Per Curiam Committee Releases Report:

Would Keep PCAs, But to Allow Requests for Opinion

by Susan W. Fox

In May 2000, the Judicial Management Council (JMC) Committee on per curiam affirmances (PCAs) released its long-awaited report. The full JMC immediately approved the report and forwarded it on to the Supreme Court of Florida.

The PCA Committee rejected a proposal to abolish the PCA and believes that the PCA "performs a useful function" in these situations: (1) when a case has not been fully briefed, and therefore, does not present issues necessitating a discussion; (2) when the law is so well settled on the issues presented that no further explication is required; and (3) that the principle of law upon which the decision rests is so generic that even reference to a citation would add nothing to the jurisprudence.

The Committee did recommend that Rule 9.330 of the Florida Rules of Appellate Procedure be amended to allow an appellant to ask for an opinion. This provision would add the following language to subsection (a).

> "When the order is a per curiam affirmance without opinion, and a party believes that a written opinion would provide a legitimate basis for Supreme Court review, the party may request that the court issue a written opinion. Such a request shall include the following statement: I express a belief based on a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for Supreme Court review because (state with specificity the reasons why the Supreme Court would be likely to grant review if an opinion were written [followed by attorney's signature and Florida Bar Number]."

The Committee also recommended adoption of "suggestions for opinion writing" to be disseminated to appellate judges and incorporated into judicial education programs. Without a commitment to suggestions for opinion writing, any "good intentions" regarding PCAs will disappear.

The suggestions for "Opinion Writing" include the following situations (1) the decision is in conflict with that of another district; (2) the decision appears to be in conflict, but can be harmonized; (3) there is an arguable basis for Supreme Court jurisdiction; (4) the decision establishes a new rule of law; (5) the decision modifies an existing rule of law; (6) the decision applies an existing rule of law to facts different from those to which the rule had previously been applied; (7) the decision applies an existing rule that appears to have been generally overlooked; (8) the issue is present in other pending cases; (9) the issue can be expected to arise in future cases; (10) the decision rules on a constitutional or statutory authority for the first time; (11) previous precedent has been overuled by statute, rule, or an intervening decision of a higher court; (12) a dissent has been written; (13) the error was harmless, but will likely be repeated by the trial court or counsel if not addressed; and (14) in a criminal case where the unpreserved error is material.

The Committee also rejected the concept of a mandatory checklist of reasons for the PCA. The PCA Committee felt that such a checklist "would demean the appellate function, create confusion if judges differ on the rationale for the decision, and provide little, if any, benefit to attorneys and litigants."

The PCA Committee stopped short of prohibiting PCAs in a case with a dissent, but "strongly discourages their use." The Committee felt that use of PCAs in such instances shows disrespect for the dissenting judge and present a less than desirable image to the public.

A minority report by Judge Gerald Cope of the Third District disagreed with the Committee majority on the central issue of when an opinion should be written. Judge Cope felt that PCAs should not be used for fully briefed appeals. If an affirmance in such a case rests on routine application of well settled law, then at least a citation to the authority on which affirmance is based would be appropriate. If the citation is not adequate to resolve the issues, then there should be a brief statement of the reasons for affirmance. The approach outlined by Judge Cope is consistent with the American Bar Association's *Standards Relating to Appellate Courts*. These standards provide:

> The court should give its decision and opinion in a form appropriate to the complexity and importance of the issues presented in the case. A full written opinion reciting the facts, the questions presented, and the analysis of pertinent authorities and principles, should be rendered in cases involving new or unsettled questions of general importance. Cases not involving such questions should be decided by memorandum opinion. Every decision should be supported, at minimum, by a citation of the authority or statement of grounds upon which it is based.

Nancy Daniels, Public Defender for Leon County, also wrote a minority report. She wanted a rule that would strictly limit PCAs. She felt that the Committee's report "seriously underestimates the gravity of the per curiam affirmed problem in Florida." She proposed a rule *requiring* a written decision in the types of cases the Committee listed in their "suggestions for opinion writing". Further, she recommended adoption of a system of using unpublished opinions in non-precedential cases. "These changes, I believe, would alleviate the current mood of frustration and bring Florida into line with other large states that suffer as we do from excessive appellate workload."

The Appellate Court Rules Committee has referred the issue to its General Subcommittee, chaired by Nancy Gregoire, (954) 761-8600, e-mail: nangrag@icanect.com. Please forward comments to her.

The full text of the report is available on the Supreme Court's website, or through the office of the State Court's Administrator at (850) 922-5094.