Steering Committee on Arizona Appellate Case Processing Standards

Final Report

March 24, 2016

I. Introduction

The National Center for State Courts (NCSC) published the *Model Time Standards for State Appellate Courts ("Model Standards")* in 2014 (See Appendix 1). These standards were developed by the Conference of Chief Justices and the Conference of State Court Administrators, in conjunction with participation from the Conference of Chief Judges of the State Courts of Appeal, the National Conference of Appellate Court Clerks and the American Bar Association to address the disposition of appellate cases in the state courts. The model time standards encompass civil and criminal cases in both the intermediate appellate courts and courts of last resort.

As part of an ongoing effort to improve the judicial system process, as identified in the *Advancing Justice Together* strategic agenda, the Arizona Supreme Court ("Court") established the Steering Committee on Arizona Appellate Case Standards ("Committee") through administrative order 2015-90 entered November 4, 2015. The members of the Committee are identified in Appendix 2. The Court charged the Committee with evaluating the *Model Standards* and developing and recommending case processing standards for the Arizona Supreme Court and both divisions of the Arizona Court of Appeals.

The Committee held a series of meetings and invited comment from various legal groups across the state regarding the *Model Standards* as they relate to Arizona and what, if any, alternative time standards should be considered. In developing its recommendations, the Committee considered statutory requirements, court rules, court jurisdiction, time-reference points already established and measured in CourTools, data availability, current statistical information, comments received, and other relevant factors for statewide appellate case processing standards.

II. Recommendations

The Committee recommends establishing time standards for both the Court of Appeals and the Supreme Court as reflected in Appendix 3. Time standards will assist the courts in improving case processing, maintaining accountability to the public, and identifying areas that need greater resources.

Although the *Model Standards* established standards for civil and criminal cases, the Committee recommends that the Court set standards for the following case types in both the Court of Appeals and the Supreme Court: criminal, civil, family, juvenile, industrial commission, and special actions. The courts currently measure performance in CourTools for these case types. Adopting standards for these same case types will enable the courts to continue to measure performance of these case types while permitting them to end ~~their~~ formal tracking of the ~~use of the~~ CourTools, Time to Disposition measure, thereby eliminating a duplication of effort.

For the Court of Appeals, the Committee recommends following the *Model Standards* by setting standards for Filing to Disposition. The starting event for this measure will be the filing of the notice of appeal in the trial court and the ending event will be the final disposition of the case. The starting event for this measure will be the notice of filing in the Court of Appeals and the ending event will be the final disposition of the case. For the Supreme Court, the Committee recommends following the *Model Standards* by setting standards for (1) Filing to Discretionary Review, and (2) Review Granted to Disposition. The starting event for the Filing to Discretionary Review is the filing of the initial document (e.g. Petition to Review) with the ending event being the decision to grant or deny review. The starting event for the Review Granted to Disposition is review being granted and the ending event is the final disposition of the case. (There are additional stages in the CourTools Time to Disposition measure for both courts.) The Committee chose these stages as they permit comparison to the *Model Standards*.

Commented [DS1]: Two options are listed here, one will be deleted after the Committee confers.
The statistical data for both COAs listed in appendix 4 is from the notice of filing in the COA.

Commented [DS2]: This may need to be reworked depending on the decision as to which start event is used.

For each case type, the Committee recommends adoption of a two-tiered standard as suggested in the *Model Standards*. The first tier would measure the point at which 75 percent of all cases should reach the end of the stage, while the second tier would measure the point at which 95 percent of all cases should reach the end of the stage. The Committee recognizes that approximately 5 percent of cases will require more time to resolve due to complexities unique to those cases. For purposes of comparison, the courts' performances in FY2013, FY2014 and FY2015 under the recommended standards are set forth in Appendix 4.

A. Recommended standards for the Court of Appeals

The Committee generally worked from the *Model Standards* to establish standards. Because the Committee recommends setting standards for different case types, however, the recommended standards are not entirely comparable to the *Model Standards*. Additionally, Committee members kept in mind that some case types receive priority for resolution, which meant longer standards for lower-priority case types, with the exception that recommended standards for criminal appeals do not reflect their relative priority, given the due process concerns outlined below. The Committee also considered the ability of the courts' case management systems to track the standards and issue reports.

The Committee initially contemplated establishing a measurement stage from the time a case is deemed "at issue" until a decision is issued. This stage reflects the time after the parties have completed briefing and are awaiting action from the court. After much discussion, the Committee opted not to recommend measuring this stage. First, the *Model Standards* do not provide a standard for this stage. Second, members could not agree on appropriate standards for this measure.

The Committee recommends, however, that the courts track the amount of time a case remains in a particular stage and report the results. If possible, the Committee recommends tracking the amount of time a case remains in the following stages: (1) notice of appeal to completion of the record; (2) completion of the record to "at issue"; (3) "at issue" to assignment to a panel; and (4) assignment to a panel to disposition. If it is not possible to accurately track the completion of the record, the Committee recommends

Commented [DS3]: Per-Judge Brown: Because Division One will not be able to accurately track this stage and/or such measurements would not be helpful, I recommend that the Committee remove this stage from the reporting requirement. In CV and FC cases, there is no Completion of Record data field. In those cases, notice of filing occurs when we receive the record from the superior court, which in most cases occurs within the 30-day time limit established by rule. The court then issues a Notice to Counsel, alerting them that the filing fee is due and stating the due date for filing the opening brief. That notice is sent out within one to three days after the Notice of filing. The appellant is responsible for obtaining and filing transcripts, if any. For IC cases, a writ/petition is filed with our court (notice of filing), then the Industrial Commission has 10 days to get us the record. When that comes in, the court issues a notice alerting counsel of the time period for filing the opening brief and paying the filing fee. Similar to CV and FC cases, it occurs promptly after receiving the record. For JV and CR cases, we do have a data field titled Notice of Completion, which corresponds to the date on which the court issues a document titled Notice of Completion of Record, which reflects the point at which the court believes that the record documents and all pertinent transcripts have been filed. However, as a practical matter, after the Notice of Completion has been filed, the court receives motions to supplement to the record, which occurs in many CR cases, and in some JV cases. When the court grants the motion (which is does regularly, to ensure that defense counsel is able to have the portions of the records needed to thoroughly review the record and explore potential issues, the Notice of Completion date is no longer valid, as the record is not complete. Attempting to publish data on this stage will unnecessarily create confusion.

that the courts combine the initial two stages above into one initial stage. In reporting the results, the courts should report the average number of days in each stage and the number of days in which 75 percent and 95 percent of the cases completed each stage.

1. Criminal

Notwithstanding that criminal cases have priority over most other types of appeals, t~~T~~he Committee recommends that the Court avoid setting standards that would encourage courts to deny requests for needed extensions of time to complete necessary tasks, thereby risking a defendant's constitutional right to competent counsel. To this end, members had extensive discussions about how to set appropriate standards while ensuring that sufficient time exists to gather the record and brief the issues. The Committee recommends that the Court adopt the *Model Standards* for Filing to Disposition in criminal cases.

Recommended Standards	*Model Standards*
Filing to Disposition ➢ 75% within 450 days ➢ 95% within 600 days	Filing to Disposition ➢ 75% within 450 days ➢ 95% within 600 days

2. Civil

The Committee recommends that the Court adopt the *Model Standard* of 390 days for the 75th percentile tier of the Filing to Disposition standard. Members recognize that this may be a difficult standard to meet for our courts, but we do not advise adopting a more relaxed standard than the *Model Standard*. The Committee recommends a standard of 500 days for the 95th percentile tier, which is 50 days longer than the *Model Standard*. Because the *Model Standards* include Family cases within the civil category, and courts

typically resolve those cases more quickly, the Committee believes that the longer standard for the 95th percentile tier in civil cases is justified.

Recommended Standards	*Model Standards*
Filing to Disposition	Filing to Disposition
➢ 75% within 390 days	➢ 75% within 390 days
➢ 95% within 500 days	➢ 95% within 450 days

3. Family

The Committee consulted the civil *Model Standards* as a starting point in recommending standards for family cases. Because family cases have priority, however, the Committee adjusted the civil standards timeframe downward for the 75th percentile.

The Committee recommends that the Filing to Disposition standards be set at 365 days for the 75th percentile tier and 450 days for the 95th percentile tier.

Recommended Standards	*Model Standards (Civil)*
Filing to Disposition	Filing to Disposition
➢ 75% within 365 days	➢ 75% within 390 days
➢ 95% within 450 days	➢ 95% within 450 days

4. Juvenile

The Model Standards do not recommend standards for juvenile cases. The Committee's recommendations rest on current case-processing measurements coupled with the need to resolve these cases as expeditiously as possible. The committee discussed fall-out rates in juvenile Court of Appeal cases. Many cases are dismissed or abandoned early in the case and are never assigned to a judge or panel. If this pattern changes over time, it may impact the court's ability to meet the standards.

The Committee recommends that the Filing to Disposition standards be set at 200 days for the 75th percentile tier and 250 days for the 95th percentile tier.

Recommended Standards

Filing to Disposition
- 75% within 200 days
- 95% within 250 days

5. Industrial Commission

Because Industrial Commission cases are comparable to civil cases, the Committee consulted the *Model Standards* for civil cases in recommending standards. Because Industrial Commission cases are given statutory priority and generally take less time to resolve than more complex civil cases, the Committee adjusted the *Model Standards* timeframes downward.

The Committee recommends that the Filing to Disposition standards be set at 275 days for the 75th percentile tier and 365 days for the 95th percentile tier.

Recommended Standards	*Model Standards (Civil)*
Filing to Disposition	Filing to Disposition
➢ 75% within 285 days	➢ 75% within 390 days
➢ 95% within 365 days	➢ 95% within 450 days

6. Special Actions

Because the *Model Standards* do not set standards for special actions, the Committee relied on the courts' performance under the CourTools measurements to recommend standards for special actions. The Committee recommends that the Filing to Disposition standards be set at 40 days for the 75th percentile tier and 80 days for the 95th percentile tier.

Recommended Standards

Filing to Disposition

- 75% within 40 days
- 95% within 80 days

The Dissent

The dissent disagrees with the Committee's decision to not recommend standards for the time a case becomes at issue until disposition, and substantially focuses criticism on Division One's operating procedures in criminal cases. Because this Committee is not charged with examining any court's operating methodologies, we do not respond to these comments. But the dissent compels us to make two points. First, as previously noted, the Committee recommends that the Supreme Court refrain from setting standards in criminal cases that would encourage courts to deny requests for needed extensions of time to complete necessary tasks, thereby risking a defendant's constitutional right to competent counsel. Second, the *Model Standards* do not establish standards for the time a case becomes at issue until disposition, and, after vigorous debate, the Committee was unable to reach an accord on appropriate standards. There was no intent, however, to permit the Court of Appeals to meet established standards by unjustifiably denying extensions of time requested by defense counsel.

