 507, 22 So. 748, 749 (1897). When Florida courts discuss the inherent powers doctrine, they frequently use different terminology to describe that doctrine. See, e.g., Ray v. Williams, 55 Fla. 723, 724, 46 So. 158, 159 (1908) ("[t]here is inherent in courts of justice implied power"); Call, 39 Fla. at 507-08, 22 So. at 749 ("[t]he circuit courts . . . have implied authority"); In re Associate Justice Pearson, 8 Fla. 496, 503 (1859) ("the inherent functions of the [judicial] department"); Ford Motor Credit Co. v. Simmons, 421 So. 2d 698, 700 (Fla. 2d DCA 1982) ("[e]very court of law possesses inherent equitable power").
37. See Sun Insurance Office, Ltd. v. Clay, 133 So. 2d 735, 742 (Fla. 1961) ("each department of government . . . has, without any express grant, the inherent right to accomplish all objects naturally within the orbit of that department . . . .") (citations omitted); Girardeau v. State, 403 So. 2d 513, 515 (Fla. 1st DCA 1981); State ex rel. Gore Newspaper Co. v. Tyson, 313 So. 2d 777, 781 (Fla. 4th DCA 1975) ("[t]his power exists apart from any statute or specific constitutional provision and springs from the creation of the very court itself . . . .").
38. See, e.g., In re Florida State Bar Ass'n, 40 So. 2d 902, 905 (Fla. 1949).
40. See, e.g., Rose v. Palm Beach County, 361 So. 2d 135 (Fla. 1978) (citing 8 FLA. JUR. COURTS § 74 (1956)); State ex rel. Davis v. City of Avon Park, 117 Fla. 565, 158 So. 159 (1934); Keen v. State, 89 Fla. 113, 103 So. 399 (1925); State v. Gleason, 12 Fla. 190 (1869). In Rose v. Palm Beach County, the court stated that:
judicial discretion.\textsuperscript{41}

In Rose v. Palm Beach County,\textsuperscript{42} the court noted that the invocation of the doctrine of inherent powers appears most compelling when the judicial function at issue involves the safeguarding of fundamental human rights.\textsuperscript{43} The Rose court cited Carlson v. State ex rel. Stodola,\textsuperscript{44} which stated that a court’s freedom of action is necessary to protect “[t]he security of human rights and the safety of free institutions.”\textsuperscript{45} However, “a court is not free if it is under financial pressure.”\textsuperscript{46} Therefore, the courts must have the power to compel the funds necessary to secure their independence.

A. Separation of Powers Confrontations—The Judiciary’s Use of Inherent Powers to Protect Itself as an Independent Branch of Government

1. The Power to Compel Funds

There are various considerations involved in utilizing the doctrine of inherent powers to compel an appropriation or expenditure of funds for judicial purposes.\textsuperscript{47} No court in this country has denied its inherent power to compel the payment of funds.\textsuperscript{48} The basic issue involves, therefore, the extent of the power rather than its existence.\textsuperscript{49}

The doctrine of inherent judicial power provides courts with a method of responding to the actions of the legislative and executive branches of government that threaten a court’s ability to func-

\textsuperscript{41} Inherent powers” of courts have been described as “all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense they exist because the court exists . . . .” 361 So. 2d at 136 n.3 (quoting CARRIGAN, INHERENT POWERS OF THE COURTS 2 (1973)); see also Cratsley, Inherent Powers of the Courts (1980) (available from the National Judicial College, American Bar Association at University of Nevada, Reno).

\textsuperscript{42} In re Florida State Bar Ass’n, 40 So. 2d at 905.

\textsuperscript{43} Rose, 361 So. 2d 135.

\textsuperscript{44} See FLA. CONST. art. I, § 21, which states: “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”

\textsuperscript{45} 247 Ind. 631, 220 N.E.2d 532 (1966).

\textsuperscript{46} Id. at 633, 220 N.E.2d at 533.

\textsuperscript{47} Id., 220 N.E.2d at 533-34.

\textsuperscript{48} See generally Annot., 59 A.L.R. 3d 569 (1974) (circumstances under which a court may in the absence of statutory authority compel a governmental entity to appropriate or expropriate funds for “proper” judicial purposes).

\textsuperscript{49} Note, Judicial Financial Autonomy and Inherent Power, 57 CORNELL L. REV. 975, 979 (1972).
The doctrine exists because it is essential to the survival of the courts as an independent branch of government. Case law suggests that a court possesses the inherent power to “compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities.” Unless the judiciary can compel the legislative branch of government to provide the funds that are necessary for the proper functioning of the court, the judicial system could be seriously impaired or destroyed.

By virtue of constitutional authority and in accordance with the separation of powers doctrine and the concept of balance of power, budgeting authority rests largely with the legislative branch of government. One commentator, Professor James Brennan, contends that a court’s exercise of judicial fiscal independence violates the doctrine of separation of powers. Brennan argues that decisions advocating judicial fiscal independence, based on the separation of powers theory, “ignore the coordinate principle of checks and balances.” He claims that “the judiciary has almost universally accepted the power of the legislature to review and alter its judicial budget.” Another writer, however, concludes that judicial fiscal independence is not violative of the doctrine of separation of powers; instead, it is necessary for the preservation of such doctrine.

Chief Justice Marshall stated in McCulloch v. Maryland, “[t]hat the power to tax involves the power to destroy.” As set forth in Commonwealth ex rel. Carroll v. Tate:

A Legislature has the power of life and death over all the Courts and over the entire Judicial system. Unless the Legislature can be compelled by the Courts to provide the money which is reasonably necessary for the proper functioning and administration of the Courts, our entire Judicial system could be extirpated, and the Legislature could make a mockery of our form of Gov-
Courts, in the states that have considered the question of a court's inherent power to compel funds, have generally upheld their inherent authority to compel payment of expenses "necessarily incurred" in the discharge of their duties. Such courts have generally taken the view that neither statutes nor administrative action can defeat the ultimate use of the court's inherent power to compel payment of "reasonably necessary" expenses.

Although there are only a few cases where the Florida judiciary has exercised its inherent power to compel an appropriation or expenditure of funds for important court purposes, the doctrine remains viable. Perhaps one may infer from the poverty of case law on this subject the state government's recognition of and respect for the judiciary's inherent power to compel the expenditure or appropriation of funds. The doctrine's ultimate strength rests not in its use, but in the knowledge that the doctrine exists and that the judiciary may invoke it when necessary to protect itself as an independent branch of government.

The doctrine may be invoked in appropriate cases where another department of government fails to provide the funds that are reasonably necessary for the judiciary to perform its essential functions. Thus, a court's inherent powers should be utilized only when the court has exhausted the established methods and statutory procedures for fulfilling its needs. As long as the judiciary maintains its credibility with the other departments of government by not making excessive or unreasonable demands, it should be able to obtain the funds needed to carry out its mandated responsibilities through cooperation, negotiation, and compromise. Courts should strive for cooperation, not confrontation. The judicial hammer of inherent powers should be used only when judicial independence or the capacity to perform an essential judicial function is threatened.

62. E.g., Rose v. Palm Beach County, 361 So. 2d 135 (Fla. 1978).
63. See, e.g., Metropolitan Dade County v. Bridges, 402 So. 2d 411 (Fla. 1981); Broward County v. Wright, 420 So. 2d 401 (Fla. 4th DCA 1982).
64. See Alpert & Masterson, The Judicial Power: Is Florida Covering its Bets?, 8 Stetson L. Rev. 265, 273 (1979) ("Historically, a distinctive feature of judicial power . . . is that it remains at rest until it is properly invoked.").
65. See Rose v. Palm Beach County, 361 So. 2d 135, 137 (Fla. 1978).
67. See Rose, 361 So. 2d at 139; see also Commonwealth ex rel. Carroll v. Tate, 442 Pa.
a. Awarding Witness Fees and Travel Expenses in Excess of Statutory Limitations

In the case of *Rose v. Palm Beach County*, the Supreme Court of Florida held that a trial court has the inherent power to require a county to pay witness fees and expenses that exceed statutory limitations. The *Rose* court held that the exercise of its inherent power to require an expenditure of public funds in excess of statutory limitations was necessary to insure a fair trial, to safeguard the fundamental rights of a defendant, and to enable the court to perform an essential judicial function.

