

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7059      PCB JDC 20-05      Jurisdiction of Appellate Courts  
**SPONSOR(S):** Appropriations Committee, Judiciary Committee, Fernandez-Barquin  
**TIED BILLS:**                      **IDEN./SIM. BILLS:** CS/SB 1510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	16 Y, 1 N	Jones	Luczynski
1) Appropriations Committee	24 Y, 2 N, As CS	Smith	Pridgeon

### SUMMARY ANALYSIS

The State Constitution establishes a four-level court system consisting of a supreme court, five district courts of appeal (DCAs), 20 circuit courts, and 67 county courts. The circuit courts and county courts primarily serve as trial courts, but the circuit courts also hear appeals from county courts involving many different types of cases and appeals from administrative bodies. A decision of a circuit court sitting as a trial court is generally appealable to the DCA.

Under current law, circuit courts have appellate jurisdiction over cases appealed from county court, except:

- Appeals where the amount in controversy is greater than \$15,000.
- Appeals of orders declaring invalid a statutory or constitutional provision.
- Appeals of orders certified to be matters of great public importance, which are accepted by a DCA for review.

Circuit courts also have jurisdiction over appeals from final administrative orders of local government code enforcement boards.

Last session, the Legislature passed CS/CS/HB 337 (2019), which limited circuit court appellate jurisdiction to civil cases appealed from county court with an amount in controversy of \$15,000 or less. This provision will be automatically repealed on January 1, 2023.

CS/HB 7059 eliminates appellate jurisdiction of circuit courts for cases originating in county court, which will cause a DCA to have appellate jurisdiction of final orders entered by county courts in civil and criminal cases. The bill allows circuit courts to continue to exercise jurisdiction over:

- Appeals from final administrative orders of local government code enforcement boards.
- Reviews and appeals as otherwise expressly provided by law.

The bill provides that it is a duty of the public defender for the judicial circuit designated to handle appeals within an appellate district, to handle all circuit court and county court appeals within the state courts and authorized federal courts if requested by any public defender or the office of criminal conflict and civil regional counsel within the appellate district that handled the trial.

The bill would have an indeterminate fiscal impact on state government and local governments.

The bill provides a recurring appropriation of \$209,929 from the State Courts Revenue Trust Fund to the State Courts System for Fiscal Year 2020-2021 for additional support staffing needed to implement the provisions of the bill.

The bill provides an effective date of January 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The State Constitution establishes a four-level court system consisting of a supreme court, five district courts of appeal (DCAs), 20 circuit courts, and 67 county courts.<sup>1</sup> The circuit courts and county courts primarily serve as trial courts, but the circuit courts also hear appeals from county courts involving many different types of cases and appeals from administrative bodies. After a case is decided by a circuit court sitting as a trial court, the losing party generally has the right to appeal to the appropriate DCA.<sup>2</sup>

The Constitution also permits the Legislature to substantially define the jurisdictions of the circuit courts and county courts by statute.<sup>3</sup> As defined by statute, the circuit court has exclusive jurisdiction over several case types, including felony cases and probate matters, but the primary distinction between the jurisdictions of the courts is a monetary threshold.<sup>4</sup>

#### Recent Legislative Changes to Trial Court Jurisdiction

During the 2019 Legislative Session, the Legislature increased the monetary threshold to expand the jurisdiction of the county courts. Since 1995, this threshold was \$15,000.<sup>5</sup> Claims exceeding \$15,000 were filed in circuit court, and county courts had jurisdiction to hear claims valued up to that amount. With the 2019 legislation, effective January 1, 2020, the threshold became \$30,000. The threshold increases again automatically on January 1, 2023, to \$50,000.

Although the 2019 legislation increased the value of claims that could be litigated in county court, the legislation did not also increase the jurisdiction of circuit courts to hear appeals from county courts. Appeals of county court orders or judgments where the amount in controversy is greater than \$15,000 will continue to be heard by a DCA until January 1, 2023.<sup>6</sup> Appeals of county court orders or judgments involving amounts of \$15,000 or less will continue to be heard in circuit court.

