

What Florida's New Sixth District Court of Appeal Means for You

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For the first time since 1979, Florida has a new District Court of Appeal. On June 2, 2022, Governor DeSantis signed CS/HB 7027 creating Chapter 2022-163. The Chapter creates a new Court of Appeal and shifts territorial boundaries within some existing districts to carve out the newly created Sixth. The Sixth District Court of Appeal will be headquartered in Lakeland, Florida, and will comprise Orange, Osceola, Polk, Hardee, Highlands, Charlotte, Glades, Lee, Hendry and Collier counties.

The following judges from the Fifth and Second District Courts of Appeal will transition to the Sixth District Court of Appeal effective January 2, 2023: Jay P. Cohen, Meredith L. Sasso, Dan Traver, John K. Stargel, Mary Alice Nardella and Carrie Ann Wozniak. Governor DeSantis will appoint three additional judges to the Sixth District Court of Appeal and four new judges to the Fifth District Court of Appeal. Governor DeSantis has appointed the members of the Sixth District Court of Appeal Judicial Nominating Commission and requested that the Commission provide the names of qualified candidates to fill the three judgeships no later than October 21, 2022. Pursuant to Florida Law, the Governor will then have 60 days to make the appointments, just shy of the January 2, 2023, start date for the new court.

Workgroup on the Implementation of an Additional District Court of Appeal

Shortly after Governor DeSantis signed CS/HB 7027, then-Chief Justice Canady issued an administrative order creating the Workgroup on the Implementation of an Additional District Court of Appeal, chaired by future Sixth DCA Chief Judge Meredith Sasso. With only six months to make it happen, the Workgroup has a lot to get done in a short amount of time. The number of cases that will transfer to the Sixth District Court of Appeal has not yet been determined; however, future Chief Judge Sasso does not expect that the disposition of cases will be delayed. "We anticipate maintaining established briefing schedules and deciding cases in a timely fashion," she said.

Precedent and Other Questions to Be Resolved

The question on everyone's mind is what will constitute precedent in the newly created Sixth District Court of Appeal. Pursuant to *Pardo v. State*, 596 So. 2d 665 (Fla. 1992), "in the absence of

interdistrict conflict, district court decisions bind all Florida *trial courts*.” However, “as between District Courts of Appeal, a sister district’s opinion is merely persuasive.” *Id. Citing State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976). Unless the Florida Supreme Court has ruled on an issue, the Sixth District Court of Appeal will have a blank slate upon which to rule. The shift in territorial boundaries means that what was once controlling precedent for trial courts may no longer be so, and will result in some level of uncertainty in the law until the Sixth DCA has had an opportunity to develop a body of case law.

Given that the Sixth DCA will be composed of judges who were previously in the Fifth DCA and the Second DCA, it will be interesting to see which way the Sixth DCA will rule on issues where those two districts were split. For example, there is currently a split in the circuits regarding whether a prevailing party can recover attorney’s fees incurred in litigating the amount of an attorney’s fee award. The Second DCA has ruled that a party could recover such fees, while the Fifth DCA has disagreed. See *Trial Practices, Inc. v. Hahn Loeser & Parks, LLP for Antaramian*, Nos. 2D13-6051, 2D14-86, 2017 WL 4798944 (Fla. 2d DCA 2017) and *Bayview Loan Servicing, LLC v. Cross*, 286 So. 3d 858 (Fla. 5th DCA 2019).

Further, prevailing parties within the Sixth DCA’s jurisdiction will be able to argue to the trial court that there is no controlling law on the right to recover such fees, which gives each judge the discretion to decide the issue. Practitioners will have to be very mindful of this upcoming change and uncertainty in the law as they argue motions before the trial courts and prepare their briefs on cases to be heard in the coming year. The Workgroup has not yet determined whether additional briefing will be required or allowed to address the lack of binding precedent, where applicable.

Appellate practitioners also are anxious to see whether the Sixth District Court of Appeal will adopt the Fifth District’s mediation program and agreed extensions policy. These are all questions that the Workgroup is working to find answers to before the Court begins its operations on January 2, 2023.

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