B. Recommended Standards for the Supreme Court

The Committee recommends the adoption of a standard for Filing to Discretionary Review as well as a standard for Review Accepted/Granted to Disposition both of which were contemplated in the *Model Standards* for courts of last resort. Members recognized that measuring from Review Accepted/Granted to Disposition does not exactly measure

the time a particular justice has to write an opinion. Nevertheless, measuring from this point is the best way to measure performance within the Supreme Court's~~under our~~ case management system. To remain consistent with the proposed Court of Appeals' measures, the Committee also recommends differentiating between family and civil cases. Finally, as with the Court of Appeals' standards, the Committee contemplated prioritization of case types when recommending standards for the Supreme Court.

1. Criminal

The Committee recommends that Arizona adopt the *Model Standards* for Filing to Discretionary Review and Review Granted to Disposition in criminal cases.

Recommended Standards	*Model Standards*
Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days	Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days
Review Granted to Disposition ➢ 75% within 180 days ➢ 95% within 240 days	Review Granted to Disposition ➢ 75% within 180 days ➢ 95% within 240 days

2. Civil

The Committee recommends that Arizona adopt the *Model Standards* for Filing to Discretionary Review and Review Granted to Disposition in civil cases.

Recommended Standards	*Model Standards*
Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days	Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days
Review Granted to Disposition	Review Granted to Disposition

- 75% within 180 days
- 95% within 240 days

- 75% within 180 days
- 95% within 240 days

3. Family

As it did for the Court of Appeals' standards, the Committee consulted the *Model Standards* civil standards as a starting point in recommending standards for family cases. Because family cases have priority, however, the Committee adjusted the civil standards downward for both percentiles in each stage.

Recommended Standards	*Model Standards (Civil)*
Filing to Discretionary Review ➢ 75% within 125 days ➢ 95% within 150 days	Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days
Review Granted to Disposition ➢ 75% within 120 days ➢ 95% within 180 days	Review Granted to Disposition ➢ 75% within 180 days ➢ 95% within 240 days

4. **Juvenile**

The *Model Standards* do not recommend standards for juvenile cases. The Committee's recommendations rest on current case-processing measurements coupled with the need to resolve these cases as expeditiously as possible.

The Committee recommends that the Filing-to-Discretionary-Review standard be set at 125 days for the 75th percentile tier and 150 days for the 95th percentile tier. For the Review Granted to Disposition standards, the Committee recommends 120 days for the 75th percentile tier and 180 days for 95th percentile tier.

Recommended Standards

Filing to Discretionary Review
- 75% within 125 days
- 95% within 150 days

Review Granted to Disposition
- 75% within ~~180~~ 120 days
- 95% within ~~240~~ 180 days

5. Industrial Commission

The Committee recommends that the Court adopt the same standards that are recommended for both criminal and civil cases.

Recommended Standards	*Model Standards (Criminal/Civil)*
Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days	Filing to Discretionary Review ➢ 75% within 150 days ➢ 95% within 180 days
Review Granted to Disposition ➢ 75% within 180 days ➢ 95% within 240 days	Review Granted to Disposition ➢ 75% within 180 days ➢ 95% within 240 days

6. Special Actions

Because the *Model Standards* do not set standards for special actions, the Committee relied on the Court's performance under the CourTools measurements to recommend standards for special actions. The Committee recommends that the Filing to Discretionary Review standard be set at 70 days for the 75th percentile tier and 120 days for the 95th percentile tier. For the Review Accepted to Disposition standard, the Committee recommends 40 days for the 75th percentile and 80 days for the 95th percentile.

Recommended Standards

Filing to Discretionary Review
- 75% within 70 days
- 95% within 120 days

Review Accepted to Disposition
- 75% within 40 days
- 95% within 80 days

C. CourTools

The Committee recommends that the Court cease requiring the appellate courts to use the CourTools Time to Disposition measure, except as explained below. In its discretion, a court may continue using CourTools Time to Disposition measure as a management tool to (1) measure stages that do not correspond to the standards recommended by the Committee, and (2) to compare future performance to past performances under CourTools. The Committee recommends, however, that each court continue (1) to track Case Clearance and Age of Pending Caseload, and (2) conduct the biennial Bench and Bar Survey. The resulting data should be published annually together with the performance data relating to the appellate standards.

Commented [DS4]: Judge Brown is requesting that the reference to "Time to Disposition measure" be removed.

III. Conclusion

Within a short timeframe, the Committee members have worked together to define the recommended time standards outlined above. The Committee understands that the achievement of time standards requires cooperation, communication, and commitment from multiple parties and agencies involved in the judicial process. The courts should seek an on-going dialogue with stakeholders to achieve case processing standards and should strongly encourage stakeholders to examine and refine current practices to achieve timely case resolution.

The Committee recognizes that minor modifications to the court's current case management systems may be necessary. While these modifications are needed in order to eliminate the need for manual analysis, the data can be compiled with current reports

and minor manual adjustments. The Committee recommends that each court conduct an internal review at least quarterly and, in an effort to promote transparency and accountability, to report the annual figures to the Administrative Office of the Courts (AOC) annually for publishing on the AOC's website. Finally, the Committee recommends that representatives from each appellate court meet annually to discuss each court's performance and to determine if any adjustments to the standards should be recommended.

The Committee hereby respectfully requests the adoption the time standards listed herein and provided in Appendix 3.

Honorable Ann A. Scott Timmer, Chair
Steering Committee on Arizona
Appellate Case Processing Standards

MODEL TIME STANDARDS

for

STATE APPELLATE COURTS

Conference of CHIEF JUSTICES

MODEL TIME STANDARDS

for

STATE APPELLATE COURTS

August 2014

A joint project of the Court Management Committee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), in conjunction with participation from the Conference of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the American Bar Association (ABA).

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Executive Summary

Time to disposition standards have existed in varying forms in a number of jurisdictions since the mid-twentieth century. The American Bar Association (ABA) played a leading role in these efforts by establishing speedy trial standards for criminal cases in the 1960s and time standards for other case types in the 1970s. These standards were revised in 1984 and again in 1992. The ABA also recommended time standards for state supreme courts and intermediate appellate courts in the *Standards Relating to Appellate Courts*[1] originally published in 1977 and amended in 1987 and again in 1994. A small number of appellate courts adopted the ABA developed standards and a few others adjusted them for their own internal aspirational guidelines, but overall, the standards were widely seen as unattainable.

This current project came about through the efforts of the Joint Court Management Committee of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA). Funding was provided by the State Justice Institute (SJI) and project committee participants included members of CCJ and COSCA, as well as the Council of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the ABA.

As the first phase of this effort, the project committee conducted preliminary research to ascertain which state appellate courts currently have time standards in place. Subsequent to that research, the committee developed and distributed surveys to all state and U.S. territory appellate courts, based on whether those courts had time standards in place.

These model time standards are designed to allow state appellate courts to adopt them as presented in this document, or to modify them to establish time standards based on their own particular circumstances. Modifying the model standards to local circumstances will create variation from one state to the next, making interstate comparisons less meaningful. However, the process of adjusting time standards to local conditions is necessary for realistic implementation of the standards throughout a nation of diverse courts. Consequently, any substantial deviations from the model time standards should be based on the requirements for doing justice in an individual state and not merely on disagreement with the concept of a national time standard. States with multiple intermediate appellate courts having the same case type jurisdiction

[1] *Standards of Judicial Administration, Volume III; The Standards Relating to Appellate Courts, 1994 Edition,* Copyright © 1977, 1995 American Bar Association

should agree upon and adopt a common set of time standards.

Use of the term "standards" does not imply that the model times presented in this document are intended to serve as overarching requirements that all state appellate courts would be expected to achieve. Many factors impact an individual court's ability to decide cases in accordance with any established timeline. The model standards should not be seen as a single national standard that should be imposed upon the appellate courts. Achievement of the standards presumes that appellate courts are adequately staffed and funded and that courts are utilizing their available resources effectively. At present, the model time standards presented in this document are likely to be fully achievable in a modest number of appellate courts, partially achievable in most others, and unattainable in the remainder. However, simply because an appellate court is not presently in a position to achieve these model time standards is not to say that they are without value. Use of these model time standards can provide appellate courts with a set of aspirational goals, inform legislatures in providing sufficient funding to enable courts to achieve those goals, and guide future revisions of applicable court rules and operating procedures that can have an impact on how long appellate courts take to resolve the cases before them.

Ideally, these model appellate court time standards will provide the courts with the information and impetus to implement their own time standards or reexamine their previously established time to disposition goals. Such efforts should be undertaken in accordance with Section VII of this document and be led by the chief justice of the COLR and the chief judge of the IAC who are in the best position to understand the effects of implementing the standards, including necessary procedural changes and resource requirements.

Common values among state appellate courts include accountability, efficiency and timeliness, productivity and quality. These values, in conjunction with the responsibilities of all appellate courts, form a foundation upon which time standards can be established. In an era of limited funding for state courts, it is increasingly important to demonstrate how well courts are operating relative to achieving their mission and goals, and accountability for their use of public resources. The timely resolution of cases is probably the most widely accepted objective measure of court operations. In addition, the appellate courts, as leaders within the Judicial Branch, are expected to lead by example. Institutional accountability of the Judicial Branch can be undermined when leadership does not demonstrate a willingness to establish time-based goals for the resolution of appellate cases. When an appellate court establishes time standards for itself, it is making a commitment toward

ensuring efficiency and timeliness in the resolution of appellate cases. This commitment is enhanced by the regular measurement of actual case resolution times with comparisons to the time standards. Publishing the actual results of a comparison between actual time to resolution and the time standards also demonstrates organizational accountability. Releasing this information may sometimes require an appellate court to acknowledge or explain a result that falls below the established standard and, if appropriate, make efforts to address the cause. However, when managed effectively, the response to such a temporary distress can build the court's credibility and engender public trust and confidence.

It must be acknowledged, that appellate courts need adequate funding and staffing to effectively fulfill their constitutional and statutory duties. This includes an appropriate number of judges to hear and decide cases in accordance with the adopted time standards. The inability of an appellate court to achieve its time standards can be an indicator that the court has an insufficient number of judges or judicial staff (law clerks and staff attorneys). However, to justify a request for more judges or staff, judicial leaders must first be able to demonstrate that they have examined all of the other potential reasons for the court's lack of timeliness.

The judicial leaders should be able to demonstrate that they have thoroughly evaluated whether they are making the best use of their available staff, that court procedures are simple, clear and streamlined, and that they are efficiently using their equipment and technology before requesting additional resources to reduce a backlog or maintain timeliness. It may also be appropriate to conduct a workload study, estimating the average amount of time that is devoted to each type of case in order to identify the number of judges and staff members needed in providing quality and timely resolutions of the number and type of cases in the court.

