



# Arizona Court of Appeals

## Division One

### 2012: The Year in Review



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# Welcome



The Arizona Legislature created the Arizona Court of Appeals in 1964 to accommodate the increase in appeals presented to the Arizona Supreme Court as the state grew in population. The court began operations in 1965 and serves as an intermediate appellate court with two divisions: Division One, based in Phoenix, and Division Two, based in Tucson.

Division One of the court came into existence with three judges and was expanded to its current number of sixteen judges throughout the years as the state's population increased from 1.5 million in 1965 to its current 6.5 million residents.

Division One considers appeals emanating from eight of Arizona's fifteen counties: Apache, Coconino, La Paz, Navajo, Maricopa, Mohave, Yavapai, and Yuma. The judges are appointed by the Governor from a list created by a citizen commission in a merit-selection process. Ten of the judges must reside primarily in Maricopa County, five of the judges must reside primarily outside Maricopa County but within Division One, and one judge must reside primarily in at least one of the counties within Division One. Thereafter, the judges run for retention by the voters every six years, who are afforded the opportunity to review information about the judges' performance published by the Commission on Judicial Performance Review.<sup>1</sup>

The court operates on a fiscal year, which runs from July 1 through June 30. It is entirely funded by the state's general fund and has no programs that use budgeted funds. In addition to the sixteen judges, Division One currently employs 91.5 full-time and part-time employees,

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<sup>1</sup> Initially, judges must run for retention in the first general election held two years after their appointment.

including our Clerk of the Court, Ruth Willingham, who oversees the appellate record and distribution of decisions, and Anthony Mackey, our Chief Staff Attorney. Division One has experienced only minimal growth in judges and employees in the last twenty years despite the dramatic increase in Arizona's population and the number of new superior court judges added during that time. Indeed, the court has not added a panel of three judges since 1989, and last received a new judge position when the legislature added the sixteenth judge in 1995. All judges and employees are governed by codes of conduct adopted by the Arizona Supreme Court, and each calendar year everyone must complete a required number of continuing education hours.

Division One decides appeals in three-judge panels, which rotate in composition every four months. The judges elect one judge to serve as Chief Judge. In light of the Chief Judge's administrative duties, that judge is not assigned to a regular panel but instead sits on the various panels as needed to accommodate vacancies, conflicts of interest and workload issues. The court decides appeals from the superior court in a wide variety of substantive areas, including civil, criminal, juvenile, family law, mental health, probate, and tax. Additionally, the court reviews decisions made by the Industrial Commission in workers' compensation cases, hears appeals

from decisions made by the Arizona Corporation Commission and the Unemployment Compensation Board, and considers “special action” petitions seeking pre-judgment and emergency relief. With few exceptions, every decision is made by a panel of judges after they meet to consider the case and hear any necessary oral argument. Each decision is memorialized in writing and issued to the parties and the decision-maker who made the challenged decision. A decision is subject to discretionary review by the Arizona Supreme Court; however over 95 per cent of all appellate cases are ultimately concluded by the Court of Appeals’ decision.

The judges and employees of Division One of the Arizona Court of Appeals work diligently to distribute and decide cases impartially and efficiently. Despite the stress brought about by the state’s fiscal crisis in recent years, we remain dedicated to public service and take great pride in our work. Although not required by any statute or rule to do so, we offer you this, our fourth Year in Review report, to better inform the public about our court and its vital role in Arizona’s justice system.

Respectfully submitted,

*Lawrence F. Winthrop*  
Lawrence F. Winthrop  
Chief Judge

# Judges of the Court of Appeals

## Current Judges

<b>Judge</b>	<b>Appointed</b>	<b>Home County</b>
Lawrence F. Winthrop, Chief Judge	2002	Maricopa
Diane M. Johnsen, Vice Chief	2006	Maricopa
Jon W. Thompson	1995	Coconino
Philip Hall	2001	Yuma
John C. Gemmill*	2001	Maricopa
Maurice Portley	2003	Maricopa
Donn Kessler	2003	Maricopa
Patricia K. Norris	2003	Maricopa
Patricia A. Orozco	2004	Yuma
Michael J. Brown	2007	Navajo
Margaret H. Downie	2008	Maricopa
Peter B. Swann	2008	Maricopa
W. Andrew Gould	2011	Yuma
Randall M. Howe	2012	Maricopa
Samuel A. Thumma	2012	Maricopa

Judge Sheldon Weisberg retired from the court in June of 2011. His replacement, Judge Andrew Gould, was appointed by Governor Brewer, and Judge Gould started his new position in December. That same month, Judge Daniel Barker retired from the court after 20 years of judicial service. Judge Patrick Irvine also left in December to enter private practice in Phoenix. Governor Brewer appointed Randall Howe and Samuel Thumma to fill these vacancies, and they began their service with the court in May of 2012.