The court applied the "reasonable and necessary" standard to compel funds from the legislature:

*Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions.* The doctrine of inherent judicial power as it relates to the practice of compelling the expenditure of funds by the executive and legislative branches of government has developed as a way of responding to inaction or inadequate action that amounts to a threat to the courts' ability to make effective their jurisdiction. The doctrine exists because it is crucial to the survival of the judiciary as an independent, functioning and co-equal branch of government. The invocation of the doctrine is most compelling when the judicial function at issue is the safeguarding of fundamental rights.

The court announced that the doctrine of inherent powers should be invoked only in situations of "clear necessity," after established...
methods have failed and where an emergency exists. The trial court, in such instances, has the burden of showing that such action is necessary to enable it to perform an “essential” judicial function. Courts must maintain their neutrality; they should not invade the areas of responsibility of the other branches of government. The supreme court cautioned that trial courts must be careful in seeking solutions to practical administrative problems that the legislature has not resolved - and must “refrain from [making] any extravagant, arbitrary, or unwarranted expenditures.” Moreover, in examining whether the statutory language established a mandatory maximum for witness fees in all cases, the court found that the statute was merely directory of a matter within the court’s inherent power.

b. Awards of Attorney Fees

Despite the holding of Rose v. Palm Beach County, Florida appellate courts have continued to strictly construe attorney fees limitations that the legislature established as mandatory and not directory. This has occurred even when the trial court found that the statutory limitation was unreasonable or infringed upon inherent judicial power.

72. Rose, 361 So. 2d at 138 n.9 (citation omitted).
73. Id. at 139.
74. Id. at 138.
75. Id.
76. Id. at 138 n.9 (quoting McAfee v. State ex rel. Stodola, 258 Ind. 667, 681, 284 N.E.2d 778, 782 (1972)).. 77. Id. at 139 n.14 (quoting CARRIGAN, INHERENT POWERS OF THE COURTS 8 (1973)).
78. See, e.g., Metropolitan Dade County v. Bridges, 402 So. 2d 411 (Fla. 1981). In Bridges, the Supreme Court of Florida held that the limits set in section 925.036 of the Florida Statutes (1983) were mandatory, not directory. See also County of Seminole v. Wadell, 382 So. 2d 357 (Fla. 5th DCA 1980) (section 925.036(4) of the Florida Statutes (1983) limiting maximum fee that court can award to attorney in a capital case to $2500 is mandatory not directory in nature); Broward County v. Wright, 420 So. 2d 401 (Fla. 4th DCA 1982) (construing fee limitation statute strictly, but intimates exception is possible if extreme circumstances are demonstrated); Marion County v. De Boisblanc, 410 So. 2d 951 (Fla. 5th DCA 1982) (trial court without authority to award amount in excess of statutory maximum); cf. MacKenzie v. Hillsborough County, 288 So. 2d 200 (Fla. 1973) (section 925.035 of the Florida Statutes (1981) limiting reasonable compensation for representation of indigent in capital case is constitutional); Dade County v. Goldstein, 384 So. 2d 183 (Fla. 3d DCA 1980) (even though trial court had authority to appoint two private attorneys to represent insolvent criminal defendant, it did not have statutory or inherent authority to compensate more than one).

In Bridges, the Supreme Court of Florida ruled that the lower court erred in awarding attorney’s fees higher than those specified in the statute, even though the lower court determined that special circumstances existed. 402 So. 2d 411, 414-15 (Fla. 1981). Chief Justice
c. Courthouse Space

The Florida Statutes require counties to provide appropriate courtrooms and facilities for the courts. Nevertheless, the supreme court recently considered a dispute arising over courthouse space between a Chief Judge and a county commission in Chief Judge of the Eighth Judicial Circuit v. Board of County Commissioners. In Board of County Commissioners, the commission adopted a resolution reassigning space that the courts were using to other users of the county courthouse. Without holding an evidentiary hearing, the Chief Judge issued an injunction restraining the county commission from interfering with the court's space without court approval.

The supreme court affirmed the district court's holding that the county was entitled to an evidentiary hearing before a judicial officer from outside the circuit. The court noted that inherent power could not be exercised except to acquire "necessary" as opposed to "desirable" space. The cause was thus remanded.

Sundberg, concurring specially, conceded to the authority of the legislature, in its role of protector of the public treasury, to set reasonable limits on amounts paid to attorneys in such cases. Id. at 415. However, Justice Boyd, concurring in part and dissenting in part, cited Rose v. Palm Beach County, 361 So. 2d 135 (Fla. 1978), for the proposition that the court has the power to order compensation in excess of statutory amounts. Id. at 416. Justice Overton, dissenting, declared that he would find the statute directory and not mandatory. Id. at 417 (Overton, J., dissenting).

In Florida, the funding of the judiciary is substantially provided from county revenues. The State's major contribution to the judiciary is in the form of salaries for judges and judicial assistance. The funding of Florida's judiciary is an interdependent and largely decentralized system of local funding. The counties, rather than the state, have been better able to bear the burden of funding the courts. Also, filing fees fund Florida's trial courts. See, e.g., Sec. 11-3, Code of Metropolitan Dade County, Fla. The argument supporting such a fee system is that those who use the system pay for it. It may be argued that state funding of the judiciary could threaten trial court autonomy and flexibility in responding to local judicial needs. For arguments supporting state unitary budgeting, see, e.g., Judicial Power—The Inherent Power of the Courts To Compel Funding for Their Own Needs, 53 WASH. L. REV. 331, 346-48 (1978).

In the event there is not suitable available space in the courthouse due to construction or reconstruction, destruction or other good reasons, for the holding of any court or courts now provided to be held in the county courthouse, or for the meeting of the grand jury of the county, the county commission, with the approval of the court, may designate some other place or places located in the
court declared that "[g]enerally, court claims to courthouse space necessary to the performance of official court functions are paramount." The judiciary, as a co-equal branch of government, has the inherent power to protect itself in the performance of assigned duties and functions. The county bears the burden of proving a lack of "reasonable necessity" for continued court use of existing space because the county is trying to reduce the courts' use of such space. If the court were seeking additional space or the renovation of existing space, it would bear the burden of showing a "reasonable necessity" for such space.

d. Court Facilities

As mentioned earlier, Florida law requires counties to provide "appropriate" courtrooms and facilities. The few cases in which the judiciary sought a new courthouse under the inherent powers doctrine were settled before trial. There is no court decision clearly examining this situation under an inherent powers analysis.

e. Court Personnel

No Florida court has ever compelled the employment of additional personnel or payment of increased salaries for court personnel. Florida law, however, requires counties to provide for necessary personnel. As stated in Commonwealth ex rel. Carroll v. county seat for the holding of court or courts or for the meeting of the grand jury.

The county also is charged with the responsibility to provide and maintain county buildings under section 125.01(c) of the Florida Statutes (1983). Furthermore, article V, section 7 of the Florida Constitution provides that a circuit or county court may hold trials and hearings anywhere within the territorial jurisdiction of the court as designated by the chief judge of the circuit.

86. See Chief Judge of the Eighth Judicial Circuit v. Board of County Comm'rs, 401 So. 2d 1330, 1332 (Fla. 1981).
87. Id. (citations omitted).
88. As to burden of proof, the court followed its decision in Rose v. Palm Beach County, 361 So. 2d 135 (Fla. 1978); see also Chief Judge of the Eighth Judicial Circuit v. Board of County Comm'rs, 401 So. 2d at 1332.
89. 401 So. 2d at 1332 (citation omitted).
91. See Cratsley, supra note 40, at 52.
92. Id.
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Tate: Should the legislature, or the county salary board, act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employees [sic] or for the payment of adequate salaries to them, whereby the efficient administration of justice is impaired or destroyed, the Court possesses inherent power to supply the deficiency.

2. THE POWER OVER THE FLORIDA BAR

In a case involving the issue of the regulation of attorney admission to the bar and disbarment, the Supreme Court of Florida noted in dictum that "apart from any statutory law, a court of record has the inherent power to provide the necessary assistance as a means of conducting its business." Regulation of the bar, however, is an area of the law that gives rise to confrontations between the legislature and the courts regarding the issue of separation of powers. In the early nineteenth century, the Florida Legislature began regulating admission to the bar and the disbarment of attorneys for unprofessional conduct. For more than a century, Florida courts acquiesced in such legislative control. In 1938, however, the supreme court unequivocally voiced its view that the power to regulate the bar "is inherent in the courts and cannot be

purposes).