Model Time Standards for State Appellate Courts

In developing this model, the project committee reviewed survey responses and actual filing to disposition data on civil and criminal appeals from a wide variety of appellate courts across the country. Based on this research and the broad experience of the committee members in litigating, processing, reviewing and deciding appellate cases, the committee designed a model which includes time standards for both reviews by permission and appeals by right in the civil and criminal case categories. This model provides reasonably achievable times to disposition for both intermediate appellate courts and courts of last resort.

These model time standards, which are generally applicable to all state appellate courts, provide a sufficient challenge for the courts to aspire to in improving their time

to disposition, yet should also be viewed as reasonable by the courts themselves. They are currently expected to be at least partially achievable by about one-third of the state appellate courts and represent a challenge that all appellate courts should strive to attain.

The model provides discrete sets of time standards for both courts of last resort and intermediate appellate courts. The review by permission and appeal by right categories are structured to coincide with the State Court Guide to Statistical Reporting.[2] A review by permission is one that the appellate court can choose to review while an appeal by right is a case that the appellate court must review. Each state determines the particular aspects of the mandatory and discretionary jurisdictions of their appellate courts, which may be set by constitution, statute, or court rule.

Within each of the general appellate case type categories (review by permission, review granted and appeal by right), the model includes separate time standards for civil and criminal cases (excluding death penalty). Depending upon a particular court's jurisdiction, makeup of caseload, and procedural distinctions, it may also be helpful to supplement the model time standards with additional case types such as juvenile, death penalty, administrative agency, attorney discipline, etc.

[2] *State Court Guide to Statistical Reporting*, Conference of State Court Administrators and the National Center for State Courts, Williamsburg, VA. http://www.courtstatistics.org/~/media/Microsites/Files/CSP/DATA%20PDF/CSP%20StatisticsGuide%20v1%203.ashx

MODEL APPELLATE TIME STANDARDS IN DAYS						
Court	**Case Types**		**Starting Event**	**Ending Event**	**Time Standards**	
					75%	**95%**
COLR	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	150	180
		Criminal	Filing Initial Document	Grant/Deny Decision	150	180
	Review Granted	Civil	Grant/Deny Decision	Disposition	180	240
		Criminal	Grant/Deny Decision	Disposition	180	240
	Appeal By Right	Civil	Filing Initial Document	Disposition	270	390
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	180	330
IAC & single level COLRs	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	150	180
		Criminal	Filing Initial Document	Grant/Deny Decision	150	180
	Review Granted	Civil	Grant/Deny Decision	Disposition	240	270
		Criminal	Grant/Deny Decision	Disposition	300	420
	Appeal By Right	Civil	Filing Initial Document	Disposition	390	450
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	450	600

Appellate courts establishing time standards should include the following recommended practices;

- Time should begin to run at the occurrence of the case initiating event, typically filing of a notice of appeal or petition for review.
- Time should also be measured within discrete interim stages of the case which can help to identify any causes of undue delay.
- The results of measurements of time to disposition, relative to the established standards, should be published periodically. This can build accountability and credibility with the public.

This document also includes a suggested outline of activities that can be used as a guide in establishing time to disposition standards and implementing a program of time measurement. To be most successful,

such efforts must be championed by the chief justice of the court of last resort and/or chief judge of the intermediate appellate court. These individuals can provide the leadership and credibility that such a project requires among the bench, court staff, external stakeholders and the public.

I. Introduction

The establishment of time to disposition standards is not a new development in the state courts. Such standards have existed in varying forms in a number of jurisdictions since the mid-twentieth century. The American Bar Association (ABA) played a leading role in these efforts by establishing speedy trial standards for criminal cases in the 1960s and time standards for other case types in the 1970s. These standards were revised in 1984 and again in 1992. The Conference of State Court Administrators (COSCA) promulgated its own set of national time standards in 1983. These were revised and updated in 2011[3] through a joint effort of COSCA, the Conference of Chief Justices (CCJ), and the National Association for Court Management (NACM) and the National Center for State Courts (NCSC).

The ABA also recommended time standards for state supreme courts (also referred to as courts of last resort) and intermediate appellate courts in the *Standards Relating to Appellate Courts*[4] originally published in 1977. The *Standards* were amended in 1987 and again in 1994. A small number of appellate courts adopted the ABA developed standards and a few others adjusted them for their own internal aspirational guidelines, but overall, the standards were widely seen as unattainable and did not gain much traction. In recent years, further efforts toward developing and implementing time to disposition standards have taken place at the trial court level with only a relatively modest focus on the appellate courts.

It has now become a common refrain among many trial court judges and managers that their courts are required to manage toward a set of time to disposition goals or standards, often imposed by the state supreme court, but that most appellate courts do not have such requirements. While it is correct that a good number of appellate courts have not established such time standards, some of them have, and more are currently considering adopting them.

It should be noted that a variety of phrases are used by the courts to describe their established time to disposition goals. Some use the common term "time standards" while others refer to "time processing guidelines" or "time reference points." These varying phrases are often used to denote that the related time frames describe aspirational goals and to avoid a perception that those cases exceeding the time frames may not be receiving appropriate attention from the court. For simplicity, we will use the common term "time standards" throughout this document to identify time frames or goals related to the resolution of appellate cases.

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[3] *Model Time Standards for State Trial Courts*, National Center for State Courts, Williamsburg, VA, (2011)

[4] *Standards of Judicial Administration, Volume III; The Standards Relating to Appellate Courts, 1994 Edition,* Copyright © 1977, 1995 American Bar Association

This project came about through the efforts of CCJ and COSCA. At the request of those organizations' Joint Court Management Committee, NCSC sought and obtained grant funding from the State Justice Institute (SJI) and recruited project committee participants from CCJ and COSCA, as well as the Council of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the ABA.

Although most appellate courts are subject to various rules or statutory directives specifying that certain case types should receive priority in docketing and scheduling, these directives frequently do not include a quantifiable time period during which such cases should be decided. Cases involving child custody, civil cases with particular election-related issues and appeals of certain types of decisions by administrative agencies are examples of the types of cases that are typically affected by such requirements. In the 2000s, the federally funded Court Improvement Program (CIP), encouraged courts at all levels to expedite cases involving foster care and permanent placements of children. Some states developed appellate rules with reduced time periods for filing a notice of appeal, preparing the trial court record and transcripts, and submitting briefs in appeals involving the termination of parental rights and child placement issues. Most appellate courts now expedite, or "fast track" such designated cases; however, the rules and statutes often do not provide for specific time-related goals for deciding such cases. However, this project focuses on "primary" time standards which are applicable to the general caseload of the court through issuance of a dispositional order or decision, rather than the "specially expedited" time requirements which apply only to certain case types or particular issues or circumstances.

Most appellate courts now expedite, or "fast track" such designated cases; however, the rules and statutes often do not provide for specific time-related goals for deciding such cases.

As the first phase of this effort, the project committee conducted preliminary research to ascertain which state appellate courts currently have time standards in place. Subsequent to that research, the committee developed and distributed surveys to all state and U.S. territory appellate courts, based on whether those courts had time standards in place. Among those states with multiple appellate districts or circuits, separate surveys were distributed to each individual court.

The goals of this project are 1) to develop a set of model time standards for both state intermediate appellate courts (IAC) and state supreme courts or courts of last resort (COLR); and 2) to discuss the impact that time to disposition goals have had on the courts that have individually developed and adopted them.

The model time standards are designed to allow appellate courts throughout the United States to adopt them as presented in this document, or to modify the model standards and establish time standards based on their own particular circumstances. Modifying the model standards to local circumstances will create variation from one state to the next, making interstate comparisons less meaningful. However, the process of adjusting time standards to local conditions is necessary for realistic implementation of the standards throughout a nation of diverse courts. Consequently, any substantial deviations from the model time standards should be based on the requirements for doing justice in an individual state and not merely on disagreement with the concept of a national time standard. States with multiple intermediate appellate courts having the same case type jurisdiction should agree upon and adopt a common set of time standards.

Use of the term "standards" does not imply that the model times presented in this document are intended to serve as overarching requirements that all state appellate courts would be expected to achieve. Many factors impact an individual court's ability to decide cases in accordance with any established timeline. It is imperative that this document not be seen as a single national standard that should be imposed upon the appellate courts. Achievement of the standards proposed here presumes that appellate courts are adequately staffed and funded, which is not the case in many states, and that courts are utilizing their available resources effectively. At present, the model time standards presented in this document are likely to be fully achievable in a modest number of appellate courts, partially achievable in most others, and unattainable in the remainder. However, simply because an appellate court is not presently in a position to achieve these model time standards is not to say that they are without value. Use of these model time standards can provide appellate courts with a set of aspirational goals, inform legislatures in providing sufficient funding to enable courts to achieve those goals, and guide future revisions of applicable court rules and operating procedures that can have an impact on how long appellate courts take to resolve the cases before them.

Ideally, these model appellate court time standards will provide the courts with the information and impetus to implement their own time standards or reexamine their previously established time to disposition goals. Such efforts should be undertaken in accordance with Section VII of this document and be led by the chief justice of the COLR and the chief judge of the IAC who are in the best position to understand the effects of implementing the standards, including necessary procedural changes and resource requirements.

II. Why Should Appellate Courts Establish Time Standards?

"Time standards should be used as an administrative goal to assist in achieving caseflow management that is efficient, productive, and produces quality results." [5]

Appellate courts, both as public institutions and as leaders within the judicial branch, are accountable to the litigants and the public at large for achieving the goals of productivity and efficiency while maintaining the highest quality in resolving cases before them. These goals help to shape many of the values held by appellate courts. A white paper[6] published by the CCJSCA and the NCSC identified a set of "shared values" common to many intermediate appellate courts. These include:

- Adopting effective internal management and operational structures that maximize public resources;
- Implementing case management processes that promote the timely and efficient disposition of cases;
- Promoting public awareness about the judicial system and avenues for access to the courts;
- Maintaining judicial integrity by promoting transparency regarding court processes; and
- Producing high quality work product in the form of well-reasoned, clearly written decisions that respond to the issues before the court.

COLRs would likely express similar concepts as values that the highest state courts have in common with the intermediate appellate courts. These shared values clearly express the concepts of accountability, efficiency and timeliness, productivity, and quality. These values, in conjunction with the responsibilities of all appellate courts, serve to form a foundation upon which time standards can be established.

In an era of limited funding for state courts, it is increasingly important to demonstrate how well courts are operating relative to achieving their mission and goals, and accountability for their use of public resources. The timely resolution of cases is probably the most widely accepted objective measure of court operations and is also, fairly or otherwise, a primary concern of the other branches of government and the public regarding the courts. In fact, the

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[5] *Standards Relating to Appellate Courts, at* §3.52 (a).