\*Former Chief Judge

## Former Judges

Judge	Service	Home County
James Duke Cameron*^	1965-1971	Yuma
Francis J. Donofrio^	1965-1981	Maricopa
Henry S. Stevens*^	1965-1975	Maricopa
Levi Ray Haire*	1969-1989	Maricopa
William E. Eubank^	1969-1992	Maricopa
Eino M. Jacobson*	1969-1995	Yavapai
Williby E. Case^	1971-1972	Yuma
Jack L. Ogg*^	1973-1985	Yavapai
Gary K. Nelson	1974-1978	Maricopa
Donald F. Froeb*^	1974-1988	Maricopa
Laurance T. Wren*^	1974-1982	Coconino
Mary M. Schroeder	1975-1979	Maricopa
Joe W. Contreras*^	1979-1996	Maricopa
Sandra Day O'Connor	1979-1981	Maricopa
Robert J. Corcoran^	1981-1989	Maricopa
Sarah D. Grant*	1981-1999	Maricopa
Thomas C. Kleinschmidt*	1982-2000	Maricopa
J. Thomas Brooks	1982-1991	Coconino
Bruce E. Meyerson	1982-1986	Maricopa
D. L. Greer^	1982-1989	Apache
Melvyn T. Shelley^	1985-1991	Navajo
Noel Fidel*	1986-2001	Maricopa
Rudolph J. Gerber	1988-2001	Maricopa
John L. Claborne^	1989-1995	Maricopa
Edward C. Voss*	1989-2003	Maricopa
Susan A. Ehrlich	1989-2008	Maricopa
Ruth V. McGregor*	1989-1998	Maricopa
Jefferson L. Lankford	1989-2006	Maricopa
John F. Taylor	1989-1992	Navajo
William F. Garbarino	1991-2004	Coconino
Philip E. Toci*	1991-2000	Yavapai

<b>Judge</b>	<b>Service</b>	<b>Home County</b>
E.G. Noyes, Jr.*	1992-2003	Maricopa
Sheldon H. Weisberg*	1992-2011	Mohave
James B. Sult	1995-2006	Yavapai
Cecil B. Patterson, Jr.	1995-2003	Maricopa
Michael D. Ryan^	1996-2002	Maricopa
Rebecca White Berch	1998-2002	Maricopa
James M. Ackerman^	2000-2001	Maricopa
Ann A. Scott Timmer*	2000-2012	Maricopa
Daniel A. Barker	2001-2011	Maricopa
G. Murray Snow	2002-2008	Maricopa
Patrick Irvine	2002-2011	Maricopa

^ Deceased

\* Former Chief Judge

# How the Court Makes Decisions

## Appeals<sup>2</sup>

When all briefs have been submitted in an appeal, or the time has expired for doing so, the Clerk of the Court sets the case on the next available calendar of one of the five court panels. The Clerk assigns the cases without reviewing the subject matter of the appeal or considering the composition of the panels. No judge has a role in determining which cases are assigned to any panel. Each three-judge panel is assigned a monthly calendar of cases, which is grouped by subject matter. For example, a panel may have a criminal calendar one week, a civil calendar the next and a workers' compensation calendar the week after that. Monthly calendars are posted in advance on the court's website.

All panels privately meet to discuss and decide the appeals weekly, typically on either a Tuesday or Wednesday. Prior to meeting, each judge reads the parties' briefs, conducts legal research, and reviews pertinent parts of the record. The judge is assisted in this effort by law clerks and staff attorneys who specialize in various areas of the law. By the time the judges

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<sup>2</sup> In addition to appeals, some cases come before the court as petitions for review. This report uses the term "appeals" to encompass petitions for review, unless otherwise noted.

meet to discuss the cases assigned to a weekly calendar, they are well-versed in the facts and issues and prepared to consider the viewpoints of the other judges and then decide the cases. If a party requests oral argument and the court believes argument would assist it in deciding the case, the panel will hear oral argument on the same day it discusses the case in a conference.

