

Welcoming Florida’s Sixth District Court of Appeal

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Florida’s court system has four tiers: (1) county courts, (2) circuit courts, (3) the intermediate appellate courts, which are known as the district courts of appeal (DCAs), and (4) the Supreme Court of Florida. Most appeals do not reach the Supreme Court of Florida and are, instead, heard by three-judge panels at the district court level.¹ As of January 2022, there were 20 judicial circuits and five districts in the State of Florida.²

In January 2023, Florida will welcome the Sixth District Court of Appeal—the first new appellate court in the State since 1979, when the Fifth District Court of Appeal was created.³ This article explains what you need to know about the new court—the background behind the creation of the Sixth District, and how the jurisdiction of Florida’s district courts will change with the addition of the Sixth District. It also reviews what questions remain unanswered related to the operation of the Sixth District.

Creating the New Court

In May 2021, then-Chief Justice Charles Canady created the District Court of Appeal Workload and Jurisdiction Assessment Committee (the “DCA Committee”) “to evaluate the necessity for increasing, decreasing, or redefining the appellate districts” under the framework in Rule 2.241 of the Florida Rules of General Practice and Judicial Administration.⁴ Rule 2.241 sets forth five criteria for this analysis: effectiveness, efficiency, access to appellate review, professionalism, and public trust and confidence.⁵

After several meetings and extensive analysis, on September 30, 2021, the DCA Committee filed its Final Report and Recommendations (the “Report”) with the Supreme Court.⁶ A majority of the DCA Committee recommended creating at least one additional district court.⁷ The Report

¹ *District Courts of Appeal*, Fla. Courts, <https://www.flcourts.org/Florida-Courts/District-Courts-of-Appeal> (last visited Sept. 13, 2022).

² *Trial Courts – Circuit*, Fla. Courts, <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit#:~:text=First%20Circuit%20%2D%20Escambia%2C%20Okaloosa%2C,Hernando%2C%20Lake%2C%20Marion%20and%20Sumter> (last visited Sept. 13, 2022).

³ Fla. Courts, <https://www.flcourts.org/6DCA> (last visited Sept. 13, 2022) [hereinafter *Sixth DCA*].

⁴ *In re: Redefinition of Appellate Dist. & Certification of Need for Additional Appellate Judges*, No. SC21-1543, 2021 WL 5504715, at *1 (Nov. 24, 2021) [hereinafter *Redefinition of Appellate Districts*]; *Final Report & Recommendations*, Dist. Ct. of Appeal Workload & Jurisdiction Assessment Comm. (Sept. 30, 2021) [hereinafter *DCA Committee Final Report*].

⁵ Rule 2.241, Fla. R. Gen. Practice & Judicial Admin.; *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1.

⁶ *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1. See generally *DCA Committee Final Report*, *supra* note 4.

⁷ *DCA Committee Final Report*, *supra* note 4, at 3; *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1.

explained that the majority’s “primary rationale” for this recommendation was “promot[ing] public trust and confidence.”⁸ Specifically, the majority believed that “an additional DCA would help provide adequate access to oral arguments and other proceedings, foster public trust and confidence based on geography and demographic composition, and help attract a diverse group of well-qualified applicants for judicial vacancies, including applicants from all circuits within each district.”⁹ In addition, a plurality of the DCA Committee favored redrawing the boundaries of the existing districts.¹⁰ A minority of the DCA Committee favored keeping the existing boundaries of the five districts.¹¹

In November 2021, a majority of the Supreme Court of Florida adopted the DCA Committee’s plurality recommendation to create an additional district court of appeal and redraw the existing district boundaries.¹² Chief Justice Charles Canady authored the opinion, joined by Justices Jorge Labarga, Alan Lawson,¹³ Carlos Muñiz, and John Couriel.¹⁴ The Court cited the DCA Committee’s reasoning for doing so.

Justice Jamie Grosshans concurred in result only. Justice Ricky Polston dissented, noting that the recommendation was not supported by any of the five chief judges of the existing district courts.

Following the Court’s recommendation, the Legislature proposed bill HB 7027.¹⁵ The legislation created the new Sixth District Court of Appeal and redefined the boundaries of the districts. However, the districts in the legislation are different than those suggested by the DCA Committee and adopted by the Court (discussed further below).¹⁶ Governor DeSantis signed the bill into law on June 2, 2022 (the “Legislation”).¹⁷

The Sixth District will open on January 1, 2023, in Lakeland, Polk County, Florida.¹⁸ The Second District Court of Appeal, which is currently located in Lakeland, will relocate to a new courthouse in St. Petersburg, Pinellas County, Florida.¹⁹ The new courthouse is currently under construction and will not be complete as of January 1, 2023. Until the new courthouse is complete, the Second District will operate out of its Stetson Law Center location in Tampa, Hillsborough County, Florida.²⁰

⁸ *DCA Committee Final Report*, *supra* note 4, at 3; *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1.