[6] Doerner, J. and Markman, C., "*The Role of Intermediate Appellate Courts: Principles for Adapting to Change*"; Council of Chief Judges of the State Courts of Appeal and National Center for State Courts, Williamsburg, VA, (2012): p. 6

timely resolution of cases in court is a key element used by businesses considering whether to relocate to another state or remain in their current location.[7] Cases in the appellate courts are no exception to the focus on timely resolution. Former Chief Judge Lawrence Winthrop of the Arizona Court of Appeals, Division 1, says *"Annual reporting of performance against our case resolution reference points is critical to our dealings with the legislature and in showing businesses how well the courts are operating in Arizona."*

In addition, the appellate courts, as leaders within the Judicial Branch, are expected to lead by example. Institutional accountability of the Judicial Branch can be undermined when the leadership does not demonstrate its willingness to establish time-based goals for the resolution of appellate cases. Both the Minnesota Supreme Court and Court of Appeals have established time standards and publicly report their performance annually to the Minnesota Judicial Council. Honorable Lorie Gildea, Chief Justice of the Minnesota Supreme Court, puts it this way, *"We need to study our results against our time standards and report them to the Judicial Council to model accountability to the trial courts. This also puts the Judicial Branch on a stronger footing with the state legislature and citizens in terms of accountability and transparency."*

Data has not been collected demonstrating conclusively that appellate courts with time standards necessarily resolve cases more quickly than those without time standards. However, it is self-evident that when an appellate court establishes time standards for itself, it is also making a commitment toward ensuring efficiency and timeliness in the resolution of appellate cases. This commitment is enhanced by the regular measurement of actual case resolution times with comparisons to the time standards. The court's evaluation of such comparisons can often provide insight into the factors that may inordinately contribute to the amount of time cases take to resolve. This is particularly true when the standards and measurement process account for distinctive case types as well as specified interim stages of an appellate case. If insufficient resources are a contributing factor, measuring the achievement of

… it is self-evident that when an appellate court establishes time standards for itself, it is also making a commitment toward ensuring efficiency and timeliness in the resolution of appellate cases.

[7] *2012 Legal Climate Overall Rankings by State*; U.S. Chamber Institute for Legal Reform, Washington D.C. In this study, 1,125 general counsel/senior litigators were asked, "How likely would you say it is that the litigation environment in a state could affect an important business decision at your company such as where to locate or do business?" 70% of respondents said "somewhat likely" or "very likely." "Slow process/Delays" was the second most frequently mentioned issue (tied with "Corrupt/Unfair system") in creating the least fair and reasonable litigation environment.

established time standards can serve as a critical foundation for building evidence-based requests for additional resources.

In addition to strengthening an appellate court's commitment to the timely and efficient resolution of cases, publishing the actual results of a comparison between actual time to resolution and the time standards also demonstrates organizational accountability and a dedication to leading the Judicial Branch by example. Releasing this information may sometimes require an appellate court to acknowledge or explain a result that falls below the established standard and, if appropriate, make efforts to address the cause. However, when managed effectively, the response to such a temporary distress can build the court's credibility and engender public trust and confidence.

III. Selected Survey Results

Surveys were distributed in November 2012 and responses were collected over the next several months, resulting in good response rates from both IACs and COLRs. Because some information regarding time standards was known before distributing the surveys, different versions were provided to those courts with known information and those for which time standard information was not known. Copies of the surveys are included in Appendix A.

A brief summary of the survey responses follows -

A. Response Rate:

	Respondents	Maximum	Response Rate
Intermediate Appellate Courts (IAC)	71	87	82%
Courts of Last Resort (COLR)	40	56	71%
Total	111	143	78%

B. Establishment of Primary Time Standards:

	Respondents	Yes	Percentage
Intermediate Appellate Courts (IAC)	71	35	49%
Courts of Last Resort (COLR)	40	12	30%
Total	111	47	42%

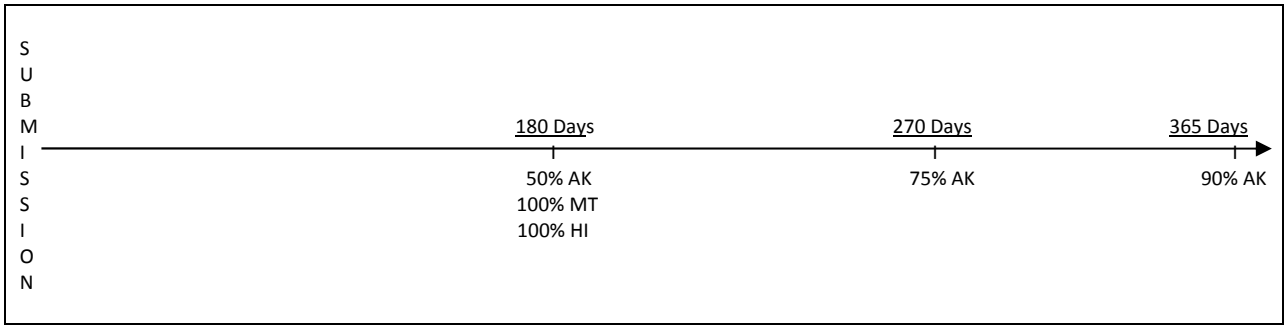
C. Variation of Established Appellate Time Standards:

Among the responding courts, both IACs and COLRs, that have established standards, most include a percentage with a time limit; i.e. 75% of cases should be resolved within 270 days. Some courts apply the percentage and time limit standards to their entire caseload while several others vary the percentage and time limit standards based on case type.

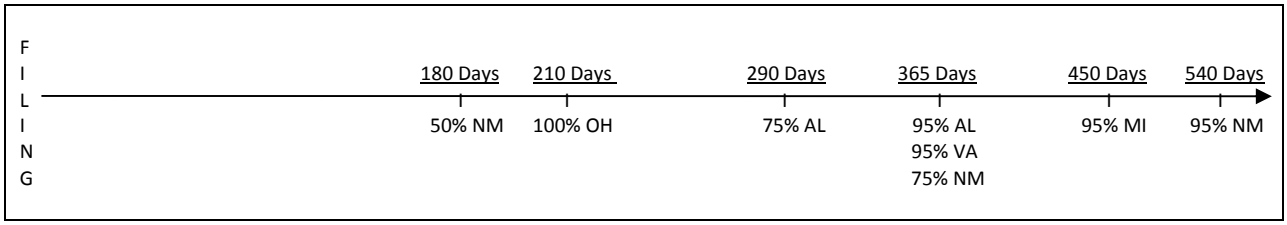
D. Example Time Standards

The length of time stated in the appellate courts' existing time to disposition standards also varied widely. The following examples demonstrate the variation in standards applicable to the general caseload (measured from either filing or submission to resolution).

Courts of Last Resort



Intermediate Appellate Courts



Established time standards sometimes also include interim times to various significant milestone events such as filing of the appeal to filing of the record, close of briefing to oral argument or submission of the case, etc. Some courts reported establishing internal standards applicable only to a particular phase of the case, usually from case assignment to circulation of a draft opinion. Such standards are useful case management tools but do not encompass the full life of the case and time to disposition.

E. Starting Point for Counting Time:

There were also substantial differences reported in the point at which the time starts being counted, as illustrated in the table below.

	Filing NOA or comparable document	Filing or Lodging the Record	Close of Briefing	Oral Argument/ Submission
IACs	21	3	1	10
COLRs	3	1	1	7

F. Process Used to Establish Time Standards

Among those responding courts with time standards, the state Supreme Courts have generally been the driving force behind their establishment. Among IACs, eleven reported that the standards were established by order or rule of the Supreme Court, six reported that the time standards were developed internally (one with Supreme Court prompting), and fourteen worked with the Supreme Court and a task force to develop time standards, some of which were in conjunction with implementing portions of the Appellate CourTools.[8] One responding IAC indicated that the standards were statutorily imposed and another did not know what the process was since the time standards have been in place for many years and all involved parties have since left the court.

Among COLRs, nine established standards by their own rule or order, two reportedly were by statute, one formed a task force in conjunction with implementing the Appellate CourTools and one did not know the process used to establish its time standards.

G. Case Stages Contributing to Delay

The responding courts were also asked to identify particular stages in an appeal that inordinately contribute to delay by making selections from a list. Respondents were allowed to select multiple items and a total of 198 individual selections were made. When "Other'" was selected, the reason for delay was variously described as: “court-appointed attorney process,”

[8] The Appellate CourTools, designed by the NCSC, is a set of six metrics that can be used by any appellate court to measure its performance. The Appellate CourTools is available at: http://www.courtools.org/

"self-represented litigants," and "substitution of counsel." Not all respondents explained their selection of "other" as contributing to delay.

Case Stage	Selections	% of Total
Filing of the Record	38	19%
Transcript Preparation	55	28%
Briefing	44	22%
Setting Argument or Assignment	8	4%
Opinion Preparation	19	10%
Other:	23	12%
None	11	6%
Total	198	100.00%

H. Additional Results

Among the forty-two responding courts with established time standards:

- 92% reported that the established time standards are appropriately set
- 85% reported that the court routinely meets the established standards
- 75% reported that the court regularly reviews the time standards
- 98% regularly prepare a report, of which 81% include time between various milestones or events (although fewer actually include those events in their standards)
- 54% prepare some type of external report on court performance relative to time standards

IV. Analyzing Actual Time to Disposition Data

In addition to the survey responses, the project committee reviewed data from two major studies studying civil and criminal appeals in the state courts. Civil appeals data was obtained through the 2005 Civil Justice Survey of State Courts, which tracked 26,950 general civil (i.e., tort, contract, and real property) cases that were disposed by bench or jury trials in 156 participating counties. Subsequently, 3,970 of those cases were appealed to eighty-four appellate courts in thirty-five states.[9] Criminal appeals data includes 2,978 appeals concluded in calendar year 2010 from one hundred forty three appellate courts (IACs and COLRs) in all fifty states and the District of Columbia. As part of each study, the collected data was compiled with the actual time between various events within the appeal process and from filing to disposition being calculated for each participating court.

These data showed:

Civil Appeals Data				
	Time to Disposition	Times for Interim Events (in Days)		
		Case Filing to Transcript	Transcript to Close of Briefing	Submission to Disposition
IACs				
75% of Cases	452	149	198	187
95% of Cases	546	201	249	269
COLRs				
75% of Cases	422	91	191	215
95% of Cases	Not available	Not available	Not available	Not available
Criminal Appeals Data				
	Time to Disposition	Times for Interim Events (in Days)		
		Case Filing to Transcript	Transcript to Close of Briefing	Submission to Disposition
IACs				
75% of Cases	521	164	152	177
95% of Cases	818	456	314	298
COLRs				
75% of Cases	204	80	194	175
95% of Cases	571	305	391	331

[9] This data collection examined civil bench and jury trials concluded in state trial courts in 2005 that were appealed to an intermediate appellate court or court of last resort. The Bureau of Justice Statistics' (BJS) Civil Justice Survey of Trials on Appeal (CJSTA) included information from those civil trials concluded in 2005 and tracked the subsequent appeals from 2005 through March 2010.