Typically, the panel of judges will decide cases at the conclusion of the conference. A majority vote of two judges is needed to determine the disposition of a case. The presiding judge of the panel, who is selected by majority vote of the panel, then assigns the cases to the judges to write the decisions as either opinions, which may be cited in other cases as precedent, or memorandum decisions or decision orders, which may not be cited in other cases as precedent. If a judge on the panel disagrees with the majority's decision, that judge may write a dissent explaining the disagreement. If any judge agrees with the majority's decision but not its reasoning, that judge may write a special concurrence explaining his or her viewpoint.

The judges and staff at the court work diligently to issue written decisions as expeditiously as possible. The timing of the release of a decision, however, depends on a number of factors:

(1) The court is required by the legislature to give priority to criminal, juvenile, workers' compensation, mental health, and unemployment board appeals. Also, the court may, on application by a party and for good cause, accelerate some civil appeals pursuant to court rule. Consequently, judges may be required to issue written decisions in these types of cases before writing decisions in non-priority cases.

(2) A judge's caseload may impede that judge's ability to quickly draft or complete a written decision. Every judge from time to time draws cases that are exceptionally lengthy and/or complicated, thereby requiring extraordinary periods of focused time for research, record review, consideration and drafting. Because a judge assigned to one of these time-consuming matters typically is not in the meantime relieved of other ongoing case responsibilities, these large cases can slow the disposition of the judge's assigned cases for a period of time.

(3) After the authoring judge submits a draft to the panel, the remaining two judges review it and submit comments and suggestions. A judge wishing to write a dissent or special concurrence will do so at this time. Sometimes, several drafts are exchanged before the panel agrees on a final draft.

(4) Drafting an opinion is generally more time-consuming than drafting other written decisions. Because opinions serve as precedent for future cases, judges may cite more authority for the decision, provide more reasoning, and spend more time in an effort to avoid language or reasoning that may lead to unintended consequences in future cases. Also, unlike other written decisions, the authoring judge circulates a draft opinion to the entire court for comments. This does not mean all judges on the court vote on the outcome, but their comments often are helpful to the authoring judge and the others on the panel in refining the decision. The comment period can extend the time for issuing an opinion.

### Special Actions

Petitions for special action relief are filed by parties asking the court to order a public or private entity or group, officer, or person to take some action or refrain from action. For the most part, such petitions seek immediate relief and the petitioner asserts -- and must demonstrate -- that the matter cannot wait for the regular appeal process.

Each panel of judges is assigned a special action calendar of up to eight cases every month or so. As petitions are filed, the Clerk of the Court sends the petitions to the panel in the order received until the calendar “closes” due to the number of petitions received or timing constraints

imposed by the Rules of Procedure for Special Action. This panel is known as the “hot panel” because the judges must remain available to immediately address any requests for emergency stay relief while their special action calendar remains open. When one panel’s calendar closes, the next panel’s special action calendar opens and that panel becomes “hot.”

If a petitioner needs an immediate order from the court staying a challenged decision, the petitioner must first ask the superior court judge that issued the order to stay it pending resolution of the special action. If that judge denies the request, the petitioner may request a stay order from the hot panel. That panel will immediately schedule a telephonic hearing regarding the stay request and will generally verbally grant or deny the request directly after the hearing with a written order to follow.

Unlike direct appeals, the court has discretion whether to accept jurisdiction to intervene and decide the merits of a special action petition. In order to save the parties time and money and to decide petitions more expediently, the panel reviews all petitions before a response is filed to decide whether the petition sufficiently sets forth allegations qualifying the petitioner for special action relief. If not, the panel may decline jurisdiction immediately without requiring a responsive brief be filed. If the petition sets forth special-action-worthy allegations, the panel will await full briefing.

Thereafter, the panel will confer and decide the petitions in the same manner as appeals. If the court decides to decline jurisdiction, the parties will receive only a short order to that effect, which will not reflect the often-extensive work that occurred in making that decision.