95. 442 Pa. at 55, 274 A.2d at 198.

96. In re Florida State Bar Ass'n, 40 So. 2d 902 (Fla. 1949).

97. Id. at 907.

98. In one such confrontation, the Supreme Court of Florida held that the Public Records Law, which provides for public inspection of "public records," did not apply to the unauthorized practice of law investigative files maintained by the Florida Bar. In re Florida Bar, 398 So. 2d 446 (Fla. 1981). In the court's view, the Public Records Law represented the legislature's attempt to exercise power over a matter explicitly vested in the court under article V of the Florida Constitution. Id. at 447. The court stated that "[t]he unauthorized practice of law investigative files of the Florida Bar, as an official arm of this Court, are subject to the control and direction of this Court and not to either of the other branches of the government." Id. at 448. In another such confrontation, the court held unconstitutional an act of the legislature that required lawyers representing criminal defendants to move the court to assess attorney's fees and costs against the defendant. Graham v. Murrell, 9 FLA. L. WEEKLY 2646 (Fla. 1st D.C.A. 1984). However, in the field of sovereign immunity, a legislative cap on the amount of recoverable attorney's fees was upheld as constitutional, such did "not amount to a legislature usurpation of the power of the judiciary to regulate the practice of law." Ingraham v. Dade School Board, 450 So. 2d 847, 849 (Fla. 1984).


100. Id.
taken from them by the Legislature."

The supreme court presently retains exclusive jurisdiction to regulate admissions to the bar. Its exclusive jurisdiction is predicated on its inherent judicial power as well as its constitutional authority under article V, section 15, of the Florida Constitution.

a. Power to Supervise the Bar and to Discipline Attorneys

Judicial power "to discipline attorneys at law is as ancient as the common law itself." Although the Supreme Court of Florida has always had inherent disciplinary jurisdiction over attorneys, an express provision of the Florida Constitution governs such jurisdiction.

In addition to its power to discipline attorneys, the Supreme Court of Florida retains supervisory power over the bar in general. This inherent right to supervise the bar is incident to the court's power to control, admit to practice, and discipline attorneys.

101. Id. at 862, 186 So. at 285 (citations omitted). The court acknowledged that the early English common law rule was that "admission to the bar was deemed a legislative function but that it was under the act of 4 Hen. IV, chapter 18, made a judicial function which it continued to be and was so when the common law of England was adopted by statute in [Florida]." Id. at 863, 186 So. at 285; see also Fla. Const. art. V, § 15 ("supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted").

102. See In re Florida Bar, 398 So. 2d 446, 447 (Fla. 1981) (quoting In re Florida Bd. of Bar Examiners, 353 So. 2d 98, 100 (Fla. 1975)).

103. Florida Bar v. Massfeller, 170 So. 2d 834, 838 (Fla. 1964); In re Florida Bar, 316 So. 2d 45 (Fla. 1975).

104. E.g., In re Jacksonville Bar Ass'n, 125 Fla. 175, 177-78, 169 So. 674, 675 (1938); Gould v. State, 99 Fla. 662, 664, 127 So. 309, 310 (1930); Florida Bar v. Massfeller, 170 So. 2d 834, 838 (Fla. 1964).

105. Fla. Const. art. V, § 15. This express constitutional provision is said to be a recognition of the preexisting authority of the Florida courts. Massfeller, 170 So. 2d at 838. There are several methods available to a court for disciplining attorneys. One such method is the imposition of contempt sanctions upon attorneys who commit minor infractions. Burns v. Huffstetler, 433 So. 2d 964, 965 (Fla. 1983). Another method available to the court is the traditional grievance committee-referee process wherein the Bar prosecutes the attorney and the court imposes sanctions based on the referee's recommendations. Id. Finally, a procedure exists whereby the state attorney initiates prosecution of delinquent attorneys and the Supreme Court of Florida may review the trial court's decision. Id.


107. In re Florida Bar, 398 So. 2d 446, 447-48 (Fla. 1981) (reaffirming In re Florida Bar, 316 So. 2d 45 (Fla. 1975)); see also In re Florida Board of Examiners, 353 So. 2d 98 (Fla. 1977) (The Florida Board of Bar Examiners is answerable solely to the judiciary.)
b. Power to Integrate the Bar and Power to Impose a Membership Fee

In 1948, the Florida State Bar Association sought a ruling by the Supreme Court of Florida to integrate the Florida Bar. The court took the opportunity to reexamine the underpinnings of the inherent powers doctrine. Acknowledging its inherent power to control the administration of justice within the judicial branch of the government, the court concluded that it possessed the inherent right to integrate the bar by rule. After deciding that it had the inherent power to integrate the bar, the court considered whether it had the authority to impose a membership fee for the support of bar integration activities. If such a fee could be construed as a tax, "undoubtedly it should be imposed by the legislature under its police power." The court, in distinguishing a membership fee from a tax, stated that a membership fee in a bar association is "an exaction for regulation only," whereas the purpose of a tax is to obtain revenue. In the court's view, the power to regulate carried with it the implied power to impose a charge for that purpose. In sum, "[a]ttorneys . . . are officers of the Court and as such constitute an important part of the judicial system

108. In re Florida State Bar Ass'n, 40 So. 2d 902 (Fla. 1949).
109. The court stated that:
   Inherent power arises from the fact of the Court's creation or from the fact that it is a court. It is essential to its being and dignity and does not require an express grant to confer it. Under our form of government it is the right that each department of government has to execute the powers falling naturally within its orbit . . . .
   Id. at 905; see also Florida Bar v. Lewis, 358 So. 2d 897, 899 (Fla. 1st DCA 1978), aff'd, 372 So. 2d 1121 (Fla. 1979) (noting that the preamble to the integration Rule of the Florida Bar that the supreme court adopted acknowledges the court's inherent power over the Florida Bar).
110. In re Florida State Bar Ass'n, 40 So. 2d at 905.
111. Id. at 906.
112. Id.
113. Id. at 906. The court noted that "[w]hile the police power is generally considered an exclusive power of the legislature, it may . . . be exercised by the Courts." Id. (citing Workmen's Compensation Bd. v. Abbott, 212 Ky. 123, 278 S.W. 533 (1949)).
114. In re Florida State Bar Ass'n, 40 So. 2d at 906.
115. Id. The court clarified the distinction between a fee and a tax in its earlier decision in City of Jacksonville v. Ledwith, 26 Fla. 163, 201-04, 7 So. 885, 891-92 (1890).
116. The court noted that "[i]f the judiciary has inherent power to regulate the bar, it follows that as an incident to regulation it may impose a membership fee for that purpose . . . [T]he doctrine of implied powers necessarily carries with it the power to impose such an exaction." In re Florida State Bar Ass'n, 40 So. 2d at 906-07; cf. Florida Bar v. Lewis, 358 So. 2d 897, 899 (Fla. 1st DCA 1978), aff'd, 372 So. 2d 1121 (Fla. 1979) (as part of the judiciary, the Florida Bar was immune from taxation by the legislature).
The right to define and regulate the practice [of law] naturally and logically belongs to the judicial department of government."  

B. The Inherent Power of the Court to Regulate Practice and Procedure

Although the supreme court has used the inherent powers doctrine to justify its rulemaking authority (or its control of its practice and procedure), this does not mean that the judiciary has always exercised exclusive control over rulemaking. Historically, the Florida Legislature has either enjoyed supremacy, or has shared rulemaking authority with the judicial department. As a result, there evolved a gray area of overlapping or coordinate authority in rulemaking between the legislature and the judiciary.

1. HISTORICAL DEVELOPMENT OF THE COURT'S RULEMAKING AUTHORITY

The Florida Supreme Court has long recognized its inherent power to prescribe such rules of practice and procedure as it deemed necessary to facilitate the administration of justice. In Humphries v. Hester & Stinson Lumber Co., it stated that "this Court has always been clothed with inherent power to make rules for its governance."  