V. Structure of Appellate Time Standards

Time standards currently in use by appellate courts around the country vary significantly, not only in the time lengths established, but also in their form. Some courts have simply established an overall time standard that is generally applicable to all types of cases in the court. For example, "all cases should be decided within 270 days." This form of standard sometimes includes a percentage, such as 75% or 90%, of cases that should be resolved within the indicated length of time. The ABA Overall Time Standards, as amended in 1994, are an example of this form. Those standards, measured from the date of initial filing, are listed in Table 1 below:

Table 1 - ABA Overall Appellate Time Standards

Court Type	50th Percentile	75th Percentile	90th Percentile	95th Percentile	100%
COLR [10]	290 Days		365 Days		As expeditiously as possible
IAC [11]		290 Days		365 Days	

Other courts have established standards with different time lengths for different case types. The time reference point standards for the Arizona Court of Appeals, for example, state that 75% of general civil cases should be resolved within 400 days and that 75% of criminal cases should be resolved within 375 days from the date of filing in the appellate court.

In addition, some appellate courts include interim time standards for the various administrative and attorney or judge driven stages of an appellate case, along with an overall standard for the total time to disposition. The common stages for which time standards are developed include:

- Filing of the notice of appeal or other originating document to the filing of the trial court record (additionally, there may be a discrete time standard pertaining to filing the transcript, depending on applicable procedures)
- Filing of the trial court record to close of briefing or 'at issue' date
- Close of briefing to oral argument or submission on the briefs
- Oral argument or submission to issuance of a decision

[10] ABA time standards for courts of last resort are based upon the number of days from the filing of the petition for certiorari or the notice of appeal.

[11] ABA time standards for intermediate courts of appeal are based upon the number of days from the filing of the notice of appeal.

These discrete stages in the life cycle of an appeal or certiorari proceeding are also patterned similarly to the ABA standards which are listed in Table 2 below:

Table 2 - ABA Appellate Time Standards for Discrete Stages of an Appeal			
	Administrative Functions	**Attorney Functions**	**Judicial Functions**
Record	30 days from filing Notice of Appeal		
Transcript	30 days from filing Notice of Appeal		
Appellant's Brief		50 days from filing record & transcript	
Appellee's Brief		50 days from receipt appellant's brief	
Reply Brief		10 days from receipt appellee's brief	
Oral Argument			55 days from filing appellee's brief
Submission on Briefs			35 days from filing appellee's brief
Opinion Preparation (most cases)			55 days from oral argument or case assignment
Opinion Preparation (Death Penalty & cases of extraordinary complexity)			90 days from oral argument or case assignment
Voting on Circulating Draft Opinions			20 (COLR)/15 (IAC) days from receipt of draft opinion
File Dissenting Opinions			30 days from receipt of draft opinion
Memorandum Opinions			30 days from oral argument or case assignment

Establishing specific time standards for various case types and interim time standards within each of those case types provides court leadership with a wide range of objective data that can be used to focus in on the discrete stages that might consume more time than expected. This, in turn, enables the court to develop targeted strategies for improvement within specific stages to ensure the timely resolution of appellate cases.

As a part of establishing any overall time standards, a critical decision must be made with respect to when to start counting appellate case processing time. Based on the survey responses from those appellate courts that have adopted time standards, there are currently four distinct points at which those courts begin counting the time to disposition. Each of these four starting points was reported by both intermediate courts and courts of last resort:

- Date of filing the notice of appeal or other initiating document;
- Date of lodging the trial court record;
- Date of the close of briefing; and
- Date of oral argument or, if no argument, submission to the court.

Those courts with time standards that begin counting at lodging of the record, close of briefing or submission of the case, commonly consider the time period from initiation of the appellate proceeding to one of those latter stages to be outside the court's control. For example, the clerk of the trial court and one or more court reporters are responsible for the preparation and filing of the record and the transcripts, counsel for the various parties to the appeal are responsible for filing their respective briefs, and appellate court control begins after one of those particular events. While it is true that significant responsibility for the completion of the record, transcript and briefs is assigned to persons outside of the appellate court, it is also evident that the primary responsibility for case management and efficient processing of appeals must reside with the appellate court. According to the ABA, the first and most important contributing factor to appellate delay *"… is that an appellate court has exercised inadequate supervision of the movement of cases coming before it. Only the appellate court itself can provide such supervision."*[12] Neither the trial court nor counsel for the litigants is in a position to reliably give the necessary attention to appellate case management as the appellate court itself is.

… the primary responsibility for case management and efficient processing of appeals must reside with the appellate court.

[12] *Standards Relating to Appellate Courts at* page 89.

As a matter of fact, one of the most persistent factors contributing to lengthy times to disposition in appellate courts is the preparation of the trial transcripts. Many jurisdictions are now contending with a shortage of qualified court reporters whose principal duty is to make verbatim notes of the trial court proceedings. Preparation of appellate transcripts is often relegated by the court reporter to weekend and evening hours. In addition, heavy workloads in the offices of the appellate defender and the attorney general or appellate prosecutor are common in many states and are perceived to be a primary contributing factor to delays in briefing. When asked in the recent survey to identify whether particular stages of an appellate case contributed inordinately to delay in appellate cases, the most frequently selected were; transcript preparation (28%), briefing (22%) and filing the record (19%). (See Section II) These factors must be addressed in order to alleviate their impact on appellate court delay. In response, a number of state court systems have expanded the use of real-time reporting and digital audio recording of trial court proceedings, reducing the overall average time for transcript production. Appellate courts have also initiated discussions and worked in conjunction with their appellate defenders and attorneys general to improve case management procedures and reduce the overall length of briefing time in criminal cases.

VI. Minimum Recommended Features of Appellate Court Time Standards

There are several beneficial features pertaining to the implementation and use of time standards in appellate courts that the project committee recommends as best practices. Including these features enables the appellate court to effectively monitor its actual appellate processing time on an ongoing basis and also ensures that the court is accountable for its performance.

The minimum recommended features of Appellate Court Time Standards are:

- *Run from the case initiating event.*
- *Measure discrete interim stages.*
- *Publish the results.*

These recommended best practices are:

A. Time Standards Should Run from the Case Initiating Event

Data over the full range of the life of a case is necessary for the appellate court and others to fully understand the amount of time it takes for cases to be resolved, what the contributing factors are to that amount of time, and whether specific procedural changes might be effective in resolving appeals more quickly. To obtain such data, appellate court time standards should start counting time at the earliest event, typically the filing of the notice of appeal, petition for review, or other comparable case initiating document[13]. This approach accounts for the entire life of an appellate proceeding and avoids the perception that the appellate court is not taking steps to manage the early stages of the case. It also corresponds with the public's perspective of when a case is considered to be on appeal. In order to provide accurate information however, time must not be included when a case is stayed due to bankruptcy proceedings, remand to the trial court, etc.

B. Measure Time Within Discrete Interim Stages

Measuring the actual time within the interim stages of an appellate case helps to pinpoint the causes of excessive delay so that the court can target its resources and improvement efforts most effectively. This can also provide insightful information to the court's partners

[13] There are some appellate systems in which the notice of appeal is first filed in the trial court and forwarded to the appellate court at some later time. Ideally, the time standards should run during this period and the two courts work jointly to ensure timely forwarding of the notice of appeal. Alternatively, this period could be designated as a discrete interim stage and measured separately (see Section V. b.)

in the appellate process such as the trial courts, court reporters and counsel, highlighting how completion of their respective roles affect overall time to disposition.

The discrete interim stages should include:

By Permission Cases

- Initial Case Filing to Grant/Deny Decision

By Right Cases

- Initial Case Filing to Filing of Record/Transcript
- Filing of Record/Transcript to Close of Briefing
- Close of Briefing to Oral Argument/Submission
- Oral Argument/Submission to Disposition

C. Publish the Results of Measurements to Time Standards

Disclosing summary results of a measurement of actual time to disposition statistics with a comparison to the established time standards provides a number of benefits to the appellate court. For example, publication of such objective data fosters accountability and transparency by encouraging courts to regularly review their performance, understand and explain their results, and consider operational improvements to address any shortfalls. This enables appellate courts to lead by example within the Judicial Branch, emphasize the importance of the timely resolution of cases, and ensure an ongoing commitment to the issue. It also builds the court's credibility with the public and other branches of state government, demonstrates accountability of the judicial branch, and helps to ensure that public resources are used effectively. Such public disclosure might typically include a press release, website posting, and reporting to legislatures or other public officials. For example, the Minnesota Court of Appeals and Supreme Court report their results directly to the Judicial Council at a public meeting, and the Arizona Court of Appeals, Division One, distributes copies to all legislators.

VII. Model Time Standards for State Appellate Courts

The failure to resolve appellate cases in an appropriately expeditious timeframe undermines the ability of the appellate courts to efficiently manage their publicly provided resources, demonstrate effective leadership within the Judicial Branch and promote public confidence in the courts. State appellate courts should take the lead to ensure that they and their partners in the appellate process maintain a focus on eliminating delays while ensuring the ability to produce well-reasoned, clearly written decisions. The model time standards listed below provides appellate courts with a framework for these efforts.

A. Establishing the Model Standards

In developing this model, the Appellate Time Standards Project Committee reviewed the survey responses and the actual filing to disposition data on civil and criminal appeals from a wide variety of appellate courts across the country. Based on this research and the broad experience of the committee members in litigating, processing, reviewing and deciding appellate cases, the committee designed a model which includes time standards for both reviews by permission and appeals by right in the civil and criminal case categories. This model provides reasonably achievable times to disposition for both intermediate appellate courts and courts of last resort.

> ***… there is a great deal; of variation in the current capacity of state appellate courts to review and decide cases expeditiously.***

It was critical to the process of developing these model time standards to acknowledge that there is a great deal of variation in the capacity of state appellate courts to review and decide cases expeditiously. This may be attributable to an insufficient number of judges or court staff, the inability of trial court personnel to prepare and submit the trial record and transcripts in the allotted time, inadequate attorney positions or excessive workload in the appellate public defender and prosecutor's offices, various provisions in the appellate rules, outdated procedures, a long-standing culture within the appellate system that does not place great value on the expeditious resolution of cases, or other reasons.

Regardless of the reasons for delays, establishing time standards and measuring court performance going forward is necessary in order to identify and make progress on the issues that impact an appellate court's ability to dispose of cases timely. Only the appellate courts themselves are capable of addressing the issues and driving reduction of delay in the appellate process.

It is important that these model time standards, which are generally applicable to all state appellate courts, provide a sufficient challenge for the courts to aspire to in improving their time to disposition, yet also be viewed as reasonable by the courts themselves. A set of overly aggressive time standards would likely be disheartening to many appellate courts. These proposed model time standards currently are at least partially achievable by about one-third of the state appellate courts. They also represent a reasonable challenge that all appellate courts should strive to attain.