## Motions

The court receives many motions filed in cases on appeal. These may include motions to dismiss all or part of an appeal, to supplement the trial court record on appeal, to strike all or a portion of a party's brief, etc. If a motion is filed after a case is assigned to a panel of judges, that panel will decide the motion. If a motion is filed before a case is assigned to a panel, a three-judge motions panel will decide the motion. All judges in the court take turns serving on the motions panel on a monthly basis.

## Budget Overview

The Court of Appeals is entirely funded by Arizona's general fund on a fiscal-year basis (July 1 – June 30). Fiscal years are referred to by the year in which the fiscal year expires. In calendar year 2012, Division One was funded by monies appropriated by the legislature in the latter half of fiscal year ("FY") 2011 and the first half of FY 2012.

With the onset of the state's economic downturn, Division One's budget has been cut in recent years. In FY 2013, the current budget year, Division One has a baseline budget of \$9,640,000, with further reductions possible.<sup>3</sup>

Approximately 92% of the court's current budget is comprised of salaries and employee-related expenditures. Division One has no court programs that receive state funding. As a result, to weather the economic

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<sup>3</sup> This budget includes a one-time reduction of \$78,500 for the Health and Dental premium holiday savings and a one-time increase of \$183,500 for the 5% employee retention payment cost. The FY 2013 baseline budget additionally omits the required increase in the court's employer contribution to the Elected Officials Retirement Plan (EORP) and the Arizona State Retirement System (ASRS), which the legislature mandated, but did not separately fund. Those costs had to be absorbed within the current appropriation, which was only possible without further staff reductions by cost savings generated by judicial vacancies. We are seeking a FY 2014 appropriation increase to cover these increased employer costs not yet covered within the baseline appropriation.

storm, for the past several years the court has not filled employee positions as they became vacant, unless the jobs could not be performed by remaining employees, and has drastically reduced its library resources. While the court in 2010 was forced to lay off three employees due to an insufficient budget, it did not experience any forced layoffs in 2011 or 2012. The court did delay filling some positions that came open during the year, and asked the current Judges and staff to carry the extra workload. Effective January 1, 2011, the court eliminated personal days off and reduced the number of vacation hours eligible for annual rollover. Over the last several years, the court has taken advantage of technology advances and, to a large extent, has converted to electronic filing, review, and distribution of cases in order to reduce postage and paper expenses.

## Transitioning to the E-world

The court continued to work throughout 2012 towards its goal of transitioning from a fully paper-based court to one that, to the greatest extent possible, operates electronically. By implementing electronic filing, record access, and decision distribution, the court has minimized postage and archival costs, and has increased efficiency and public access to the court.

### E-Records

In 2006, as a pilot project, the superior court in Yavapai County began electronically transmitting its case records to the Court of Appeals. Electronic access to the record allows each judge on a panel of the court to review a digital record and means that panel members do not have to exchange paper copies of the record among themselves. It also minimizes the time spent by the superior court staff in gathering and transmitting paper records, and thereby cuts costs for that court.

Since the completion of the pilot project with Yavapai County, the remaining seven counties that make up Division One, including Maricopa County, now electronically transmit their case records to our court. The ultimate goal of the judiciary is to develop a system of statewide electronic

case records that can be accessed by multiple courts (and eventually the public) without the need for physical transmission.

### E-Filing

The court continued to work closely with the Supreme Court and its vendor in 2012 to implement e-filing for parties in all case types through a system called “AZTurboCourt.” In December of 2010, the court conducted a “soft launch” of the system by inviting attorneys who frequently appear before the court to file documents electronically. This soft launch allowed the court to detect flaws in the filing system and refine policies for e-filing. Expanded use of e-filing for criminal appeal briefs, and an aggressive pilot project for e-filing civil appeal briefs occurred throughout 2011. That experience has demonstrated that the system works well, and focused training and education on the use of electronic filing was provided to the entire legal community. E-filing in Maricopa County Superior Court is now mandatory and, per the Chief Justice’s directive, e-filing in Division One and the Supreme Court became mandatory in 2012 for all attorneys appearing in those courts.

## E-Distribution

With an upgrade to its case management system, the court expanded electronic distribution to include parties in all case types who have e-mail addresses on file with the court. By electronically distributing decisions and orders, the court provides quicker access to decisions and saves postage.

