



# Opening the Door to Supreme Court Review Through a Citation PCA

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5 minute read | January 16, 2026 at 09:12 AM By **Randall Burks**



Randall Burks, an appellate attorney with Schwartz Sladkus Reich Greenberg Atlas. Courtesy Photo

When an appellant seeks reversal of a trial court order in Florida, the appellate court may reverse the order in whole or in part. Alternatively, the appellate court may affirm the order with a written opinion or with a per curiam affirmation (PCA) that simply states “affirmed” without providing any explanation or rationale. A PCA generally cannot be reviewed by the Florida Supreme Court, but this article provides an example of a limited exception that can enable the Supreme Court to accept jurisdiction.

Appellate courts avoid issuing written opinions merely to repeat established precedent. Written opinions are reserved for decisions that meaningfully develop the law. Written opinions are also issued where the court needs to disclose conflicting authority or certify a question to the Florida Supreme Court, as explained in *Whipple v. State*, 431 So. 2d 1011, 1015–16 (Fla. 2d DCA 1983). Due to this narrow scope, most affirmances appear as PCAs.

Florida Rule of Appellate Procedure 9.330(a)(2)(D) provides a mechanism for requesting a written opinion after receiving a PCA. The rule allows this kind of motion when the movant believes that a written opinion would provide a legitimate basis for Supreme Court review, an explanation for deviating from precedent, or necessary guidance to the parties or lower tribunal. The most common basis is an argument that a written opinion would bring to light a conflict between that decision and a decision of another district court or the Florida Supreme Court. Although these motions are rarely granted, it could be worthwhile to try when the appellant wants to leave no stone unturned in an effort to pursue Supreme Court review.

In certain special procedural circumstances, there may be a way to increase the chance of obtaining a helpful response from the appellate court by including an alternative request for a quicker, easier form of relief known as a “citation PCA,” which affirms without a written opinion but cites the precedent relied upon. A citation PCA does not constitute a written opinion and generally cannot provide a basis for jurisdiction in the Supreme Court. Some appellants, however, may find themselves in a unique situation where a citation PCA could open the door to Supreme Court review.

For example, an appellant recently approached the firm after receiving an unelaborated PCA. The appellant wished to pursue any available means to seek review by the Florida Supreme Court. The firm filed a motion explaining that a written opinion would likely expose an express and direct conflict with a decision from another district court—one of the clearest bases for Supreme Court jurisdiction. Moreover, the motion pointed out the unique situation where the Florida Supreme Court was actively deliberating on the same issue in a pending review of the same district court’s opinion that likely served as the precedent underlying the PCA.

Since motions for issuance of a written opinion are rarely granted, counsel’s motion strategically capitalized on the unusual circumstances by not only requesting a full written opinion but also proposing a quicker, easier remedy that would suffice in that special situation: a citation PCA citing the case on which the decision relied. This alternative approach stemmed from an unusual feature of that particular case: the PCA appeared to rely on the very precedent then pending review before the Supreme Court. Under *Jollie v.*

*State*, 405 So. 2d 418, 420 (Fla. 1981), the Supreme Court has jurisdiction to review a PCA if the case cited as precedent has been quashed or is pending review in the Supreme Court.

In response to the motion for written opinion, the district court ultimately granted the alternative request and issued a citation PCA referencing two cases that were pending Supreme Court review: the precedential case and a conflicting opinion from another district court. This result made it possible for the appellant to petition the Florida Supreme Court for discretionary review despite the lack of a written opinion.

This scenario illustrates that while a PCA will generally foreclose Supreme Court review, such a decision does not always represent the end of the line. When an appellate attorney prepares a motion for written opinion, it is advisable to investigate whether there may be unusual circumstances that could support a strategy of requesting an alternative remedy of a citation PCA. It would be important to determine whether the Florida Supreme Court has previously quashed the decision in the precedential case or has accepted jurisdiction to review it. If one of those conditions is true, it could be a useful strategy to mention a citation PCA as an alternative form of relief in the motion for written opinion.

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