The model provides discrete sets of time standards for both courts of last resort and intermediate appellate courts. The model time standards recognize the fact that the time for record preparation and transcript production generally occurs during the intermediate court case. However, there are a number of states that have a single level appellate system which includes only a court of last resort and no intermediate court. As a result, these "single level COLRs" encounter the same challenges with regard to record preparation and transcript production as intermediate appellate courts. To recognize this significant difference between COLRs in single and dual level appellate systems, the committee suggests that COLRs in a single level system consider applying the COLR standards as appropriate or the IAC time standards adapted as necessary to their particular circumstances.

The review by permission and appeal by right categories are structured to coincide with the State Court Guide to Statistical Reporting.[14] A review by permission is one that the appellate court can choose to review while an appeal by right is a case that the appellate court must review. Each state determines the particular aspects of the mandatory and discretionary jurisdictions of their appellate courts, which may be set by constitution, statute, or court rule.

When applying the model time standards to the review by permission case types, time begins running on the date the application, petition or comparable initiating document requesting review is filed and concludes when the decision to grant or deny the request is issued. When the decision is made to grant the request, the review granted time standards would then apply with time being counted from the date the decision to grant is issued through the disposition of the case. The review granted time standards assume that relevant portions of the lower court record and transcripts are available to the court prior to the grant/deny decision and that once review is granted these cases can proceed more quickly than a typical appeal by right.

[14] *State Court Guide to Statistical Reporting*, Conference of State Court Administrators and the National Center for State Courts, Williamsburg, VA. http://www.courtstatistics.org/~/media/Microsites/Files/CSP/DATA%20PDF/CSP%20StatisticsGuide%20v1%203.ashx

However, this is not true in all appellate courts, which impacts whether the time period specified in the model is appropriate for a particular court.

When applying the model time standards to the appeal by right case types, time begins running when the notice of appeal or comparable initiating document is filed and concludes upon the disposition of the case, typically on the issuance of a dispositive opinion or order closing the case or a mandate returning jurisdiction to the lower court. Time stops when a case is stayed due to bankruptcy proceedings, remand to the trial court, etc. restarting once the stay is lifted.

Within each of the general appellate case type categories (review by permission, review granted and appeal by right), the model includes separate time standards for civil and criminal cases (excluding death penalty). Depending upon a particular court's jurisdiction, makeup of caseload, and procedural distinctions, it may also be helpful to supplement the model time standards with additional case types such as juvenile, death penalty, administrative agency, attorney discipline, etc.

MODEL APPELLATE TIME STANDARDS IN NUMBER OF DAYS

Court Type	Case Types		Starting Event	Ending Event	Time Standards	
					75%	95%
COLR	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	150	180
		Criminal	Filing Initial Document	Grant/Deny Decision	150	180
	Review Granted	Civil	Grant/Deny Decision	Disposition	180	240
		Criminal	Grant/Deny Decision	Disposition	180	240
	Appeal By Right	Civil	Filing Initial Document	Disposition	270	390
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	180	330
IAC & single level COLRs	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	150	180
		Criminal	Filing Initial Document	Grant/Deny Decision	150	180
	Review Granted	Civil	Grant/Deny Decision	Disposition	240	270
		Criminal	Grant/Deny Decision	Disposition	300	420
	Appeal By Right	Civil	Filing Initial Document	Disposition	390	450
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	450	600

As suggested throughout this document, there will be instances in which statutes, rules or other requirements necessitate individual courts to modify or adapt these model standards. Following are two actual examples of circumstances that could be addressed either by modifying the model time standards or, if appropriate, revising the underlying authority and making corresponding procedural changes.

- The Kentucky Supreme Court is constitutionally mandated to hear, as original appeals, all criminal cases in which a sentence of life imprisonment or imprisonment over twenty years has been imposed. These cases bypass the Kentucky Court of Appeals and, as a result, a significantly greater amount of time is consumed in record preparation and briefing as compared to a motion for discretionary review in which the record and transcripts have already been provided. In this type of circumstance, a COLR implementing time standards could consider establishing a separate case class designation with an appropriate amount of time, preferably not in excess of that provided in the model for IAC criminal appeals by right.
- In many permissive appeals, the Michigan Court of Appeals makes its decisions to grant or deny petitions for review without the benefit of the complete trial court record or transcripts. If review is granted by the court, the case proceeds in the normal manner and timeline as an appeal by right without any scheduling priority. In this type of circumstance, an appellate court implementing time standards could consider modifying the amount of time provided in the model with a more appropriate length, preferably not in excess of that provided in the model for IAC appeals by right.

B. Suggested Progressive Benchmarks

In addition to the model appellate time standards, the committee has suggested a set of progressive benchmarks that are not as aggressive as the model time standards, but can nevertheless provide a target that less timely appellate courts could use to measure their progress as they seek to meet the model standards. The set of progressive benchmarks also provide an opportunity for these courts to establish both short-term and long-term objectives, identify the factors affecting their ability to achieve more timely dispositions, and to achieve interim successes as they progress in their efforts to reduce overall time to disposition.

PROGRESSIVE BENCHMARKS IN NUMBER OF DAYS								
Court Type	**Case Types**		**Starting Event**	**Ending Event**	**Progressive Benchmark – Level 1**		**Progressive Benchmark – Level 2**	
					75%	**95%**	**75%**	**95%**
COLR	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	210	240	180	210
		Criminal	Filing Initial Document	Grant/Deny Decision	210	240	180	210
	Review Granted	Civil	Grant/Deny Decision	Disposition	300	360	240	300
		Criminal	Grant/Deny Decision	Disposition	240	330	210	270
	Appeal By Right	Civil	Filing Initial Document	Disposition	360	510	300	450
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	300	480	240	420
COLRs & single level COLRs	Review By Permission	Civil	Filing Initial Document	Grant/Deny Decision	210	240	180	210
		Criminal	Filing Initial Document	Grant/Deny Decision	210	240	180	210
	Review Granted	Civil	Grant/Deny Decision	Disposition	330	390	270	330
		Criminal	Grant/Deny Decision	Disposition	360	570	330	480
	Appeal By Right	Civil	Filing Initial Document	Disposition	510	600	450	570
		Criminal (exc. Death penalty)	Filing Initial Document	Disposition	540	720	510	660

The Level 1 Progressive Benchmarks indicate a minimal level of timeliness that all state appellate courts should be currently capable of achieving. It is critical that any courts currently unable to meet the Level 1 benchmarks investigate the contributing factors and develop strategies to resolve cases more expeditiously. Like the Model Time Standards, the Level 2 Progressive Benchmarks are informed by the results of the BJS civil and criminal appeals studies. The Level 2 benchmarks should currently be at least partially achievable by about half of all state appellate courts.

C. Standards for Interim Stages of an Appeal

In addition to overall model time to disposition standards, appellate courts can benefit by establishing separate time standards pertaining to the interim stages of an appeal. Such interim standards should be used internally by the appellate court for analyzing its own results. The length of time for the interim stages can vary significantly based on the allotment of time specified in each state's appellate rules for completing certain actions. For instance, California Rule 8.212 (b) allows the parties to extend each briefing period by stipulation for up to 60 days. While such a provision may reduce the impact of numerous motions for extension of time on court workload by eliminating the need for the court to rule on such motions, it can also negatively impair the court's ability to control briefing time. Because there are many such differences in appellate court rules among the states, the committee includes the following table as an example that appellate courts can use to establish their own standards for these interim stages. Results of measuring such interim standards would not necessarily be published in accordance with the recommended best practice in Section VI C, which focuses on the overall time to disposition.

This example is provided for four interim stages that typically occur in an appeal by right and the number of days is related to the model time standards provided above. The example days included here are considered reasonable by the committee. A court should carefully consider its own rules, procedures and practices regarding these stages of appeal and establish interim time standards appropriate to supporting its overall standards.

Example of Time Standards for Interim Stages of an Appeal - Civil Appeal By Right			
Starting Interim Event	**Ending Interim Event**	**Example Days**	
		75%	95%
Initial Filing	Filing of Record and Transcript(s)	90	120
Filing of Record and Transcript(s)	Close of Briefing	150	180
Close of Briefing	Oral Argument or Submission	60	90
Oral Argument or Submission	Issuance of Dispositional Order or Opinion	90	120

VIII. Implementing Appellate Court Time Standards

Time standards provide reference points for measuring court performance and management effectiveness, serving as benchmarks to determine whether appellate proceedings are being resolved at a reasonable and acceptable pace. However, simply adopting a set of time standards is not sufficient to ensure that appeals will be decided expeditiously. A number of additional management components of effective court administration should also be in place. First and foremost is a strong commitment on the part of the Chief Justice. Following is an outline that provides a general guide to the steps that an appellate court should consider when undertaking an effort to establish time standards and some additional discussion addressing the implementation process.

> ***… simply adopting a set of time standards is not sufficient … additional management components of effective court administration should also be in place.***

A. Outline for Establishing Appellate Court Time Standards

1. The Chief Justice of the court of last resort, with the support of the Chief Judge of the intermediate appellate court if applicable, and the State Court Administrator, would take a leadership role and identify the establishment of appellate court time standards as a priority within the Judicial Branch. This would include shepherding the time standards through their initial analysis, development, review and final adoption. This can set the tone for the process with all businesses partners and inter-related departments or groups that the appellate courts work with. This phase is likely to require multiple meetings and discussions to obtain buy-in from justices and judges in the appellate courts and officials with appellate system partners.
2. Establish an internal committee or working group to guide the process. This body should include several justices/judges from the COLR and the IAC, the clerks of each court and other key staff members as appropriate. Particular areas for the working group to explore are:
    - Analyze the current time frames in which appellate cases are being decided for both civil and criminal cases and other case types as desired.

This could provide a baseline for determining the courts' actual times relative to the model standards.

- Evaluate any causes of delay at each stage of an appellate case.
- Review the appellate rules, applicable statutes and the appellate courts' internal operating procedures to identify any provisions that might result in unnecessarily long time requirements by limiting time-saving options such as the use of electronic records and transcripts, creating difficult scheduling or cumbersome workflows perhaps in opinion review and circulation procedures, etc. Develop feasible solutions and draft proposed new rules, statutes or procedures.