## **Court Performance**

### Filing and Termination Rates

In calendar year 2012, the court began the year with 2,317 pending cases. An additional 2,882 appeals were filed and 57 cases were reinstated after dismissal during the prior year. The court terminated 2,966 cases during the year through decisions on the merits of a case or dismissal orders, leaving 2,208 cases pending at the start of 2013. The cases break down into the case types set forth on the following page:

<b>Case Type</b>	<b>Begin Pending</b>	<b>Filed/Reinstated</b>	<b>Terminations</b>	<b>End Pending</b>
Civil	729	909	892	746
Criminal <sup>4</sup>	1260	837	914	1101
Juvenile	108	289	278	119
Mental Health	26	97	96	27
Workers' Comp	55	77	78 <sup>5</sup>	54
Special Actions	77	295	289	83
Unemployment Board	50	426	412	64
Tax	12	9	7	14
Corporation Commission	0	0	0	0
Electrical Power	0	0	0	0
<b>TOTAL</b>	<b>2,317</b>	<b>2,939</b>	<b>2,966</b>	<b>2,208</b>

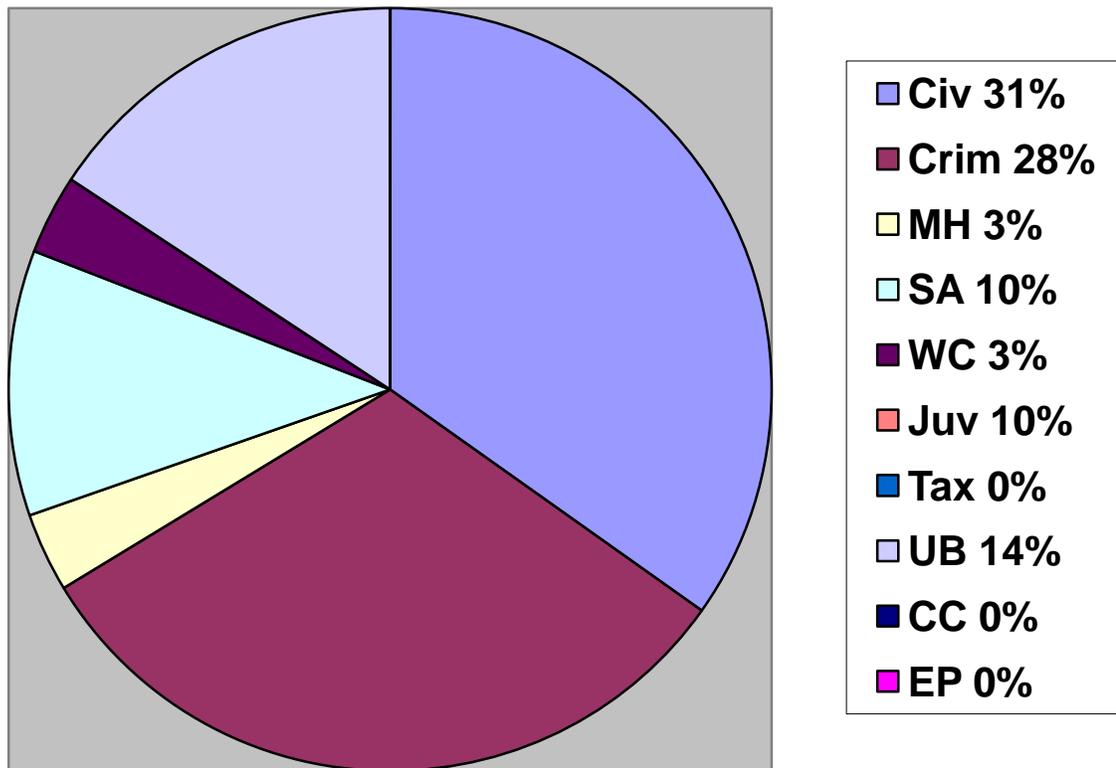
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<sup>4</sup> Criminal cases include criminal appeals, petitions for review of post-conviction relief rulings, and habeas corpus filings. At the request of Division Two, 100 pending post-conviction relief petitions were transferred to that Division.