117. In re Florida State Bar Ass'n, 40 So. 2d at 907.
118. See In re Florida Bar, 61 So. 2d 646, 647 (Fla. 1952).
119. See State ex rel. Ros v. Call, 39 Fla. 504, 22 So. 748 (1897). Section 12 of the Act of December 13, 1824, granted the courts of appeals the power to make all rules necessary for the regulation of the courts. Id. at 511, 22 So. at 750. Such rules were to be submitted to the legislature and, if approved by the legislative council, would have the authority of law. Id.
118. See In re Florida State Bar Ass'n, 145 Fla. 223, 199 So. 57 (1940); Note, The Rulemaking Power of the Florida Supreme Court: The Twilight Zone Between Substance and Procedure, 24 U. FLA. L. REV. 87, 87 (1971).
121. See In re Florida State Bar Ass'n, 145 Fla. 223, 226, 199 So. 57, 58 (1940); In re Jacksonville Bar Ass'n, 125 Fla. 175, 177, 169 So. 674, 675 (1936); In re Associate Justice Pearson, 8 Fla. 496 (1859).
122. 103 Fla. 1081, 141 So. 749 (1932).
123. Id. at 1082, 141 So. at 749. To the contrary, one commentator remarked: Prior to the "Great Debate" over procedural reform in the 1920's and 1930's, the scope of judicial rulemaking was generally limited to administrative matters such as contempt, administration of the bar, and regulation of court business. Such matters were considered within the inherent power of the courts by virtue of the constitutional separation of powers. Note, supra note 120, at 88-89 (footnotes omitted). Later, however, in Bluesten v. Florida Real Estate Comm'n, 125 So. 2d 567 (Fla. 1960), by virtue of a constitutional amendment
Notwithstanding the inherent powers and separation of powers doctrines, the supreme court, from the beginning of this state's history, acquiesced in legislative control of rulemaking. Although the court recognized that it had the "inherent power" or "implied authority" to "adopt necessary rules" to enable it to exercise its jurisdiction, the court accepted legislative supremacy over rulemaking, except where the legislature failed to provide a necessary method of procedure, or where a legislative enactment substantially impaired the court's constitutional powers. "[T]he scope of judicial rulemaking was generally limited to administrative matters such as contempt, administration of the bar and regulation of court business." Although it recognized that the Florida judiciary had the inherent power to prescribe rules of procedure and rules to facilitate the administration of justice as "deemed necessary," the court's power was subject to the limitation that such rules must be "subordinate to law and in cases of conflict the law [should] prevail."

2. THE COURT'S RULEMAKING AUTHORITY TODAY

A revision in 1956 of article V of the Florida Constitution provided that "[t]he practice and procedure in all courts shall be gov-
erned by rules adopted by the supreme court."129 As a result of this constitutional revision, the supreme court held that it had the "sole power" to prescribe rules of practice and procedure in the Florida courts.130 Since then, the judiciary has considered any attempt by the legislature to create rules of practice and procedure to be an encroachment of its power, as an independent branch of government,131 in violation of the separation of powers doctrine.132

The exclusiveness of the supreme court's authority over rulemaking "constitutes one dimension of the new rulemaking authority."133 The "other dimension" consists of a distinction between substance and procedure under the separation of powers doctrine.134

While substantive law is said to create and define legal rights with respect to persons and their property, practice and procedure may be described as the "legal machinery by which substantive law is made effective."135 Nevertheless, such distinctions are not always easily made. The entire area of substance and procedure has been described as a "twilight zone"136 in which it is sometimes difficult

129. FLA. CONST. art. V, § 3 (1957, amended 1972); see Bluesten v. Florida Real Estate Comm'n, 125 So. 2d 567, 568 (Fla. 1960) (holding that the 1956 constitutional amendment vested exclusive rulemaking authority in the supreme court). But see Means, supra note 124, at 447 (contending that "[a]lthough the new [1956] provision could certainly be read as vesting exclusive authority, the Florida supreme court never so applied it"). In State v. Furen, 118 So. 2d 6 (Fla. 1960), the supreme court noted that "[i]t seems to make little difference whether the provisions of section 3 were merely declaratory of a power already vested in the Supreme Court or were a grant of a power not inherent in the court." Id. at 11. However, the Florida Constitution, as amended in 1972, recognized legislative supremacy in the area of rulemaking by stating that the Florida Supreme Court "shall adopt rules for the practice and procedure in all courts," but that "[t]hese rules may be repealed by general law enacted by two-thirds vote" of the legislature. FLA. CONST. art. V, § 2(a).

130. Bluesten v. Florida Real Estate Comm'n, 125 So. 2d 567, 568 (Fla. 1960); see, e.g., Markert v. Johnston, 367 So. 2d 1003, 1005 n.8 (Fla. 1978); In re Clarification of Fla. Rules, 281 So. 2d 204 (Fla. 1973) (modifying In re Amendments to Rule 3.125(j), 297 So. 2d 301 (Fla. 1974)); Vic Potamkin Chevrolet, Inc. v. Bloom, 386 So. 2d 286, 287 (Fla. 3d DCA 1980).


132. Markert, 367 So. 2d at 1005 n.8 (citing FLA. CONST. art. II, § 3, which provides that the legislative branch may not exercise powers pertaining to the judicial branch).

133. Means, supra note 124, at 452.

134. Id. at 452-53. Means argued that the creation of such a boundary was inappropriate because of the "inherent imprecision" in the distinction between substance and procedure, and because of the nature of the powers being separated. Id. at 468.

135. State v. Garcia, 229 So. 2d 236, 238 (Fla. 1969); e.g., In re Florida Rules of Criminal Procedure, 272 So. 2d 65, 66 (Fla. 1972); Military Park v. DeMarois, 407 So. 2d 1020, 1021 (Fla. 4th DCA 1981). Procedural law is also referred to as "adjective law" or the "law of remedy." Garcia, 229 So. 2d at 238. It is the "means and methods to apply and enforce" substantive rights. State v. ex rel. J. A., Jr., 367 So. 2d 702, 703 (Fla. 2d DCA 1979).

136. E.g., In re Florida Rules of Criminal Procedure, 272 So. 2d at 66 (Adkins, J., concurring).
to distinguish whether a particular matter involves substance or procedure.\(^{137}\) Because a substantive right must be implemented procedurally, distinguishing between what is substantive and what is procedural is no easy task.\(^{138}\) As a result, confusion sometimes occurs in determining authority over rulemaking, and has resulted in conflict between the judiciary and the legislature. A statute or rule is characterized as substantive or procedural depending on "the nature of the problem for which a characterization must be made."\(^{139}\)

Unless an enactment of the legislature is substantive rather than procedural, the legislature has exceeded its rulemaking authority. The supreme court has adopted a "substantive rights" theory to define the limits of its authority.\(^{140}\) This theory, based on the separation of powers doctrine, provides that Florida Supreme Court rules shall not abridge, enlarge, nor modify the substantive rights of any litigant.\(^{141}\)

137. State v. Garcia, 229 So. 2d at 238.

For instance, in Markert v. Johnston, 367 So. 2d 1003 (Fla. 1978), the nature of section 627.7262 of the Florida Statutes (1977), which prohibited joinder of motor vehicle liability insurers as defendants at the commencement of a lawsuit brought against the insured, but allowed joinder following a rendition of a verdict with respect to liability, was at issue. The court held that section 627.7262 involved procedural aspects of trial rather than substantive rights, and therefore violated its rulemaking authority under the Florida Constitution. Five years later, however, the supreme court ruled in Van Bibber v. Hartford, 439 So. 2d 880 (Fla. 1983), that virtually the same statute was substantive in nature and therefore constitutional. The Van Bibber court's reasoning, however, is not compelling and suggests that by couching a statute that is inherently procedural—such as one involving joinder—in substantive language, the legislature is free to invade the court's authority with respect to promulgating rules of procedure. In Van Bibber, the court distinguished section 627.7262 of the Florida Statutes (Supp. 1982), from its predecessor in Markert, section 627.7262 of the Florida Statutes (1977), on the basis that the former requires, as a condition precedent to having a third party interest in an insurance policy, the vesting of that interest by judgment, whereas the latter statute does not. 439 So. 2d at 882-83. Contra Fla. Stat. § 627.7262(4) (1977), Markert v. Johnston, 367 So. 2d at 1004. The court also distinguished the statutes on the basis that the 1982 statute specifically authorized a contractual provision in the policy prohibiting direct third party suits. 439 So. 2d at 883.