⁹ *DCA Committee Final Report*, *supra* note 4, at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1.

¹³ Justice Alan Lawson retired from the Court as of August 31, 2022, and was replaced by Justice Renatha Francis. Jim Ash, *Alan Lawson, Florida’s 86th Supreme Court Justice, Retires*, The Fla. Bar (Aug. 31, 2022), <https://www.floridabar.org/the-florida-bar-news/alan-lawson-floridas-86th-supreme-court-justice-retires/>.

¹⁴ *Redefinition of Appellate Districts*, 2021 WL 5504715, at *1.

¹⁵ This was not the first time legislation to create a sixth DCA was presented. The Report notes that such legislation was proposed in 2004. *DCA Committee Final Report*, *supra* note 4, at 28.

¹⁶ *Compare Redefinition of Appellate Districts*, 2021 WL 5504715, at *5, with Ch. 2022-163, Laws of Fla., at §§ 5-9.

¹⁷ Ch. 2022-163, Laws of Fla.

¹⁸ *Id.* at § 9.

¹⁹ *Id.*

²⁰ See *Tampa Office*, Fla. Second Dist. Ct. Appeal, <https://www.2dca.org/About-the-Court/Map-Directions/Tampa-Office> (last visited Sept. 13, 2022).

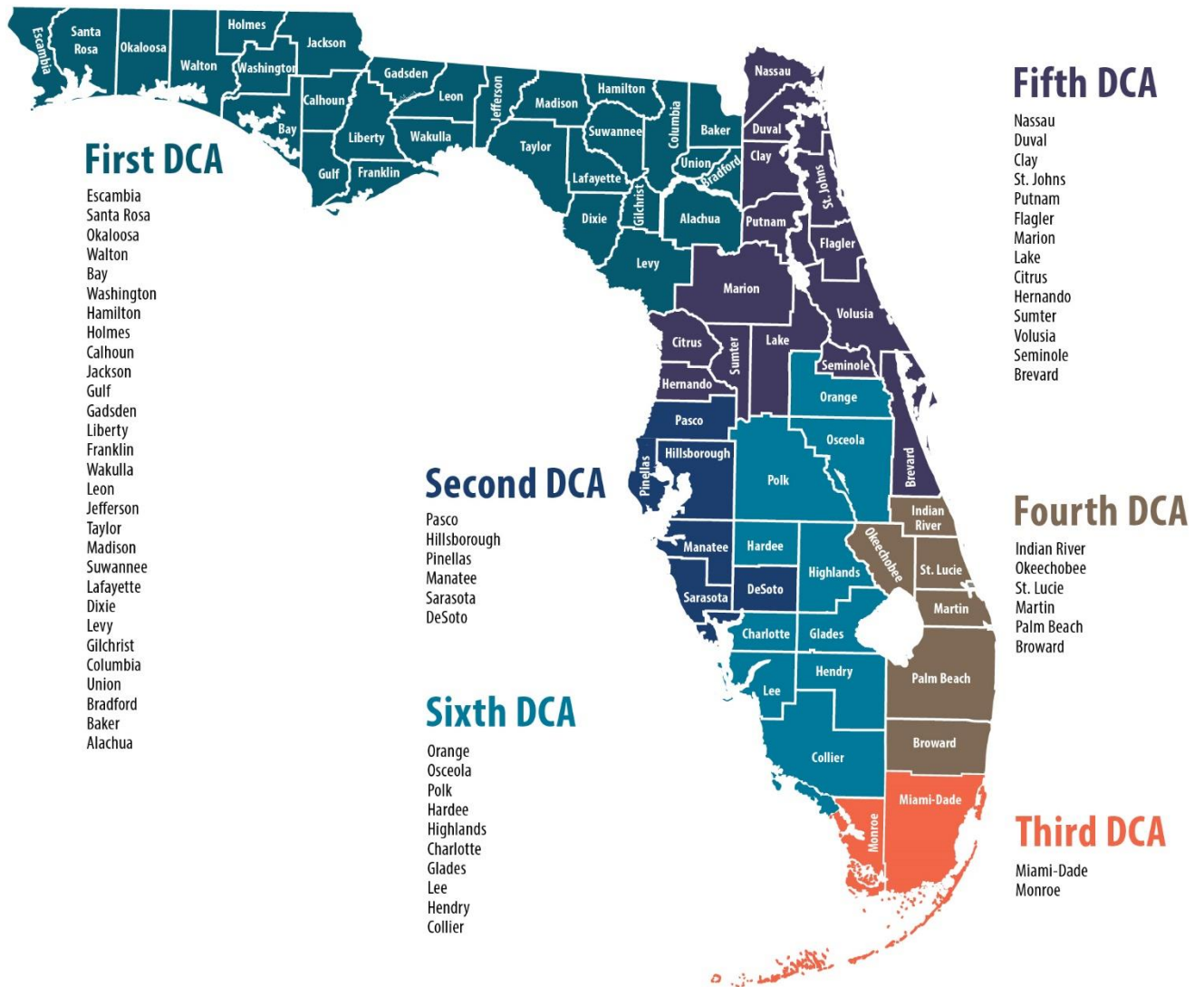
Jurisdiction of Florida’s District Courts of Appeal (Effective January 1, 2023)