<sup>5</sup> In addition to these terminations, Division One transferred 15 workers' compensation cases to Division Two per agreement between the divisions. Although Division One is statutorily authorized to decide all industrial commission cases for the entire state, it transfers cases to Division Two when counsel for the parties reside in the geographic area served by that division.

In 2012, based on the numbers set forth above, the percentages of new filings and reinstatements in the various case types broke down as follows:<sup>6</sup>

**Percentage of New Filings/Reinstatements by Case Type  
2012**



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<sup>6</sup> Division One had too few new tax (.003%), Corporation Commission (0%), and electrical power (0%) appeals in 2012 to register measurable percentages of new filings and reinstatements. Thus, these categories reflect zero percentages. Additionally, all percentages are rounded to the nearest percentage and therefore do not add up to 100% .

## Comparison to 2011

The number of new filings/reinstatements over all case types increased just slightly in 2011. The court continued to experience an increase in Unemployment board appeals, and also saw an increase in civil appeals and special action filings. Criminal, workers' compensation, juvenile and mental health appeals decreased slightly. Corporation Commission cases decreased from one to no new cases, and the court did not receive any electrical power appeals.

Even though the court was short-handed by judicial vacancies during the year, it was effective in continuing its on-going effort to reduce the number of pending cases. The court had fewer cases (2,208) pending at the end of 2012 than the number of cases (2,317) pending at the end of 2011.

## Multi-Year Comparison

Over the past seven fiscal years (2006 – 2012), new filings/reinstatements over all case types ranged from a high of 3,104 filings (2010) to a low of 2,657 (2006).

## Oral Arguments

Oral arguments are scheduled upon the timely request of a party and the court's agreement that such argument is warranted. Typically, the court will deny a request if it determines that the facts and legal arguments are adequately presented in the briefs and record, and oral argument would not aid the court significantly in deciding a case. Most oral arguments are in civil cases; the court rarely receives requests for argument in criminal appeals, and generally grants argument in those cases when requested. In 2012, the court held oral arguments in 177 cases, which was 11 fewer than the number of oral arguments held in 2011.



## Decisions

In 2012, Division One issued 1,209 merit-based decisions in the form of opinions, memorandum decisions, and decision orders. All of these written decisions are available on the court's website, <http://www.azcourts.gov>. Opinions are published by Thomson Reuters, and by court rule may be used as persuasive authority in future cases. Compared to recent years, the number of published opinions in 2012 (116) represents a decrease from the numbers published in 2010 (156) and 2011 (156). This drop may be explained by the nature of the appeals terminated by decision last year, and the guidelines for publication as established in Rule 111(b), Rules of the Supreme Court and in Rule 28(b), Arizona Rules of Civil Appellate Procedure. Formal opinions are reserved for those decisions that (1) establish, alter, modify or clarify a rule of law; or (2) call attention to a rule of law which appears to have been generally overlooked; or criticizes existing law; or (3) involve a legal or factual issue of unique interest or substantial public importance. In addition, if one of the judges on the panel issues a separate concurrence or dissent, that judge may request that the decision be in the form of a published opinion.

Memorandum decisions and decision orders explain the court’s reasoning, but by Supreme Court rule may not be used as authority in unrelated cases. For purposes of transparency, and at the request of members of the bar and the public who sought access to these decisions for legal research, Division One publishes these decisions on its website with a easy-to-use search engine, and permits Thomson Reuters to include them in an online database known as “WestLaw.” Orders generally do not explain the court’s reasoning for its decisions and are only issued, therefore, when the court has discretion whether to decide a case (e.g., special actions, petitions for review of post-conviction relief rulings).

Occasionally, parties ask the court to reconsider its decision in an appeal, and the court carefully considers these requests. Parties filed 208 such motions in 2012, down slightly from the number of such motions (219) filed in 2011. Division One granted 30 motions for reconsideration in 2012, as compared to the number of similar motions (32) granted in 2011.

## **Dispositions in the Arizona Supreme Court**

In 2012, parties filed petitions for review with the Arizona Supreme Court to challenge 464 decisions issued by Division One. This was

approximately the same number of petitions (467) filed for review of Division One cases in 2011.