3. Broaden the effort by involving business partner representatives, (trial court judges and clerks, appellate practitioners, Attorney General, appellate defender, etc.). This broader group would review the recommendations of the internal working group and assist in seeking solutions and alternative business practices to eliminate delays. Selected alternatives may initially warrant a limited application or pilot study to ensure they bring about the desired effect and avoid unintended consequences
4. Establish and adopt the model appellate time standards, with modifications as needed to address local circumstances and standards for interim stages. Depending on how greatly the actual time frames vary from the standards, the appellate courts might also develop initial goals by which to chart their improvement (see the example of progressive benchmarks provided in Section VI B). Such goals can be helpful to achieve interim successes and in maintaining the commitment and focus on the overall time standards. For the overall time standards and any initial goals, the courts should designate time frames for achieving each.
5. Once time standards are established, overall times to disposition should be regularly reported and published and times through various interim stages of appellate cases analyzed by the court. The reports should be provided to all judges and staff within the appellate courts to ensure that they remain relevant to them. If appropriate, they can also be distributed to the appellate business partners that participated in developing the time standards.

B. Adoption and Use of Model Time Standards

Establishing and measuring compliance with established time standards for the disposition of cases emphasizes the need for both judges and court personnel to recognize timely case processing as an essential expectation of their work. Doing so fosters the public's trust and confidence that the courts are committed to deciding cases expeditiously.

It is critical that an endeavor to establish appellate court time standards begin with a strong commitment from the chief justice, with support from the chief judge of the IAC. These leaders, along with other members of the appellate courts, will be jointly responsible for the vital leadership efforts and ongoing commitment for the implementation of the time standards. This includes shepherding the standards through an initial analysis, one or more pilot projects and the final adoption. In this way, they will set the tone for the process throughout the state with all businesses partners and inter-related departments and groups that the appellate courts work with. During this initial time period, the chief justice and chief judge will have to conduct discussions with all justices and judges regarding the effort. This may include overcoming any internal disagreements so that the project can go forward with as much majority support as possible.

When appellate court leaders embark on an effort to develop and adopt time standards, they should solicit discussion within the court as well as other groups that will be impacted. This can include judges, trial court clerks and court reporters, attorney general and appellate public defender offices, and appellate practitioners. The degree of participation in the process by these other groups may vary based on the culture and practices in a particular jurisdiction but their involvement is an essential ingredient. All participants should keep in mind that effective time standards are developed primarily to identify the length of time that provides both a deliberative and careful decision-making process as well as reasonable and appropriate timeliness in the resolution of cases. In addition, appellate courts must consider their own specific statutory mandates, rules and operating procedures. This process will result in implementing standards based on individual court circumstances and creating variations of the model from one state to another. However, any substantial variations from the model time standards should be based on the requirements for doing justice in an individual state; they should not result from disagreement with the concept of a nationally applicable model for time standards. Ideally, states with multiple intermediate appellate courts having the same case type jurisdiction would agree upon and adopt a common set of time standards for those courts.

Whatever the difference in circumstances may be from one appellate court to another, the provision of timely and affordable justice in compliance with time standards should be an

integral part of each court's management culture. The nature and importance of time standards as organizational goals should be communicated by the chief justice or chief judge and the court's executive management team to the judges and staff throughout the court, as well as to all of their appellate system partners.

Both in terms of overall public service and the court's own expectations of quality justice, appellate courts should consider the achievement of time standards as an important indicator of their performance.

C. Measuring Achievement of Time Standards

Once an appellate court has adopted either these model time standards or a modified set, the court leadership should regularly measure their achievement with respect to the established standards. Many state appellate courts already have a process for measuring timeliness of case disposition. Most of those include measures of time between interim events. The results of these measurements should be distributed on a regular basis, at least quarterly, to all judges and staff throughout the court. Results should also be released publicly at a minimum frequency of once each year, more frequently would be preferable.

If the results of these measurements consistently indicate that the court is not achieving its goals, the court leadership must develop and implement appropriate steps designed to improve timeliness. Depending upon the case stages that contribute to delay, such steps can include working with trial court clerks and court reporters to streamline the filing of records and transcripts, or with appellate counsel, especially offices of the appellate defenders and attorneys general offices, with respect to briefing timeliness. In addition, it is critical that court leadership also evaluate its internal policies and procedures to ensure that they do not contribute to the court's failure to meet its objectives.

Many appellate courts have instituted some form of screening process that can help to determine how best to review and decide cases, and some have accelerated the assignment of cases in their efforts to improve timeliness. Others have taken more systemic approaches. For example, since July 2009, Utah trial courts digitally record all proceedings and the appellate clerk's office centrally manages all transcript requests. The previous average of 138 days from transcript request to filing the transcript in the appellate court was reduced to an average of twenty-two days after this function was centralized.[15]

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[15] Suskin, L. *A Case Study: Reengineering Utah's Courts Through the Lens of the Principles for Judicial*

D. Relationship Between Time Standards and Resources

Appellate courts must have adequate funding and staffing to effectively fulfill their constitutional and statutory duties. This includes an appropriate number of judges to hear and decide cases in accordance with the adopted time standards. The inability of an appellate court to achieve its time standards can be an indicator that the court has an insufficient number of judges or judicial staff (law clerks and staff attorneys). However, to justify a request for more judges or staff, judicial leaders must first be able to demonstrate that they have examined all of the other potential reasons for the court's lack of timeliness.

The judicial leaders should be able to demonstrate that they have thoroughly evaluated whether they are making the best use of their available staff, that court procedures are simple, clear and streamlined, and that they are efficiently using their equipment and technology before requesting additional resources to reduce a backlog or maintain timeliness. It may also be appropriate to conduct a workload study, estimating the average amount of time that is devoted to each type of case in order to identify the number of judges and staff members needed in providing quality and timely resolutions of the number and type of cases in the court.

Measuring the achievement of established time standards is a critical foundation for building evidence-based requests for additional resources.

Measuring the achievement of established time standards is a critical foundation for building evidence-based requests for additional resources. It ties budget proposals to the mission of meeting agreed-upon goals. Appellate courts that adopt model time standards, measure their degree of achievement, promote timeliness, and take steps to effectively govern, organize, administer and manage the appellate process are well positioned to request and justify the resources needed to enable them to hear and decide cases in a timely manner.

Administration, NCSC, Denver, February 2012; http://www.ncsc.org/services-and-experts/~/media/Files/PDF/Services%20and%20Experts/Court%20reengineering/Utah%20Case%20Study%202%2027.ashx

Appendix 2

STEERING COMMITTEE ON ARIZONA APPELLATE CASE PROCESSING STANDARDS

Chair

Justice Ann A. Scott Timmer
Arizona Supreme Court

Members

Honorable Michael Brown
Chief Judge, Court of Appeals
Division One

Honorable Peter Eckerstrom
Chief Judge, Court of Appeals
Division Two

Janet Johnson
Clerk of Court
Arizona Supreme Court

Ruth Willingham
Clerk of Court
Court of Appeals, Division One

Jeffrey Handler
Clerk of Court
Court of Appeals, Division Two

Dr. William Mangold, Jr.
Public Member

Kimberly A. Demarchi
Attorney, Appellate Bar Representative

Alice Jones
Attorney, Office of Attorney General

David Euchner
Attorney, Criminal Bar Representative

Staff

Summer Dalton
Administrative Office of the Courts

Appendix 3

Recommended Case Processing Standards

Court of Appeals

Criminal	Filing to Disposition	
	75%	95%
	450	600
Civil	**Filing to Disposition**	
	75%	95%
	390	500
Family	**Filing to Disposition**	
	75%	95%
	365	450
Juvenile	**Filing to Disposition**	
	75%	95%
	200	250
Ind. Commission	**Filing to Disposition**	
	75%	95%
	285	365
Special Action	**Filing to Disposition**	
	75%	95%
	40	80

Supreme Court

Criminal	Filing to Discretionary Review		Review Accepted to Disposition	
	75%	95%	75%	95%
	150	180	180	240
Civil	**Filing to Discretionary Review**		**Review Accepted to Disposition**	
	75%	95%	75%	95%
	150	180	180	240
Family	**Filing to Discretionary Review**		**Review Accepted to Disposition**	
	75%	95%	75%	95%
	125	150	120	180
Juvenile	**Filing to Discretionary Review**		**Review Accepted to Disposition**	
	75%	95%	75%	95%
	125	150	120	180
Ind. Commission	**Filing to Discretionary Review**		**Review Accepted to Disposition**	
	75%	95%	75%	95%
	150	180	180	240
Special Action	**Filing to Discretionary Review**		**Review Accepted to Disposition**	
	75%	95%	75%	95%
	70	120	40	80

Appendix 4

Court Performance under Recommended Standards

Court of Appeals-Division One

Juvenile	Filing to Disposition	
	75% within 200 days	95% within 250 days
FY 2013	87%	95%
FY 2014	92%	98%
FY 2015	87%	95%
Ind. Commission	**Filing to Disposition**	
	75% within 285 days	95% within 365 days
FY 2013	74%	83%
FY 2014	69%	95%
FY 2015	72%	92%
Family	**Filing to Disposition**	
	75% within 365 days	95% within 450 days
FY 2013	93%	98%
FY 2014	79%	93%
FY 2015	77%	91%
Civil	**Filing to Disposition**	
	75% within 390 days	95% within 500 days
FY 2013	81%	93%
FY 2014	74%	92%
FY 2015	70%	88%
Criminal	**Filing to Disposition**	
	75% within 450 days	95% within 600 days
FY 2013	71%	93%
FY 2014	79%	94%
FY 2015	81%	97%
Special Action	**Filing to Disposition**	
	75% within 40 days	95% within 80 days
FY 2013	93%	98%
FY 2014	86%	94%
FY 2015	91%	95%

Meeting standard Within 10% of standard Failing to meet standard

Court of Appeals-Division Two

Juvenile	Filing to Disposition	
	75% within 200 days	95% within 250 days
FY 2013	96%	99%
FY 2014	97%	98%
FY 2015	97%	99%
Ind. Commission	**Filing to Disposition**	
	75% within 285 days	95% within 365 days
FY 2013	80%	93%
FY 2014	85%	95%
FY 2015	76%	90%
Family[1]	**Filing to Disposition**	
	75% within 365 days	95% within 450 days
FY 2013		
FY 2014		
FY 2015		
Civil	**Filing to Disposition**	
	75% within 390 days	95% within 500 days
FY 2013	97%	99%
FY 2014	97%	99%
FY 2015	95%	98%
Criminal	**Filing to Disposition**	
	75% within 450 days	95% within 600 days
FY 2013	86%	98%
FY 2014	77%	94%
FY 2015	87%	95%
Special Action	**Filing to Disposition**	
	75% within 40 days	95% within 80 days
FY 2013	73%	97%
FY 2014	80%	94%
FY 2015	77%	94%

Meeting standard Within 10% of standard Failing to meet standard

[1] Court of Appeals Division Two is unable to separate family cases historically, but will be able to separate them on a day forward basis.

