

PUBLICATION

Florida's New Sixth District Court of Appeal: What It Means for Judges and Attorneys in the State of Florida

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On June 2, 2022, Florida Governor Ron DeSantis signed HB 7027, creating Chapter 2022-163, Laws of Florida, which established the Sixth District Court of Appeal (DCA) – Florida's first new appellate court since the creation of the Fifth District Court of Appeal in 1979.

The boundaries of the First, Second, and Fifth District Courts of Appeal will be changed to make way for the newly established Sixth District Court of Appeal, while the boundaries of the Third and Fourth Districts will remain unchanged.

According to the newly enacted legislation, as of January 1, 2023, the Second District Court of Appeal will relocate to St. Petersburg and the newly formed Sixth District Court of Appeal will take over its current headquarters in Lakeland.

The headquarters of the remaining First, Third, Fourth, and Fifth District Courts of Appeal will remain the same. Under the new legislation, the District Courts of Appeal will comprise the following Judicial Circuits:

- First DCA: First, Second, Third, Eighth, and Fourteenth
- Second DCA: Sixth, Twelfth, and Thirteenth
- Third DCA: Eleventh and Sixteenth
- Fourth DCA: Fifteenth, Seventeenth, and Nineteenth
- Fifth DCA: Fourth, Fifth, Seventh, and Eighteenth
- Sixth DCA: Ninth, Tenth, and Twentieth

The Sixth DCA is acquiring the Tenth Judicial Circuit (composed of Hardee, Highlands, and Polk Counties) and the Twentieth Judicial Circuit (composed of Charlotte, Collier, Glades, Hendry, and Lee Counties) from the Second District Court of Appeal, and the Ninth Judicial Circuit (composed of Orange and Osceola Counties) from the Fifth District Court of Appeal. Notably, the First DCA will no longer be the appellate authority for the Fourth Judicial Circuit (composed of Clay, Duval, and Nassau Counties), which will join the Fifth District Court of Appeal.

Judges in three circuits joining the Sixth District Court of Appeal are moving from a well-established body of case law that presently controls their decisions to an uncertain world where no legal precedent exists to control their own decisions (except in situations where the Florida Supreme Court has previously ruled). The newly created Sixth DCA will require numerous case transfers in affected counties, but briefing schedules are not anticipated to be impacted.

Here is what that means for both the trial court judges of the Ninth, Tenth, and Twentieth Judicial Circuits and the new appellate judges on the Sixth District Court of Appeal's panel:

Trial Court Judges and the Supreme Court's Decision in *Pardo v. State*

In *Pardo v. State*, 596 So. 2d 665, 667 (Fla. 1992), the Florida Supreme Court explained the hierarchy of authority within the Florida court system as follows:

The District Courts of Appeal are required to follow Supreme Court decisions. As an adjunct to this rule[,] it is logical and necessary in order to preserve stability and predictability in the law that, likewise, trial courts be required to follow the holdings of higher courts — District Courts of Appeal. *The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision.* Alternatively, if the district court of the district in which the trial court is located has decided the issue, the trial court is bound to follow it. Contrarily, as between District Courts of Appeal, a sister district's opinion is merely persuasive.

Put another way, under *Pardo*, a trial court must follow any decision of first impression by any one of Florida's five (soon to be six) district courts of appeal. The Florida Supreme Court reaffirmed the *Pardo* holding in *Brannon v. State*, 850 So. 2d 452, 458 n.4 (Fla. 2003), stating: "If there is no controlling decision by this Court or the district court having jurisdiction over the trial court on a point of law, a decision by another district court is binding."

What does this mean for trial courts in the Ninth, Tenth, and Twentieth Judicial Circuits upon their arrival in the newly formed Sixth District Court of Appeal? If there is a matter of first impression on which the Florida Supreme Court has not ruled and the Sixth District Court of Appeal has not yet ruled, a decision from one of the other five district courts of appeal will be binding on these trial courts. This will be particularly interesting to follow in the event a judge in one of these three circuits is tasked with deciding an issue that is presently split by two or more of the current district courts of appeal.

Appellate Court Judges in the Sixth District, and the Freedom to Innovate

While *Pardo* affects trial courts, it does not affect the DCAs. The judges of the Sixth DCA will have the freedom to decide every legal issue that comes before it from scratch (unless there is already a binding Florida Supreme Court precedent). While the trial court judges in the Ninth, Tenth, and Twentieth Judicial Circuits may encounter a time in which they must decide between precedent in one district court of appeal or another, the judges on the Sixth District Court of Appeal are empowered to create new inter-district conflict where none currently exists. In fact, the Sixth District need not even decide whether to adopt the view of one or another sister court; it can simply create new law altogether.

Moving forward, it will be interesting to see how the judges in these circuits and the new DCA rule on matters of first impression at both levels. While the trial court judges are most likely to have appellate precedent to follow, the Sixth District is certain to have substantially more opportunities to forge its own path. When presented with the chance to do so, we suspect they will.

If you have any questions about Florida's newly created Sixth District Court of Appeal and how it may impact your pending legal matters, please do not hesitate to reach out to your Baker Donelson attorney.