#### Supreme Court's Recommended Changes to Appellate Court Jurisdiction

About the same time the 2019 legislation was filed increasing the monetary jurisdictional threshold, the Chief Justice of the Florida Supreme Court issued an administrative order directing the Workgroup on Appellate Review of County Court Decisions to:

- Study whether the circuit courts should be uniformly required to hear appeals in panels and propose appropriate rule amendments, if necessary.
- Review a recommendation made by the Judicial Management Council's Workgroup on County Court Jurisdiction<sup>7</sup> and propose appropriate amendments to law or rule if necessary.
- Consider whether other changes to the process for appellate review of county court decisions would improve the administration of justice, in which case the Workgroup may propose any necessary revisions in the law and rules to implement the recommended changes.<sup>8</sup>

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<sup>1</sup> See art. V, ss. 1 – 6, Fla. Const.

<sup>2</sup> See art. V, s. 4(b)(1), Fla. Const.

<sup>3</sup> Article V, s. 6(b), Fla. Const. (stating that "[t]he county courts shall exercise the jurisdiction prescribed by general law." Under Article V, s. 5(b), the jurisdiction the circuit courts includes "original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law." Circuit courts also "have the power of direct review of administrative action prescribed by general law." *Id.*

<sup>4</sup> S. 26.012, F.S. (defining the jurisdiction of the circuit courts); s. 34.01, F.S. (defining the jurisdiction of the county courts).

<sup>5</sup> Ch. 2019-58, ss. 1 and 9, Laws of Fla.

<sup>6</sup> Ch. 2019-58, s. 1., Laws of Fla. (providing that the limitation on the appellate jurisdiction of circuit courts to matters where the amount in controversy is \$15,000 or less is repealed on January 1, 2023).

<sup>7</sup> The Workgroup's recommendation was that any modification to the county court jurisdictional amount should include a provision allowing conflicts in circuit court appellate decisions within the same district to be certified to the DCA.

<sup>8</sup> Supreme Court of Florida, In Re: Workgroup on Appellate Review of County Court Decisions, Administrative Order No. AOSC19-3, (Jan. 4, 2019), <https://www.floridasupremecourt.org/content/download/425765/4589231/AOSC19-3.pdf> (last visited Jan. 27, 2020).

In October 2019, the Workgroup issued a report containing its recommendations. The Supreme Court agreed with the recommendation in part, indicating its support for legislation during the 2020 Regular Session to transfer circuit court appellate and related extraordinary writ authority to the DCAs. The Court also expressed a desire for the legislation to become effective no earlier than January 1, 2021, to allow adequate time for implementation.<sup>9</sup>

### Authority to Define Appellate Court Jurisdiction

Although the Legislature has broad authority to define the jurisdiction of the circuit and county courts, its authority to define the jurisdiction of the DCAs is more limited. The State Constitution gives the:

- Circuit courts "jurisdiction over appeals when provided by general law."<sup>10</sup>
- DCAs jurisdiction to hear appeals that may be taken as a matter of right from final judgments or orders of trial courts, which are not directly appealable to the Supreme Court or a circuit court.<sup>11</sup>

Taken together, these provisions mean that the Legislature has the authority to determine the appellate jurisdiction of the circuit court; and that anything not designated by the Legislature as being within the circuit courts (or Supreme Court's) jurisdiction will be appealed to the DCA. In turn, if the Legislature removes a type of case from the appellate jurisdiction of a circuit court, the DCA will, by default, become the proper court to hear that type of appeal.