141. See State v. Furen, 118 So. 2d 6, 12 (Fla. 1960). Furen involved a conflict between a state statute and a court rule. The statute granted an appeal as a matter of right, while the court rule provided that such appeals were by certiorari. Finding that the rule limited a substantive right, the court declared that the rule exceeded the scope of practice and procedure. Id.; cf. Sun Insurance Office, Ltd. v. Clay, 133 So. 2d 735, 741 (Fla. 1961) (adoption by
3. RECENT LEGISLATION NOT INVOLVING SEPARATION OF POWERS
CONFRONTATIONS WITH THE JUDICIARY

In a number of recent acts of the legislature, the supreme
court avoided a substance versus procedure question by adopting
legislative enactments as court rules. The court has acknow-
ledged that it "considers these laws as expressing the intent of the
legislature and has formulated rules of practice and procedure that
attempt to conform with the intent of the Legislature . . . ." Addition-
ally, where legislative acts are neither clearly substantive nor
procedural, the court has adopted the statutes as a matter of con-
venience to avoid deciding whether a matter lies within the realm
of substantive or procedural law.

a. Florida Evidence Code

The supreme court avoided a confrontation with the legisla-
ture by adopting the Florida Evidence Code. This adoption was
in part due to confusion as to whether a specific evidentiary provi-
sion is substantive or procedural, but may also have been the
result of the supreme court's reluctance to face the legislature in a
separation of powers confrontation. The legislature's Florida Evi-
dence Code was thus adopted as court rules "to the extent that

supreme court of rule authorizing it to determine certified questions from federal courts was
a valid exercise of state supreme court's "organic" power).

142. See infra notes 145, 151, 156 and accompanying text. For an interesting discussion
of the role of the legislature in rulemaking, see Parness, The Legislative Role in Florida's
the legislature and "implementation of 'public process in judicial rulemaking,' " Id. at 360.
The Supreme Court of Florida adopted Florida Rule of Judicial Administration 2.125 (effect-
ive March 1, 1985) (In re Amendment to Rules of Judicial Administration, No. 66,593 (Fla.
Sup. Ct. filed Feb. 28, 1985)). The new rule creates a judicial council composed of judges, a
state attorney, a public defender, a clerk of the court, members of the Bar, and members of
the public to study and recommend changes in the operation and procedure of the court to
improve the administration of justice.

143. In re Clarification of Florida Rules of Practice and Procedure, 281 So. 2d 204 (Fla.
1973).

144. Id. at 205.

145. In re Florida Evidence Code, 372 So. 2d 1369, clarified, 376 So. 2d 1161 (Fla. 1979)
(clarifying dates of applicability to civil and criminal matters), modified, In re Amendment
of Florida Evidence Code, 404 So. 2d 743 (Fla. 1981) (incorporating statutory changes). The
(1979).

146. In re Florida Evidence Code, 372 So. 2d at 1369 (rules of evidence may in some
instances be substantive and in others procedural).
they are procedural.”

b. Court Administration

Section 43.35 of the Florida Statutes, which requires the court administrator in each county within the judicial circuit to establish a witness coordinating office, is another area in which the legislature has exercised authority and the court has acquiesced to such control. This section imposes upon the courts the administrative responsibility of contacting and coordinating witness appearances in criminal cases. Section 43 also provides for the selection and powers of a presiding judge for each judicial circuit. With the supreme court’s adoption of a similar rule, Florida Rule of Judicial Administration 2.050, the court laid to rest the question of legislative encroachment.

c. Sentencing Guidelines

Another area where a separation of powers confrontation could have but did not occur, is sentencing guidelines. The legislature created a “sentencing commission” to develop a statewide sys-

147. Id.
148. Section 43.35 of the Florida Statutes provides:
Each court administrator shall establish a witness coordinating office in each county within his judicial circuit. The office shall be responsible for:
(1) Coordinating court appearances, including pretrial conferences and depositions, for all witnesses who are subpoenaed in criminal cases, including law enforcement personnel.
(2) Contacting witnesses and securing information necessary to place a witness on an on-call status with regard to his court appearance.
(3) Contacting witnesses to advise them not to report to court in the event the case for which they have been subpoenaed has been continued or has had a plea entered, or in the event there is any other reason why their attendance is not required on the dates they have been ordered to report.
(4) Contacting the employer of a witness, when necessary, to confirm that the employee has been subpoenaed to appear in court as a witness.
In addition, the office may provide additional services to reduce time and wage losses to a minimum for all witnesses. Fla. Stat. § 43.35 (1983).
149. Id. at § 43.35(1).
151. Section 43.26(6) of the Florida Statutes (1983) authorizes the employment of an "executive assistant to the presiding judge [of each judicial circuit] who shall perform such duties as the presiding judge may direct." Rule of Judicial Administration 2.050(d) similarly states that "[a]n executive assistant may be selected by a majority of the circuit judges and shall perform such duties as the chief judge may direct." The supreme court adopted the Rules of Judicial Administration in 1978. In re Florida Rules of Judicial Admin., 360 So. 2d 1076, 1076, 1081 (Fla. 1978).
tem of sentencing guidelines.\textsuperscript{152} Although the preamble to the statute states that "[t]he provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the legislature,"\textsuperscript{153} it fails to mention that the imposition of sentences is a judicial function.\textsuperscript{154} Section 921.001(4)(a) of the Florida Statutes directed the supreme court to develop statewide sentencing guidelines by September 1, 1983.\textsuperscript{155} The court's acceptance and application of the legislature's sentencing guideline rule precluded any confrontation concerning legislative encroachment upon the judiciary's rulemaking power.\textsuperscript{156} The court apparently recognized the principle that "[u]nlike interpreting the Constitution or adjudicating disputes, sentencing is not inherently or exclusively a judicial function."

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152. Section 921.001 of the Florida Statutes provides:

(1) The provision of criminal penalties and limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority to establish sentencing criteria and to provide for the imposition of criminal penalties, has determined that it is in the best interest of the state to develop, implement, and revise a uniform sentencing policy in cooperation with the Supreme Court. In furtherance of this cooperative effort, there is created a Sentencing Commission which shall be responsible for the initial development of a statewide system of sentencing guidelines. After final development of a sentencing guidelines system by the Supreme Court, the commission shall evaluate these guidelines periodically and recommend such changes on a continuing basis as are necessary to ensure certainty of punishment as well as fairness to offenders and to citizens of the state.

FLA. STAT. § 921.001 (1983).

153. Id. at § 921.001(1).

154. See Rhynes v. State, 312 So. 2d 520, 521 (Fla. 4th DCA 1975) ("[a]ppellant confuses the legislative function of prescribing penalties and the judicial function of imposing them."); see also State v. Benitez, 395 So. 2d 514, 519 (Fla. 1981) ("[s]o long as a statute does not wrest from courts the final discretion to impose sentence, it does not infringe upon the constitutional division of responsibilities") (emphasis in original) (citing People v. Eason, 40 N.Y.2d 297, 297, 386 N.Y.S.2d 673, 676, 353 N.E.2d 587, 589 (1976)).


156. In re Rules of Criminal Procedure (sentencing guidelines), 439 So. 2d 848, 849 (Fla. 1983). The court subsequently modified the rule in The Florida Bar: Amendment to Rules of Criminal Procedure, 451 So. 2d 824 (Fla. 1984). The Florida Legislature then amended §§ 921.001(4) and 921.001(7) of the Florida Statutes (1983) to conform to the supreme court's modification. Sentencing Guidelines, 1984 Fla. Sess. Law Serv. 62, ch. 84-328 (West). The supreme court apparently has not questioned the legislature's requirement that the office of the state court's administrator act as the staff for the sentencing commission to "provide all necessary data collection, analysis, and research and support services." FLA. STAT. § 921.001(2)(e) (1983).

d. Alimony, Support, and Other Matters

The supreme court has accepted a legislative mandate requiring the collection of support and alimony payments through a court central depository. The number of jurors required to try various offenses is also the subject of a statute and rule. The supreme court also shares authority with the legislative and executive branches of government with respect to the judicial administrative commission, judicial qualifications commission, judicial nomination commission, and other matters. The court has


159. See Fla. Stat. § 913.10 (1983) and Fla. R. Crim. P. 3.270 (“[t]welve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases”); see also Hearns v. State, 223 So. 2d 738, 739 (Fla. 1969) (Florida provides for the number of jurors required to try cases by both statute and rule; the federal Constitution guarantees an impartial jury trial, but not a definite number of jurors).