Supreme Court

Juvenile	Filing to Discretionary Review			Review Granted to Disposition		
	75% within 125 days	95% within 150 days	Number of Cases[2]	75% within 120 days	95% within 180 days	Number of Cases
FY 2013	68%	82%	34	n/a	n/a	0
FY 2014	79%	92%	24	n/a	n/a	0
FY 2015	77%	92%	26	n/a	n/a	0
Ind. Commission	**Filing to Discretionary Review**			**Review Granted to Disposition**		
	75% within 150 days	95% within 180 days	Number of Cases	75% within 180 days	95% within 240 days	Number of Cases
FY 2013	55%	91%	11	n/a	n/a	0
FY 2014	73%	91%	11	n/a	n/a	0
FY 2015	46%	77%	13	100%	100%	1
Family	**Filing to Discretionary Review**			**Review Granted to Disposition**		
	75% within 125 days	95% within 150 days	Number of Cases	75% within 120 days	95% within 180 days	Number of Cases
FY 2013	40%	75%	20	n/a	n/a	0
FY 2014	80%	80%	10	100%	100%	1
FY 2015	15%	69%	13	n/a	n/a	0
Civil	**Filing to Discretionary Review**			**Review Granted to Disposition**		
	75% within 150 days	95% within 180 days	Number of Cases	75% within 180 days	95% within 240 days	Number of Cases
FY 2013	83%	95%	292	65%	90%	20
FY 2014	69%	94%	264	79%	86%	14
FY 2015	51%	80%	250	88%	94%	17
Criminal	**Filing to Discretionary Review**			**Review Granted to Disposition**		
	75% within 150 days	95% within 180 days	Number of Cases	75% with 180 days	95% within 240 days	Number of Cases
FY 2013	78%	94%	360	50%	75%	4
FY 2014	75%	92%	291	100%	100%	4
FY 2015	49%	80%	310	89%	89%	9
Special Action	**Filing to Discretionary Review**			**Review Accepted to Disposition**		
	75% within 70 days	95% within 120 days	Number of Cases	75% within 40 days	95% within 80 days	Number of Cases
FY 2013	70%	89%	27	0	0	1
FY 2014	67%	93%	15	50%	50%	2
FY 2015	81%	100%	16	n/a	n/a	0

Meeting standard Within 10% of standard Failing to meet standard

[2] Note that the number of cases are provided in this chart to provide context and demonstrate that some percentages may represent a skewed picture of performance due to the low volume of cases represented.

Appendix 5

Dissenting letter from Mr. David Euchner

The Steering Committee on Arizona Appellate Case Processing Standards agreed to adopt time standards not only for "filing to disposition" but also for "at issue to disposition" to measure the judges. After this was supported by the committee at two consecutive meetings, the committee abandoned the "at issue to disposition" metric on the sole ground that it would be too difficult for Division One of the Court of Appeals to meet any standards that would be set. Because I believe not only that the "at issue to disposition" is a critical component to any standards that are set, but also that the removal of that metric is fatal to the concept of reporting any meaningful statistics, I must respectfully dissent from the final report.

At the outset, it is important for me to place the work of this committee in context. The criminal defense appellate bar that practices in Division One has been struggling for eighteen months with unrealistic deadlines set for filing briefs. In 2014, in my capacity as President of Arizona Attorneys for Criminal Justice, I received from some of our members a proposed policy from Division One that would implement a rigid policy that explicitly rejected the attorneys' heavy caseloads as a compelling reason to request second continuances. After reviewing the new policy and the written comments already submitted, I co-signed a letter explaining that such a "rocket-docket" policy would lead to public defenders withdrawing from cases due to caseloads and highly skilled private attorneys refusing to accept appellate contracts. Naturally, the court would then have to appoint attorneys who are less skillful or experienced, and thus the ultimate result could only be deteriorating quality of briefs. Yet despite these expressed concerns, Division One has implemented its policy. It was with these concerns in mind that I sought appointment for criminal practitioners to this committee.

I wholeheartedly agree that it is important to measure "filing to disposition" so that the time in which it takes for an appeal to run its course can be seen by the legislature that approves funding for the judiciary, the participants in the appellate process, and the public as a whole. I also agree that the courts should measure the amounts of time it takes to complete each of the three stages of an appellate case: 1) preparation of the record; 2) filing of the briefs; 3) decision of the court. In criminal cases there is often a significant blending of time between record preparation and brief submission because an attorney may not immediately recognize that important portions of the record are missing or inaccurate until the record has been certified as complete and the attorney reviews the entire record and identifies issues for appeal. Because of this blending, the overwhelming majority of the committee agreed to set standards not only for "filing to disposition" but also for "at issue to disposition." *See* Minutes of January 20, 2016 meeting, pp.1-2; Minutes of February 11, 2016 meeting, p.2.

At the January 20 meeting, the committee discussed at length that a case becomes "at issue" when the case is submitted by the parties to the court. A case becomes "at issue" ten days after the reply brief is filed, because that is the deadline for filing a request for oral argument. The chief judges and clerks of Division One and Division Two explained the next step in the process once a case is submitted by the parties. In Division Two, the case is immediately assigned to a department or a chambers. In Division One, however, the case sits in some kind of a "holding pattern"[1] for as much as 45-60 days in case types with priority (and several months in civil cases) before it is assigned to a department or chambers.

[1] I do not remember whether there is an official name for this process within Division One; I have assigned it that name based on its function.

The January 20 meeting minutes reflects that the time to be measured that is within the judges' control is "at issue to disposition – chambers control." Prior to the motion and vote, however, the minutes also reflect that "Committee members noted the importance of measuring the time in which the appellate bench has control of the case separately from the total time from filing to disposition." It seemed universally understood among all committee members when a case becomes at issue.

In advance of the February 11 meeting, Division One and Division Two provided the 75th and 95th percentiles for the two requested data points. Instead of labeling the data "at issue to disposition," however, it was labeled "judge assignment to disposition." In Division Two, this is a distinction without a difference, because the case is assigned on the same day it is at issue. But in Division One, this data masked the time cases sat in the "holding pattern."

When it was discussed at the February 11 meeting that the committee did not want the court's responsibility for initiating work on a case to begin at "judge assignment" but when the case is "at issue," Division One balked and noted this would have a significant effect on its ability to meet standards. With this knowledge, the committee still voted overwhelmingly to maintain a standard for "at issue to disposition," over the objection of the Division One chief judge and clerk. The committee then proposed time standards to be circulated for comment and to be voted upon at the final meeting on February 26, 2016.

On the afternoon prior to that meeting, however, Division One circulated a memorandum that included accurate data demonstrating how far afield it was from the proposed standards. Division One offered new time standards for "at issue to disposition," without modifying the "filing to disposition" standard at all. Thus, Division One sought to take significant amounts of extra time for itself at the expense of court reporters and lawyers.

Based on this memorandum and data, the committee retreated from a position it had taken only fifteen days earlier and rescinded the standard for "at issue to disposition." I see no cause to rescind that standard.

I was particularly concerned about the existence of the "holding pattern" as a means by which Division One judges could mask their true metrics. I noted at both the February 11 and February 26 meetings that the rigid Division One policy gave no quarter to public defenders who were no less overworked than the judges (and almost certainly more overworked). Thus, Division One has practiced a double-standard.

During the February 26 meeting, the Division One chief judge defended that court's rigid continuance policy on criminal defense lawyers by stating that the lawyers should endeavor to work faster for the benefit of their clients. This statement ignores the tireless labor of public defenders who are compelled by county supervisors to carry crushing caseloads while doing their best to write high-quality briefs and obtain relief for their clients. Defense attorneys can be relied upon to have their own clients' best interests in mind when they ask for a continuance of a brief due date. It is unfair for a court to demand that overworked lawyers rush their work while at the same time failing to assess its own delays in the process of resolving cases.

The discussions of the committee revealed other inefficiencies in Division One's processes beyond the significant "holding pattern" time. The periods of time in which a panel of judges stays together is only four months in Division One, but twelve months in Division Two. This

means that Division One judges are rotating panels at least once, and possibly several times, during the life of a case. This seems chaotic and ripe for reform. It was suggested that, even if Division One changed to a twelve-month rotation, at most that would only reduce the length of time to complete a case by several days. But with a caseload in the thousands, what begins as a short line that moves too slowly, in very little time, becomes a very long line. I am unconvinced that changing the duration of panel assignments would have only a negligible effect; there is a reasonable probability that this change alone could solve the backlog.

A likely unintended consequence of the Division One "rocket-docket" policy in criminal cases is the filing of more *Anders* briefs than might otherwise be filed if the lawyer had sufficient time to research and brief the issues. It was pointed out in committee that searching the record for fundamental error in an *Anders* case takes more time than deciding a case with a merits brief. I fully agree with that statement, and I note that Division One finds arguably meritorious issues meriting *Penson* briefs with great frequency. Division One even published an order in *State v. Thompson*, 229 Ariz. 43, 270 P.3d 870 (App. 2012), as an attempt to reinforce the duties of the criminal appellate attorney. I stated this on several occasions during committee meetings, and I am certain that if Division One relaxes its rigid policy and provides competent counsel with sufficient time to review the record and brief the issues, it will issue fewer *Penson* orders and its "at issue to disposition" times will improve.

I have grave concerns on behalf of Division One practitioners if time standards are adopted for "filing to disposition" without a corresponding check on the judiciary by measuring the time a case is at issue. It is indisputable that among the participants responsible for preparing the record, submitting the briefs, and deciding the case, the judiciary has inordinate power over the other participants. This includes the power to punish court reporters or lawyers who take an amount of time to complete their tasks significant enough that, coupled with the inefficiencies of the court, the time standards are not met. Thus, Division One, holding all the power, can pass the buck onto the other participants. Again, it must be noted that Division Two can meet standards without placing any rigid constraints on court reporters or lawyers.

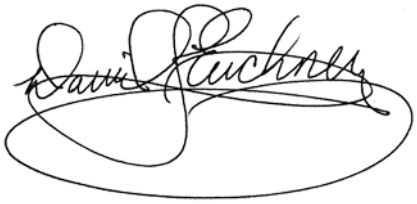
There may be other concerns outside the control of the courts. For example, it was repeated multiple times that the Maricopa County Superior Court is notoriously slow about transmitting the record to Division One. It is also possible that, because funding for attorneys is done at the county level, that the counties in Division One provide less funding for appellate defense than do the counties in Division Two, which in turn contributes to crippling caseloads. A bill in the legislature would create and fund two additional Arizona Supreme Court justices; perhaps this could be a vehicle to requesting that the legislature instead create and fund two additional Court of Appeals judges. It is important to identify variables and address these issues in the proper forum.

But based on the record before this committee, I see no reason to depart from the time standards that were suggested at the February 11 meeting[2] without, at the very least, some steps taken by Division One to improve its own efficiencies. In the absence of such steps, any standards

[2] Some modifications were made at the February 26 meeting for case types that are less common, such as Industrial Commission. I voted in favor of those minor modifications and continue to support that decision based on the difficulty in measuring case types with limited frequency.

adopted will lose their meaning and will result in continued undue pressure on lawyers and court reporters.

I respectfully dissent.



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