The DCAs also have the authority to:

- Hear appeals of certain interlocutory orders.
- Review administrative action as prescribed by general law.<sup>12</sup>

These provisions mean that a litigant has a right to only one appeal. As such, a litigant may appeal a final order of a county court or an administrative entity to a circuit court, but the litigant has no right to further appeal to a DCA.<sup>13</sup> The order may be reviewed by a DCA only by a writ of certiorari, which means that the DCA has the discretion to hear the case.<sup>14</sup> Moreover, a review by certiorari is much more limited in scope than a review by appeal.<sup>15</sup>

The certiorari jurisdiction of the DCAs is defined, not by statute, but by the Florida Rules of Procedure.<sup>16</sup> Similarly, the authority for a DCA to hear the appeal of an interlocutory order, which is a non-final order from a lower tribunal, is defined by court rules, not statutes. Because the Constitution divides the authority to define the appellate jurisdiction of the courts between the Supreme Court and the Legislature, expanding the appellate jurisdiction of the DCAs while reducing the appellate jurisdiction of the circuit courts requires cooperation between the judiciary and the Legislature.<sup>17</sup>

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<sup>9</sup> See Florida Bar News, *Justices Support Having DCAs Handle County Court Appeals*, <https://www.floridabar.org/the-florida-bar-news/justices-support-having-dcas-handle-county-court-appeals/> (last visited Jan. 27, 2020).

<sup>10</sup> Art. V, s. 5(b), Fla. Const.

<sup>11</sup> Art. V, s. 4(b)(1), Fla. Const.

<sup>12</sup> Art. V, s. 4(b), Fla. Const.

<sup>13</sup> *City of Deerfield Beach v. Valliant*, 419 So. 2d 624, 625 (Fla. 1982).

<sup>14</sup> *Id.*

<sup>15</sup> See *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, n.3. (Fla. 1995); *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001).

<sup>16</sup> Fla. R. Civ. P. 9.030(b)(2).

<sup>17</sup> For example, the Legislature, in many cases, can provide for the appeal of a final order of a county court to a DCA by eliminating the statutory authority for the appeal to be heard by a circuit court. By default, the appeal would have to be heard by a DCA. However, without changes to the court rules, interlocutory appeals from a county court case would continue to be heard by a circuit court that would not have jurisdiction to hear the appeal of a final order from the case.

## Jurisdiction to Answer Certified Questions

Current law authorizes a county court to certify important questions to a DCA in a final judgment. The DCA has absolute discretion to answer the certified question or transfer the case back to the circuit court having appellate jurisdiction.<sup>18</sup>

## Problem of Conflicting Circuit Court Appellate Decisions

Decisions of circuit courts in their appellate capacity are binding on all county courts within their circuit.<sup>19</sup> However, circuit courts are not bound by decisions of other circuit courts within their circuits. As a result, conflicting appellate decisions within a circuit court create instability in the law. County court judges and non-parties to the prior litigation do not know how or which appellate decisions to follow.<sup>20</sup>

When conflicting decisions are rendered by different panels of judges within the same DCA, the Florida Rules of Appellate Procedure permit the court to conduct an en banc proceeding,<sup>21</sup> which allows the full court to reconcile its potentially conflicting decisions.<sup>22</sup> In contrast, judicial circuits have no similar mechanism that enables them to reconcile their intra-circuit conflicting opinions. Moreover, a circuit court has no authorization to certify intra-circuit court conflicting opinions to a DCA for review.<sup>23</sup>

## Legal Representation

The Office of the Attorney General is responsible for representing the state in all suits or prosecutions, in which the state may be a party or in anywise interested, in the Supreme Court and district courts of appeal.<sup>24</sup> For circuit and county court cases in which the state is a party, the State Attorney of the respective judicial circuit in which the case was filed is responsible for representing the state.<sup>25</sup>

The Public Defender shall represent any person determined to be indigent under s. 27.52, F.S.<sup>26</sup> The defense of indigent persons in cases appealed from a county or circuit court to a district court of appeal is the responsibility of the public defender office designated to handle appellate cases of all circuits within their respective appellate district.<sup>27</sup> If a Public Defender determines at any time during the representation of two or more defendants that counsel cannot be provided by their office due to a conflict of interest, the Office of Criminal Conflict and Civil Regional Counsel (RCC) of the appellate district is appointed to provide legal services to the indigent defendants.<sup>28</sup>

- First DCA:<sup>29</sup> Second Judicial Circuit Public Defender – RCC 1
- Second DCA:<sup>30</sup> Tenth Judicial Circuit Public Defender – RCC 2
- Third DCA:<sup>31</sup> Eleventh Judicial Circuit Public Defender – RCC 3
- Fourth DCA:<sup>32</sup> Fifteenth Judicial Circuit Public Defender – RCC 4
- Fifth DCA:<sup>33</sup> Seventh Judicial Circuit Public Defender – RCC 5

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<sup>18</sup> See ss. 34.017 and 35.065, F.S.