162. Fla. Stat. § 43.29 (1983). The court recognizes both legislative and administrative roles in the appointment of judges. See In re Advisory Opinion to the Governor, 276 So. 2d 25, 29-30 (Fla. 1973), which states:

The appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function. It is the prerogative of the Legislature to provide for the number of persons to serve on each judicial nominating commission and the method of their selection. Once the judicial nominating commissions have been established by the Legislature they become a part of the executive branch of government. The function of the commissions being inherently an executive function, such cannot be limited by legislative action.

Id.

163. Another recent act of the legislature permits shared authority, between the executive and judicial branches of government, to revoke driver licenses. Section 322.28(2) of the Florida Statutes states:

(2) In a prosecution for a violation of s. 316.193 or s. 316.1931, the following provisions apply:

(a) Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted and shall prescribe the period of such revocation in accordance with the following provisions:

1. Upon first conviction for a violation of the provisions of s. 316.193 or s. 316.1931, except a violation of s. 316.1931(2) resulting in death, the driver's license or driving privilege shall be revoked for not less than 180 days or more than 1 year.

2. Upon a second conviction within a period of 5 years from the date of a prior conviction for a violation of the provisions of s. 316.193 or s. 316.1931 or a combination of such sections, the driver's license or driving privilege shall be revoked for not less than 5 years.

3. Upon a third conviction within a period of 10 years from the date of conviction of the first of three or more convictions for the violation of the provisions of s. 316.193 or s. 316.1931 or a combination of such sections, the driver's
thus promoted harmony between the branches of government by not challenging legislative authority in matters that are not clearly procedural. One wonders, however, if any matters are clearly procedural or substantive.

4. CASES INVOLVING SEPARATION OF POWERS CONFRONTATIONS WITH THE LEGISLATURE OVER RULEMAKING

This section examines the cases reflecting confrontations between the legislature and the supreme court. Because the legislature has control over substantive matters, and the judiciary has authority over procedural matters, the separation of powers doctrine again becomes the focal point of discussion. The relevant cases involve the distinction between substantive and procedural law and involve situations where the courts sought to protect judicial functions from legislative encroachment. It is difficult, if not impossible, to extract from these cases a rule of law that reconciles their outcomes.

a. Power to Admit Defendant to Bail Pending Appeal

In State ex rel. Harrington v. Genung,164 conflict arose between the judiciary and the legislature over the meaning of a statute that provided that a defendant in custody, whose case is stayed pending appeal, "shall be released on his own recognizance . . . if he is charged with a bailable offense."165 The Second District Court license or driving privilege shall be revoked for not less than 10 years.

For the purposes of this paragraph, a previous conviction outside this state for a violation of any alcohol-related or drug-related traffic offense substantially similar to the offense of driving under the influence as proscribed by s. 316.193 will be considered a previous conviction for violation of s. 316.193, and a conviction for a violation of former s. 316.028 or former s. 860.01 is considered a conviction for violation of s. 316.193 or s. 316.1931, respectively.

FLA. STAT. § 322.28(2)(a) (Supp. 1986).

Also, the court avoided confrontation in the interpretation of a statute that provided for the review of waiver orders of a juvenile court judge. In re R. J. B. v. State, 408 So. 2d 1048, 1049 (Fla. 1982). The supreme court held that the statute did not invade the court's rulemaking authority to allow an interlocutory appeal from a waiver order. If the legislature had intended to create such a right of interlocutory appeal, it would have been an improper exercise of legislative authority under the Florida Constitution. Id. at 1050; cf. In re Clarification of Florida Rules of Practice and Procedure, 281 So. 2d at 200 ("The Legislature has the constitutional right to repeal any rule of the Supreme Court by a two-thirds vote, but it has no constitutional authority to enact any law relating to practice and procedure.") (footnote omitted).

164. 300 So. 2d 271 (Fla. 2d DCA 1974).
165. FLA. STAT. § 924.071(2) (1983). The statute provides:
of Appeal interpreted the word “shall” to be directory and not mandatory in nature. The court noted that the power to admit to bail is a judicial power that must be free from encroachment by the legislative branch of government. If the court gave the legislative provision mandatory effect, it would be permitting legislative encroachment upon judicial power. To safeguard this system of separation of powers, “the preservation of the inherent powers of the three branches must be free from encroachment or infringement by one upon the other.”

In the companion case of Bamber v. State, the second district considered the effect of a statute that provided that “[n]o person may be admitted to bail upon appeal from a conviction of a felony if such person has previously been convicted of a felony . . . .” The court decided that the mandatory requirement of the statute was in apparent conflict with a court rule that allowed the court discretion to deny bail to “[a] person . . . upon appeal from a conviction of a felony if such person had previously been convicted of a felony.” The court held that the entitlement to bail was not a substantive matter within the purview of the legislature, but was a procedural matter within the discretion of the court. Because the right to bail was procedural, the legislature

An appeal by the state from a pretrial order shall stay the case against each defendant upon whose application the order was made until the appeal is determined. If the trial court determines that the evidence, confession, or admission that is the subject of the order would materially assist the state in proving its case against another defendant and the prosecuting attorney intends to use it for that purpose, the court shall stay the case of that defendant until the appeal is determined. A defendant in custody whose case is stayed either automatically or by order of the court shall be released on his own recognizance pending the appeal if he is charged with a bailable offense.  

Id.

166. Genung, 300 So. 2d at 272. Construing the statute as merely directory, and not mandatory, allowed the court to hold the statute constitutional. It has long been the policy of the supreme court to construe such mandatory language as permissive rather than declare a statute to be unconstitutional. Rich v. Ryals, 212 So. 2d 641, 643 (Fla. 1968). It should be noted that Florida Rule of Appellate Procedure 9.140(e)(2) allows the court discretion in permitting a defendant to be released on his own recognizance pending appeal by the state, and is consistent with Genung (“An incarcerated defendant charged with a bailable offense shall on motion be released on his own recognizance pending an appeal by the state, unless the lower tribunal for good cause stated in an order determines otherwise.”) Fla. R. App. P. 9.140(e)(2) (emphasis added).

167. Genung, 300 So. 2d at 272.

168. Id.; see also Johnson v. State, 336 So. 2d 93, 94-95 (Fla. 1976).

169. 300 So. 2d 269 (Fla. 2d DCA 1974).


171. FLA. R. CRIM. P. 3.691(a).

172. 300 So. 2d at 270.
could not deprive the court of its discretion to grant bail.\textsuperscript{173} Subsequently, however, the legislature passed an act that repealed the rule insofar as it was inconsistent with the provisions of section 903.132 of the Florida Statutes.\textsuperscript{174} In 1977, the supreme court amended the rule to conform with the provisions of section 903.132 as amended.\textsuperscript{175}

b. Power to Require a Presentence Investigation

In \textit{Huntley v. State},\textsuperscript{176} the court considered whether it should follow the mandatory language of a statute\textsuperscript{177} that required a presentence investigation in felony cases, or the permissive language of a supreme court rule that allowed for judicial discretion.\textsuperscript{178} The court declared that to the extent the statute mandatorily requires a presentence investigation in felony cases, the statute unconstitutionally invades the rulemaking power of the supreme court.\textsuperscript{179} Therefore, the judicial rule controlled rather than the statute.\textsuperscript{180}

c. Power to Immunize an Attorney From Disciplinary Proceedings

In \textit{Ciravolo v. The Florida Bar},\textsuperscript{181} the court held that a statute providing for a grant of immunity to witnesses testifying in certain prosecutions did not immunize an attorney from disciplinary proceedings because the Florida Constitution gives exclusive jurisdiction over the admission and discipline of attorneys to the supreme court.

