

Don't Misapply "Misapplication Jurisdiction"

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The Florida Supreme Court is a court of [limited jurisdiction](#), with authority to hear only those matters specifically enumerated in the Florida Constitution. One such [basis](#) permits the court to exercise its jurisdiction where the "decision of a district court of appeal ... *expressly and directly conflicts* with a decision of another district court of appeal." This "conflict review" not only encompasses situations where the district court of appeal has made an "announcement of a conflicting rule of law," but it also includes [instances](#) where the district court of appeal has made an "application of a rule of law in a manner that results in a conflicting outcome despite substantially the same controlling facts." This latter scenario is often referred to as "misapplication jurisdiction." However, for many years, the court's misapplication jurisdiction was [invoked](#) even where the decision under review addressed a different question of law or had substantially different facts from the other decision it was alleged to have misapplied. But this will no longer be the case going forward. Recently, in [Askew v. Florida Department of Children & Families](#), the court acknowledged that the Florida Constitution mandates that, for there to be jurisdiction to review a conflict between district courts of appeal, such conflict be "express" and "direct." The court recognized further that a district court of appeal's reliance on a decision involving a different question of law or substantially different facts does not automatically demonstrate that the district court of appeal has created an express and direct conflict with said decision. As the court explained, at most, this "misapplication" reflects the district court of appeal's *misplaced reliance* on the decision, which itself does not create an express and direct conflict with the decision. **Tips and Takeaways** The court's opinion in *Askew* does not abolish misapplication jurisdiction altogether; rather, it clarifies and limits its applicability. In light of *Askew*, appellate litigators considering whether to seek conflict review should first identify whether either of two circumstances is present:

- The district court of appeal has applied a rule of law that is contrary to a rule of law announced by another district court of appeal; or
- The district court of appeal has applied the same rule of law to substantially the same controlling facts yet has reached a contrary outcome to that of the other district court of appeal.

If neither of these circumstances is present, conflict jurisdiction likely does not exist.

Authored By



Peter D. Webster



Christopher J. Norris

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