<sup>19</sup> See *Fieselman v. State*, 566 So. 2d 768, 770 (Fla. 1990).

<sup>20</sup> See Sebastien Rogers, *The Chasm in Florida Appellate Law: Intra-Circuit Conflicting Appellate Decisions*, Vol. 92, No. 4 Fla. Bar J. 52 (Apr. 2008).

<sup>21</sup> Fla. R. Civ. P. 9.331.

<sup>22</sup> *Id.*

<sup>23</sup> Rogers, *supra* n. 15.

<sup>24</sup> S. 16.01(4), F.S.

<sup>25</sup> S. 27.02(1), F.S.

<sup>26</sup> S. 27.51(1), F.S.

<sup>27</sup> S. 27.51(4), F.S.

<sup>28</sup> S. 27.511(5), F.S.

<sup>29</sup> First DCA: 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Judicial Circuits

<sup>30</sup> Second DCA: 6<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 20<sup>th</sup> Judicial Circuits.

<sup>31</sup> Third DCA: 11<sup>th</sup> and 16<sup>th</sup> Judicial Circuits.

<sup>32</sup> Fourth DCA: 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Judicial Circuits.

<sup>33</sup> Fifth DCA: 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 18<sup>th</sup> Judicial Circuits.

## Appellate Filing Fees

When a party appeals a case from circuit court to a district court of appeal, the filing fee is \$400.<sup>34</sup> That fee is allocated:

- \$50 to the State Courts Revenue Trust Fund;
- \$250 to the General Revenue Fund; and
- \$100 to the clerks of court.<sup>35</sup>

When a party appeals a case from county court to circuit court, the filing fee is \$281.<sup>36</sup> That fee is allocated:

- \$1 to the State Courts Revenue Trust Fund;
- \$260 to the clerks of court; and
- \$20 to the General Revenue Fund.<sup>37</sup>

## **Effect of Proposed Changes**

CS/HB 7059 transfers from the circuit courts to the DCAs the jurisdiction to hear appeals of decisions of county courts in civil and criminal cases. The bill is based on the recommendations of a recent report by the Judicial Management Council's Workgroup on Appellate Review of County Court Decisions.

### Jurisdiction of the Circuit Court

The bill eliminates the authority of the circuit courts to hear appeals from county courts in:

- Criminal cases, by repealing s. 924.08, F.S., which provides that misdemeanor appeals from the county court are taken to the circuit court.
- Civil cases, by removing from s. 26.012, F.S., provisions stating that appeals of civil cases are to the circuit courts.

These modifications to ss. 924.08 and 26.012, F.S., will, by operation of the State Constitution, leave with the DCAs all jurisdiction of appeals from final orders of county courts in civil and criminal cases.<sup>38</sup> Circuit courts, however, will retain jurisdiction to hear appeals from final administrative orders of local code enforcement boards and to hear appeals and review other matters as expressly provided by law.

The bill provides that it is a duty of the public defender for the judicial circuit designated to handle appeals within an appellate district, to handle all circuit court and county court appeals within the state courts and authorized federal courts if requested by any public defender or the office of the criminal conflict and civil regional counsel within the appellate district that handled the trial.

### Certification of Questions of Importance

CS/HB 7059 provides that a county court may certify important questions to a DCA only in a final judgment that is appealable to a circuit court. This change recognizes that there is no need for a county court to certify questions relating to matters that a litigant may appeal to a DCA as a matter of right.

The bill provides a recurring appropriation of \$209,929 from the State Courts Revenue Trust Fund to the State Courts System for Fiscal Year 2020-2021 to implement the provisions of the bill. The bill provides an effective date of January 1, 2021.