\textsuperscript{173} Id.; see also Rolle v. State, 314 So. 2d 624 (Fla. 1st DCA 1975) (trial court had discretion to grant bail pending appeal from felony conviction on the basis that a statute denying bail to a convicted felon appealing a subsequent felony conviction conflicted with a rule of criminal procedure that permitted discretion in such circumstances).
\textsuperscript{174} 1976 Fla. Laws 246.
\textsuperscript{175} \textit{In re Florida Rules of Criminal Procedure}, 343 So. 2d 1247, 1262 (Fla. 1977).
\textsuperscript{176} 339 So. 2d 194 (Fla. 1976).
\textsuperscript{177} \textit{FLA. STAT.} § 921.231 (1974).
\textsuperscript{178} Florida Rule of Criminal Procedure 3.710 provides:
\textsuperscript{179} Rhynes, 312 So. 2d at 521.
\textsuperscript{180} Id.
\textsuperscript{181} 361 So. 2d 121 (Fla. 1978).
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court.\textsuperscript{188}

d. Commencement of Action

The distinction between substance and procedure was the focus of \textit{Lundstrom v. Lyon},\textsuperscript{188} where a common law complaint was filed with the clerk within the two-year limitation period provided by court rule of procedure, but where original process was not placed in the sheriff’s hands until after the expiration of the two-year period.\textsuperscript{184} A statute, that provided that an action is commenced for “limitation purposes” when process is delivered to the sheriff for service, barred the action.\textsuperscript{186} The supreme court decided that the statute did not conflict with the rule of procedure, which provided that an action is commenced for “procedural purposes” when filed with the clerk.\textsuperscript{187} In a display of judicial comity toward the legislature, the court reasoned that it could not, by its inherent rulemaking authority, amend or abrogate a right resting in either substantive or adjective law.\textsuperscript{187}

e. Other Matters

In \textit{Rich v. Ryals},\textsuperscript{188} the supreme court held that the legislature lacks the authority to mandate a court of equity to issue an injunction.\textsuperscript{189} Rather than declare such legislation unconstitutional, the court simply chose to interpret the word “shall” in a statute purporting to require the issuance of an injunction as permissive rather than mandatory.\textsuperscript{190}

Because the joinder or severance of parties during the course of a trial is a matter of procedure, any statutory provision on the subject would invade the supreme court’s exclusive authority over rulemaking.\textsuperscript{191}

\begin{quote}
\textsuperscript{182} \textit{Id.} at 124-25.
\textsuperscript{183} 86 So. 2d 771 (Fla. 1956).
\textsuperscript{184} \textit{Id.}
\textsuperscript{185} \textit{Id.} at 772.
\textsuperscript{186} \textit{Lundstrom}, 86 So. 2d at 772.
\textsuperscript{187} \textit{Id.}
\textsuperscript{188} 212 So. 2d 641 (Fla. 1968).
\textsuperscript{189} \textit{Id.} at 643.
\textsuperscript{190} \textit{Rich v. Ryals}, 212 So. 2d at 643.
\end{quote}
C. Other Inherent Powers of the Courts Involving No Substantial Separation of Powers Dispute

Many cases involve situations where the Florida judiciary exercised its inherent powers with no substantial separation of powers confrontation with another branch of government. In these cases the judiciary made use of its inherent powers for important judicial purposes. Inherent powers have thus been utilized to assure the efficient performance of judicial functions, to protect a court's dignity and integrity, and to make its lawful actions effective. The Florida courts have the inherent power to punish for contempt, to determine their own jurisdiction, to enforce judgments, to vacate judgments, to set aside satisfaction of judgments, to appoint process servers, to appoint co-counsel to represent insolvent criminal defendants, to change venue when deemed necessary to secure a fair trial, to instruct a jury on maximum and minimum penalties in a criminal trial, to direct a verdict of not guilty and

192. See Crateley, supra note 40, at 2. Some of the cases that discussed in this section involve the use of inherent powers that subsequently have been promulgated and have become the subject of express provisions in the Florida Constitution, a court rule, or a legislative enactment.

193. United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812) (a court cannot dispense with the power to fine for contempt); Demetree v. State, 89 So. 2d 498, 501 (Fla. 1956); In re Associate Justice Pearson, 8 Fla. 496 (1859) (the power to fine for contempt exists to prevent interference with the administration of justice). Florida recognizes the power by both statute and court rule. See FLA. STAT. § 38.22 (1983); FLA. R. CRIM. P. 3.830, 3.840.


195. Broadband Eng'g, Inc. v. Quality RF Services, Inc., 450 So. 2d 600, 601 (Fla. 4th DCA 1984).

196. Florida Medical Center, Inc. v. Von Stetina, 436 So. 2d 1022, 1030 (Fla. 4th DCA 1983).


198. Ford Motor Credit Co. v. Simmons, 421 So. 2d 698, 700 (Fla. 2d DCA 1982).

199. Both section 48.021(2) of the Florida Statutes and Florida Rule of Civil Procedure 1.790(b) govern who will serve process. In Bradley Fiduciary Corp. v. Citizens and S. Int'l Bank, 431 So. 2d 196, 197 (Fla. 3d DCA 1983), the court held that because the manner of service of process is a procedural matter, to the extent that a statute conflicts with a rule, the rule prevails.

200. Dade County v. Goldstein, 384 So. 2d 183, 184 (Fla. 3d DCA 1980).

201. Board of Pub. Instruction v. First Nat'l Bank, 111 Fla. 4, 11-12, 143 So. 738, 741 (1932).

202. The Florida courts once had the inherent power to charge on maximum and minimum penalties. E.g., Simmons v. State, 36 So. 2d 207 (Fla. 1948). Florida Rule of Criminal Procedure 3.390(a) supplanted the court's inherent power in this area. See Tascano v. State, 393 So. 2d 540, 541 (Fla. 1981) (upon the request of either party, it is mandatory that the court give instructions on maximum and minimum penalties); accord Thomas v. State, 419 So. 2d 634 (Fla. 1982).
to set aside a jury verdict in a criminal trial,\textsuperscript{203} to appoint an acting state attorney,\textsuperscript{204} to dismiss an action for failure to prosecute,\textsuperscript{205} to impose the sanction of dismissal for failure to comply with a court order,\textsuperscript{206} to impose the sanction of dismissal as a coercive measure,\textsuperscript{207} to strike a voluntary dismissal,\textsuperscript{208} to dismiss an appeal,\textsuperscript{209} to dismiss or decline jurisdiction on the basis of the doctrine of forum non conveniens,\textsuperscript{210} to revoke probation,\textsuperscript{211} to seal court records,\textsuperscript{212} to revoke the probate of a will,\textsuperscript{213} to correct errors,\textsuperscript{214} to reform written instruments,\textsuperscript{215} to re-establish court records,\textsuperscript{216} to modify

\textsuperscript{203} State v. Shiver, 174 So. 2d 778, 779 (Fla. 2d DCA 1965).

\textsuperscript{204} A circuit judge has inherent, as well as statutory, authority to appoint an acting state attorney in state court cases where the state attorney refuses or is unable or disqualified to act. See State ex rel. Shevin v. Weinstein, 353 So. 2d 1251, 1253 (Fla. 3d DCA 1978); King v. State, 43 Fla. 211, 221, 31 So. 254, 257 (1901); Fla. STAT. § 27.16 (1983).

\textsuperscript{205} Fla. R. Civ. P. 1.420. It is worth noting that Florida Rule of Civil Procedure 1.420(e) also precludes a trial court from exercising its inherent power to dismiss an action for failure to comply with a court order to perfect service of process insufficient for dismissal.

\textsuperscript{206} Mazer v. Jefferson Stores, Inc., 412 So. 2d 945 (Fla. 3d DCA 1982) (failure to comply with an order requiring the plaintiff to answer certain questions on deposition); Wariner v. Ferraro, 177 So. 2d 723 (Fla. 3d DCA 1965) (failure to comply with a court order to furnish names of witnesses to defendants).

\textsuperscript{207} Pinakatt v. Mercy Hosp., Inc., 394 So. 2d 441 (Fla. 3d DCA 1981) (dismissal for failure to comply with discovery order); Watson v. Peskoe, 407 So. 2d 954 (Fla. 3d DCA 1981) (failure to comply with discovery order justifies dismissal); In re Estate of Ulm, 345 So. 2d 1099 (Fla. 2d DCA 1977) (failure to perfect service of process insufficient for dismissal).

\textsuperscript{208} Chapnick v. Hare, 394 So. 2d 202 (Fla. 4th DCA 1981); Select Builders, Inc. v. Wong, 367 So. 2d 1089 (Fla. 3d DCA 1979).

\textsuperscript{209} Dasher v. State, 291 So. 2d 117 (Fla. 2d DCA 1974) (a court has the express, as well as the inherent, power to dismiss an appeal that is improperly prosecuted).