While the Legislature followed the Court’s recommendation to redraw the districts, the boundaries of the districts in the Legislation are different than what the DCA Committee recommended and the Court adopted. Specifically, the Second and Sixth Districts in the Legislation are transposed from the Court’s recommendation. In the DCA Committee and Court model, the Second District was comprised of the 9th, 10th, and 20th Circuits, and the Sixth District was comprised of the 6th, 12th, and 13th Circuits. However, the legislative model that was ultimately adopted comprises the Second District of the 6th, 12th, and 13th Circuits and the Sixth District of the 9th, 10th, and 20th Circuits. The reason for the change, which occurred in the final weeks of the legislative process, is unclear.

Ultimately, under the Legislation, the jurisdiction of the Third and Fourth Districts will stay the same. However, the composition of the other districts will change as of January 1, 2023. The chart below summarizes the changes:

	Current	New	Change
First District	1 st , 2 nd , 3 rd , 4 th , 8 th , and 14 th Circuits	1 st , 2 nd , 3 rd , 8 th , and 14 th Circuits	The 4 th Circuit moved to the Fifth District.
Second District	6 th , 10 th , 12 th , 13 th , and 20 th Circuits	6 th , 12 th , and 13 th Circuits	The 10 th and 20 th Circuits move to the newly created Sixth District.
Third District	11 th and 16 th Circuits	11 th and 16 th Circuits	No change
Fourth District	15 th , 17 th , and 19 th Circuits	15 th , 17 th , and 19 th Circuits	No change
Fifth District	5 th , 7 th , 9 th , and 18 th Circuits	4 th , 5 th , 7 th , and 18 th Circuits	Added the 4 th Circuit. The 9 th Circuit moved to the Sixth District
Sixth District		9 th , 10 th , and 20 th Circuits	

As of January 1, 2023, Florida will be divided into six districts as follows:



Florida’s District Court Judges as of January 1, 2023

The Sixth District will have nine judges, and the State overall will gain seven district court judges.²¹ The chart below summarizes how the Legislation changes district court judgeships:

	§ 35.06, Fla. Stat. (2021)	Sitting Judges as of Nov. 2021	Legislation
First District	15 judges	13 judges	13 judges
Second District	16 judges	9 judges	15 judges
Third District	10 judges	10 judges	10 judges
Fourth District	12 judges	12 judges	12 judges
Fifth District	11 judges	7 judges	12 judges
Sixth District			9 judges
Total	64 judges	51 judges	71 judges

As to judicial assignments, current district court judges will be reassigned based on their place of residence as of December 22, 2021.²² Therefore, six of the Sixth District’s nine judges will come from other districts—five from the Fifth District and one from the Second District.²³ The other three will be appointed by the Governor.²⁴ As to the Governor’s appointments, the Legislation created the Sixth District Court of Appeal Judicial Nominating Commission (the “Sixth District JNC” or “JNC”).²⁵ The new Sixth District JNC held its first meeting on September 6, 2022.²⁶ On September 7, 2022, the JNC announced it would accept applications for the vacant positions on the Sixth District until September 19, 2022. Governor DeSantis has requested that the JNC submit names of nominees for the vacant positions to him on or before October 21, 2022.