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 26.012, F.S., relating to jurisdiction of circuit court.

**Section 2:** Amends s. 34.017, F.S., relating to certification of questions of district court of appeal.

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<sup>34</sup> Ss. 28.241(2), 35.22(2)(a), F.S.

<sup>35</sup> Ss. 28.241(2), 35.22(5), F.S.

<sup>36</sup> Ss. 28.241(2), 44.108, F.S.

<sup>37</sup> S. 28.241(2), F.S.

<sup>38</sup> See art. V, s. 4(b)(1), Fla. Const.

**Section 3:** Amends s. 35.065, F.S., relating to review of judgment or order certified by county court to be of great public importance.

**Section 4:** Repeals s. 924.08, F.S., relating to courts of appeal.

**Section 5:** Provides an effective date of January 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference determined the bill would increase appellate filing fee revenue for the state by a significant amount.

The bill alters the appellate jurisdiction structure within the state court system. Based on the assumption that approximately 95% of the appellate cases would move from the circuit court to the DCA, the shift of appellate case filings would result in additional revenue from appellate filing fees in the amounts of approximately \$0.4 M remitted to the General Revenue Fund, and \$0.1 M remitted to the State Courts Revenue Trust Fund.<sup>39</sup>

#### 2. Expenditures:

The Office of the State Courts Administrator (OSCA) estimates the bill would increase DCA workload as a result of additional appellate filings, creating the need for \$209,929 in recurring funds for an additional six OPS staff for six months in Fiscal Year 2020-2021.<sup>40</sup> The bill provides a recurring appropriation of \$209,929 from the State Courts Revenue Trust Fund to the State Courts System for Fiscal Year 2020-2021 for this purpose. Additional recurring funds in the amount of \$208,710 will be needed to annualize the funding in Fiscal Year 2021-2022.

Shifting appeals originating in county courts from the circuit courts to the DCA, would increase appellate workload on the Department of Legal Affairs by an indeterminate amount. State Attorney offices may have a reduction in workload related to appeals as a result of the jurisdictional shift.

The bill may result in a shift of indigent defense appellate workload from the public defender's office in a judicial circuit to the designated appellate public defender's office of the corresponding district, to the extent that indigent defendants appeal county court cases to the DCA, that under current law would be appealed to the circuit court.

The total fiscal impact of the bill is indeterminate due to lack of data to fully quantify the changes in judicial workload and other potential impacts of the bill on court operations.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference determined the bill would decrease appellate filing fee revenue for the Clerks of the Court by a significant amount.

The bill alters the appellate jurisdiction structure within the state court system. Based on the assumption that approximately 95% of the appellate cases would move from the circuit court to the DCA, the shift of appellate case filings would result in a reduction of \$0.3 M of revenue from appellate filing fees remitted to the Clerk of Court Fine and Forfeiture Trust Fund.<sup>41</sup>

#### 2. Expenditures:

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<sup>39</sup> Revenue Estimating Conference, *Impact Conference: HB 7059 Appellate Filing Fees*, February 14, 2020.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

The bill would reduce appellate case filings for the Clerks of Court offices, and would reduce associated workload by an indeterminate amount.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may necessitate changes in filing fees for certain appeals, which may have an indeterminate fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

The bill would result in increased filing fees for a party which files for a notice of appeal from a county court. Under current law, a party filing a notice of appeal from a county court to a circuit court is required to pay a total of \$281 of filing fees. The appellate jurisdiction shift from the circuit court to the DCA would result in a party being required to pay \$400 in filing fees for a notice of appeal from a county court.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 18, 2020, the Appropriations Committee adopted two amendments, and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that it is a duty of the public defender for the judicial circuit designated to handle appeals within an appellate district, to handle all circuit court and county court appeals within the state courts and authorized federal courts if requested by any public defender or the office of criminal conflict and civil regional counsel within the appellate district that handled the trial.
- Provides a recurring appropriation of \$209,929 from the State Courts Revenue Trust Fund to the State Courts System for Fiscal Year 2020-2021 for additional support staffing needed to implement the provisions of the bill.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.