\textsuperscript{210} Even though a trial court may have statutory jurisdiction to hear a matter, the court has the inherent power to decline jurisdiction based upon the doctrine of forum non conveniens, where in the interest of justice and the convenience of the litigants, the cause should be heard in another forum. The doctrine's application rests in the sound discretion of the trial court tempered by the time-honored concept of "the interest of justice." Houston v. Caldwell, 347 So. 2d 1041 (Fla. 4th DCA 1977); see Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

\textsuperscript{211} State v. Stafford, 432 So. 2d 232 (Fla. 5th DCA 1983); Martin v. State, 243 So. 2d 189 (Fla. 4th DCA 1971); Bronson v. State, 3 So. 2d 873 (Fla. 1941). In a probation revocation proceeding, the trial court has the inherent power to decide what is reasonable. Cuciak v. State, 410 So. 2d 916 (Fla. 1982).

\textsuperscript{212} Johnson v. State, 336 So. 2d 93, 95 (Fla. 1976).

\textsuperscript{213} See In re Warner's Estate, 160 Fla. 460, 462, 35 So. 2d 296, 298 (1948).

\textsuperscript{214} Sheriff of Alachua County v. Hardie, 433 So. 2d 15 (Fla. 1st DCA 1983) (a court has the inherent power to order restitution of property or damages when its judgment is reversed on appeal, vacated, or set aside).

\textsuperscript{215} Tri-County Produce Distrib., Inc. v. Northeast Prod. Credit Ass'n, 160 So. 2d 46 (Fla. 1st DCA 1963).

\textsuperscript{216} State ex rel. Broward v. Edmunds, 114 Fla. 443, 153 So. 850 (1934) (where records
and clarify court orders, to award attorney's fees against an attorney in correcting a scrivener's error in a final judgment, to enter judgments nunc pro tunc, to impose dress requirements, to require judicial consent for the withdrawal of attorneys, to prohibit future pro se appearances in court, to protect minor children, to entertain matters pertaining to child custody, to award exclusive occupancy of a marital home in divorce proceedings, to award temporary relief, to prevent abuse of judicial procedure, to exclude the testimony of expert witnesses, to issue writs of ne exeat, to control the conduct of proceedings, to are lost or destroyed).

217. Pujals v. Pujals, 414 So. 2d 228 (Fla. 3d DCA 1982); American Sav. & Loan Ass'n v. Saga Dev. Corp., 362 So. 2d 54 (Fla. 3d DCA 1978); Shatterproof Glass Corp. v. Buckmaster, 256 So. 2d 531 (Fla. 3d DCA 1959); Florida Indus. Comm'n v. Ebner, 111 So. 2d 79 (Fla. 3d DCA 1959). But see FLA. R. Civ. P. 1.530, 1.540 (limiting a trial court's inherent power to alter or modify final judgments).

218. See Sanchez v. Sanchez, 435 So. 2d 347 (Fla. 3d DCA 1983); Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980) (federal courts have the inherent power to assess attorney fees for bad faith in the conduct of litigation - the Florida courts have not yet addressed this issue).

219. See Jaria v. Tucker, 414 So. 2d 1164 (Fla. 3d DCA 1982); Becker v. King, 307 So. 2d 855 (Fla. 4th DCA 1975). This general principle does not apply in actions for the dissolution of marriage. Messana v. Messana, 421 So. 2d 48 (Fla. 4th DCA 1982).

220. Sanstrom v. State, 309 So. 2d 17 (Fla. 4th DCA 1975) (this is based on the court's inherent power to regulate attorneys' professional conduct).

221. Fisher v. State, 248 So. 2d 479 (Fla. 1971).

222. Platelet v. Maquire, Voorhis & Wells, P.A., 436 So. 2d 303 (Fla. 5th DCA 1983) (where the court was inundated with voluminous, incomprehensible documents necessitating an "unreasonable" amount of time and effort to decipher, the appellant was prohibited from proceeding further unless represented by an attorney).

223. A court of chancery has the inherent jurisdiction to control, protect, and provide for minor children and their property. See, e.g., Cone v. Cone, 62 So. 2d 907, 908 (Fla. 1953); Pollack v. Pollack, 159 Fla. 224, 31 So. 2d 253, 254 (1947); State Dep't of Health & Rehab. Serv. v. Hollis, 439 So. 2d 947 (Fla. 1st DCA 1983); Phillips v. Nationwide Mutual Ins. Co., 347 So. 2d 465, 466 (Fla. 2d DCA 1977); Cooper v. Cooper, 194 So. 2d 278 (Fla. 2d DCA 1967); Peppard v. Peppard, 198 So. 2d 68 (Fla. 3d DCA 1967).


225. McDonald v. McDonald, 368 So. 2d 1283 (Fla. 1979); Davies v. Davies, 345 So. 2d 817 (Fla. 1st DCA 1977).

226. Campbell v. Campbell, 436 So. 2d 374 (Fla. 5th DCA 1983).


228. Brevard County v. Interstate Eng'g Co., 224 So. 2d 766 (Fla. 4th DCA 1969) (a trial court has the inherent authority to insist upon compliance with any pretrial requirements reasonably designed to expedite litigation).

229. State ex rel. Perky v. Browne, 105 Fla. 631, 142 So. 2d 247 (1932) (a court of equity has the inherent jurisdiction to prevent a person from leaving the jurisdiction until he gives security for his appearance in the performance of a decree).

230. See Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1 (Fla. 1982) (no first amendment protection of the right of the press or the public to attend a pretrial suppression hearing); State ex rel. Miami Herald Publishing Co. v. McIntosh, 340 So. 2d 904 (Fla. 1976).
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protect a defendant in a criminal trial from inherently prejudicial influences that threaten fairness,\(^{231}\) to preserve order and decorum in the courtroom,\(^{232}\) to protect the rights of the parties and witnesses,\(^{233}\) to guarantee to litigants the fundamental right to a fair trial,\(^{234}\) and generally to further the administration of justice.\(^{235}\)

IV. CONCLUSION

Article I, section 21 of the Florida Constitution requires that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The protection of human rights and the security of our institutions require the independence of the courts. The invocation of the inherent powers doctrine is crucial, particularly when the judicial function at issue is the safeguarding of fundamental human rights that the Florida Constitution guarantees.

The inherent powers doctrine, which is similar to the doctrine of separation of powers, maintains the functional integrity of each branch of government. The doctrine provides that when a constitution or statute gives a general power, or enjoins a duty, it also grants by implication every particular power necessary for the exercise of the one or the performance of the other.\(^{236}\) The doctrine may be utilized to fill in the gaps of the express provisions of law. It helps the courts respond to practical problems that the express provisions of the constitution, legislative acts, and court rules do not contemplate; and it assists each department of government in carrying out those responsibilities that naturally fall within the scope of its authority.

There are gray areas where a certain function does not clearly belong to any particular branch of government. In those areas there is a functional overlap where authority is shared. In such instances the inherent powers doctrine may assist each department of government to carry out its mandated responsibilities.

The inherent powers doctrine enables the judiciary to carry

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231. McIntosh, 340 So. 2d at 909.
232. State ex rel. Gore Newspapers Co. v. Tyson, 313 So. 2d 777 (Fla. 4th DCA 1975).
233. Id.
234. Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1, 3.
235. Id.; Gore Newspaper Co., 313 So. 2d at 782.
236. State ex rel. Ross v. Call, 39 Fla. 504, 22 So. 748 (1897) (explaining the inherent power of the court to adopt necessary rules of practice).
out its constitutional responsibilities as a court. It permits the performance of functions not expressly provided by law. The use of inherent powers, however, must be balanced so as not to invade the spheres of authority of the other branches of government. The system of checks and balances, like the inherent powers doctrine, protects the functional integrity of each branch of government and prevents encroachments of power. It prevents the tyrannical usurpation of power by a single branch of government. The few cases of confrontations among the branches of government reflect the cooperation that maintains the orderly functioning of government.

Although the Florida Constitution articulates a theoretical separation of powers among the three branches of government, the scope of authority of each branch is not realistically divisible. Thus, the orderly operation of government requires the “separateness but interdependence, autonomy but reciprocity,” of its branches. In particular, it requires that the judiciary use its inherent powers sparingly so as not to invade the constitutional sphere of authority of the other branches. The cases involving confrontations between the judiciary and the legislature, in which the court defers to the authority of the legislature, manifest the court’s prudent use of its “inherent power.”


238. In Kirk v. Baker, 229 So. 2d 250, 252-53 (Fla. 1969), the court stated:

Unquestionably the dearth of authority is occasioned by the fact that the respective branches of government in our country have throughout our history assiduously avoided any encroachment on one another’s authority. In those few instances where difficult cases have arisen, each branch has had enough foresight and respect for the orderly functioning of the governmental processes to avoid a confrontation.