²¹ In its November 2021 opinion, the Supreme Court certified the need for six new appellate judgeships to account for the addition of the Sixth District. *Redefinition of Appellate Districts*, 2021 WL 5504715, at *3. The Court’s certification of the need for additional judgeships is not unusual. Each year, the Court reviews whether there is a need for additional judgeships across the state and, if so, certifies such need to the legislature. *See id.*; *see also* Art. V, § 9, Fla. Const. However, a month later, the Court changed its prior certification, certifying the need for “seven rather than six additional district court judgeships, bringing the total number of judges on the state’s district courts of appeal.” *In re: Appellate Dists. & Certification of Need for Additional Appellate Judges*, No. SC 21-1543 (Dec. 22, 2021). Again, Justice Grosshans concurred in result, and Justice Polston dissented.

²² Ch. 2022-163, Laws of Fla., at § 15.

²³ *Sixth DCA*, *supra* note 3.

²⁴ *Id.*

²⁵ Ch. 2022-163, Laws of Fla., at § 17.

²⁶ Notice of Meeting (Sept. 4, 2022).

Questions that Remain Unanswered

Obviously, as the DCA Committee recognized in its Report, creating a new district court raises “operational issues with policy, fiscal, or legal implications.”²⁷ On these issues, the DCA Committee deferred to the Supreme Court and Legislature.

Some of the operational concerns the DCA Committee raised have been resolved. For example, one question the DCA Committee raised was the jurisdiction of offices across the state that provide court-appointed counsel—for example, the office of criminal conflict and civil regional counsel.²⁸ Before the creation of the Sixth District, these offices were each designated a district that coincided with the DCAs. The Legislature addressed this in the Legislation. Rather than creating new offices for the Sixth District, the Legislature amended the applicable statute to define five “regions,” which are the same as the old districts.²⁹

Also, certain key positions at the new court have been filled. Charles R. Crawford was appointed as the Sixth District’s acting marshal.³⁰ Crawford previously served as marshal for the Fifth District.³¹ Stacey Pectol will serve as the clerk of court for the Sixth District.³² Prior to this new role, Pectol served as clerk of the Arkansas Supreme Court and Court of Appeals since 2014.³³ Sarah Corbett will serve as director of central staff for the Sixth District, transitioning from a career staff attorney position at the Second District.³⁴

Questions that remain unanswered that could immediately affect practitioners include determining what precedent will control in the newly created Sixth District. Trial courts in the Sixth District will be bound by precedent from all of the district courts in areas where no conflict exists.³⁵ However, it is unclear whether any district’s precedent will be considered binding on the Sixth District, or if any particular district’s precedent will be considered as more persuasive authority where conflict exists. What does seem clear is that the new court creates an opportunity for appellate practitioners to shape the law in the new court on issues that directly affect clients.

Likewise, it is possible the new court will be more active than other district courts in issuing written opinions. At least in the beginning, the Sixth District will likely use written opinions to begin building and establishing its case law, including in instances where other districts might issue per curiam affirmances.

²⁷ *DCA Committee Final Report*, *supra* note 4, at 26.

²⁸ *Id.*

²⁹ Ch. 2022-163, at § 2.

³⁰ Jim Ash, *New Sixth District Court of Appeal Has Positions to Fill*, Fla. Bar (Sept. 7, 2022), <https://www.floridabar.org/the-florida-bar-news/new-sixth-district-court-of-appeal-has-positions-to-fill/>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Brannon v. State*, 850 So. 2d 452, 458 n.4 (Fla. 2003); *Pardo v. State*, 596 So. 2d 665, 667 (Fla. 1992).

Another outstanding issue is how the newly created Sixth District will be represented on the Supreme Court of Florida. Currently, under the Florida Constitution, the Supreme Court is comprised of seven justices—one from each of the five districts and two at-large.³⁶ It is unclear if and how this will change following the institution of the Sixth District.

To work on addressing these outstanding operational issues created by the establishment of a new district court, former Chief Justice Canady established the Workgroup on the Implementation of an Additional District Court of Appeal (the “Sixth DCA Workgroup”).³⁷ The Sixth DCA Workgroup is responsible for reporting to the Supreme Court on tasks that must be completed before the new Sixth District opens on January 1, 2023.³⁸

³⁶ Art. V, § 3, Fla. Const.

³⁷ *In re: Workgroup on the Implementation of an Additional District Court of Appeal*, No. AOSC22-18 (June 7, 2022).

³⁸ *Id.*