Power of General Assembly to limit rule-making authority of Supreme Court is not encroachment on powers of either branch to perform their constitutionally assigned functions and is not violation of separation of powers doctrine.

The Honorable Lacey E. Putney

Member, House of Delegates

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You ask whether § 8.013(D) of the Code of Virginia is constitutional, when read in conjunction with Article VI, § 5 of the Constitution of Virginia (1971). The focus of your inquiry is whether § 8.013(D) violates the separation of powers clause.

In considering whether a statutory provision is constitutional, I am guided by the doctrine that a statute is not to be declared unconstitutional unless a court would be driven to that conclusion. "Every reasonable doubt should be resolved in favor of the constitutionality of an act of the legislature." Following this doctrine, it has been a long-standing practice of Virginia's Attorneys General to refrain from declaring a statute unconstitutional unless its unconstitutionality is clear beyond a reasonable doubt.

As stated by the Supreme Court of Virginia, Article I, § 5 and Article III, § 1 direct "that the government function through three equal but separate branches with specific responsibilities and powers assigned to each, and that no one branch may exercise the functions or powers of another except as specifically authorized by the constitution." The required degree of separation "is not absolute and necessarily operates within some practical limitations and exceptions." The separation of powers doctrine, however, limits each branch's encroachment on the powers of another; one branch's encroachment will not be permitted to interfere to such an extent that another branch's performance of a constitutional function is rendered ineffectual.

The initial focus in determining whether a particular encroachment violates the separation of powers doctrine is the extent to which the encroachment prevents the affected branch from accomplishing its constitutionally assigned functions. "Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of the other branch."

A prior opinion of the Attorney General notes that § 8.013 "reiterates the constitutional authority of the Supreme Court to make rules, but recognizes the General Assembly's power to limit that rule-making by statute." The opinion concludes that § 8.013(D) codifies "the well-recognized rule of construction that if a rule of the Supreme Court is at variance with a statutory enactment, the terms of the statute must prevail." Article VI, § 5 recognizes that while the Supreme Court has authority to make rules, such rules shall not conflict with the general law established by the General Assembly. Section 8.013(A) similarly grants the Supreme Court authority to make rules and § 8.013(D)
recognizes the power of the General Assembly to limit those rules. Such a balance does not disrupt either the Supreme Court or the General Assembly in accomplishing the constitutionally assigned functions of each branch.

It is, therefore, my opinion that § 8.013(D) is consistent with Article VI, § 5 and, therefore, does not violate the separation of powers clause.

1Section 8.013(A) provides that "[t]he Supreme Court ... may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts. This section shall be liberally construed so as to eliminate unnecessary delays and expenses."

Section 8.013(D) states that "[t]he General Assembly may, from time to time, by the enactment of a general law, modify, or annul any rules adopted or amended pursuant to this section. In the case of any variance between a rule and an enactment of the General Assembly such variance shall be construed so as to give effect to such enactment."

2Article VI, § 5 provides: "The Supreme Court shall have the authority to make rules governing the course of appeals and the practice and procedures to be used in the courts of the Commonwealth, but such rules shall not be in conflict with the general law as the same shall, from time to time, be established by the General Assembly."

3Article I, § 5 provides "[t]hat the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct."

Article III, § 1 requires that "[t]he legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time."


7Id. at 221, 409 S.E.2d at 138.

8Id. at 222, 409 S.E.2d at 138; cf. O’Donoghue v. United States, 289 U.S. 516, 530 (1933) ("[T]he acts of each [branch] shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments.").

9Taylor, 242 Va. at 223, 409 S.E.2d at 139.
10Id. (quoting Nixon v. Administrator of General Services, 433 U.S. 425, 443 (1977)).