The Arizona Supreme Court in 2012 granted review in only 15 cases involving decisions issuing from Division One, a reduction from the 26 petitions for review granted in 2011. Stated differently, while litigants filed petitions for review in approximately 38% of the cases after our decision was issued, the Supreme Court agreed to review only 3% of those cases. The Supreme Court accepts review for a number of reasons, including where the issue involves interpreting one of the Court's rules of procedure or evidence, or where different panels of the Court of Appeals have reached conflicting decisions on an issue of law. These statistics indicate that, although our court is an "intermediate" appellate court, our decisions were final and/or unchanged by the Supreme Court in almost 99% of the cases resolved in 2012.

Occasionally, the Supreme Court "depublishes" an opinion (or a portion of an opinion) issued by the Court of Appeals, meaning the result is left intact but the decision cannot be used as precedent in future unrelated cases. Although the Supreme Court generally does not provide an explanation for depublishing an opinion, it is generally accepted that the court takes this action when it identifies language in the opinion it disagrees

with, or the appeal involves an issue the court would prefer to address in a different factual or procedural setting, even though the court agrees with the outcome of the decision. In 2012, the Supreme Court did not issue any depublication orders concerning Division One opinions.



## Performance Measures: CourTools

In June 2008, the Arizona Supreme Court established the Appellate CourTools Committee to evaluate and recommend measures by which Arizona's appellate courts can track and improve performance using a methodology developed by the National Center for State Courts. By tracking the life of appeals from initiation until resolution, Arizona's appellate courts aim to improve their performance and provide transparency and accountability to the public. Only a handful of appellate courts across the country have undertaken this project, and Division One is committed to measuring and updating this information on an annual basis.

The Committee selected three performance measures for Arizona's appellate courts to use: (1) Time to Disposition; (2) Case Clearance; and (3) Age of Pending Caseload.<sup>7</sup> An explanation of these measures and their results follow.

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<sup>7</sup> In Fiscal Years 2009 and 2011, the Committee also used an anonymous biennial Appellate Bar and Trial Bench Survey as a performance measure. We anticipate repeating that survey in 2013.

## Time to Disposition

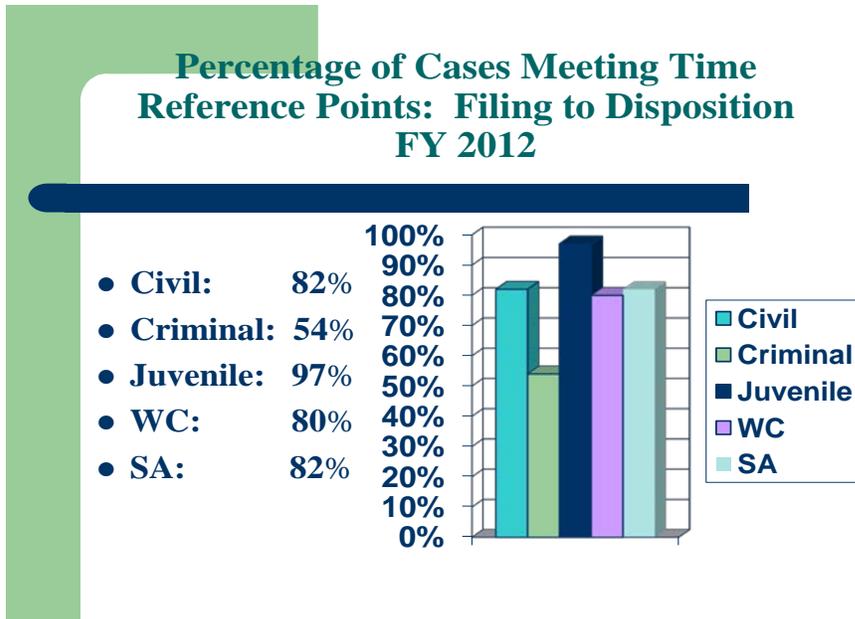
**Time to Disposition** measures the percentage of cases that were decided by a selected time reference point for the court's primary case types (civil, criminal, juvenile, special actions, and workers' compensation cases) during the court's **fiscal year** (July 1 – June 30). The purpose of this assessment is to measure stages of appeals against the same fixed points in successive years. For purposes of reference points, the court selected periods of time in which approximately 75% of its cases in the various case types and stages were decided in the years prior to Fiscal Year ("FY") 2009. Commencing with FY 2010 and continuing with FY 2011 and FY 2012, we measured our results against our performance in FY 2009 with an eye toward determining the effects of changes in funding, personnel levels, the efficiency of record gathering, and the like.

## Filing-to-Disposition Measure

The court selected the following number of days as time reference points for resolving cases measured from the day an appeal or special action is initiated by a party to the day a case is decided:<sup>8</sup>

Civil:	400 days
Criminal:	375 days
Juvenile:	275 days
Special Actions (“SA”):	25 days
Workers’ Compensation (“WC”):	300 days

In FY 2012, the percentage of cases that met these reference points was as follows:



<sup>8</sup> This means, for example, that the reference point for civil appeals from initiation to decision is 400 days, for criminal appeals is 375 days, and so forth.

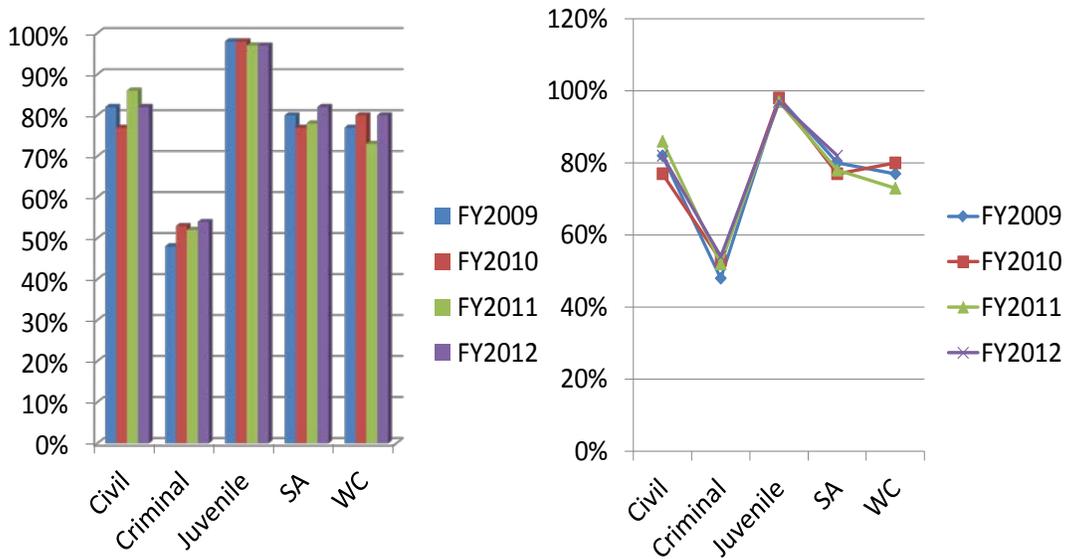
Compared to FY 2011, the court saw a slight increase in the time to disposition for civil cases, while the processing time for criminal cases was relatively identical. The percentage of criminal cases meeting this reference point goal remains a challenge, due in part to problems in having a complete record timely transmitted to the appellate court. The volume of criminal appeals, extended staff shortages and budgetary constraints in the trial court all seem to be factors in why court reporters continue to have difficulty completing and transmitting the official transcripts of criminal court proceedings in a timely fashion. The Court of Appeals closely tracks the preparation and filing deadlines for transcripts, and conducts “show cause” hearings every two weeks to try to reduce this delay. Our court will continue to work collaboratively with superior court personnel, including court reporter supervisors, to resolve delays in the filing of transcripts. The court has also taken steps to reduce continuances provided to counsel for the submission of appellate briefs; however, constitutional due process mandates applicable to criminal appeals appropriately affect the court’s ability to unduly restrict careful review and preparation of meaningful appellate briefs by counsel and, as necessary, by the defendant.

The percentage of workers’ compensation cases meeting the target goal increased by 7%, while the filing to disposition measure for special

actions continued to improve, this latest fiscal year by 4%. Juvenile cases are mandated by statute to have priority, and the percentage of these appeals meeting the time reference points in FY 2012 (97%) remained essentially identical to the percentages in the prior three years.

The following graphs illustrate the comparison between the fiscal years:

### Time from Filing to Disposition FY 2009 - 2012



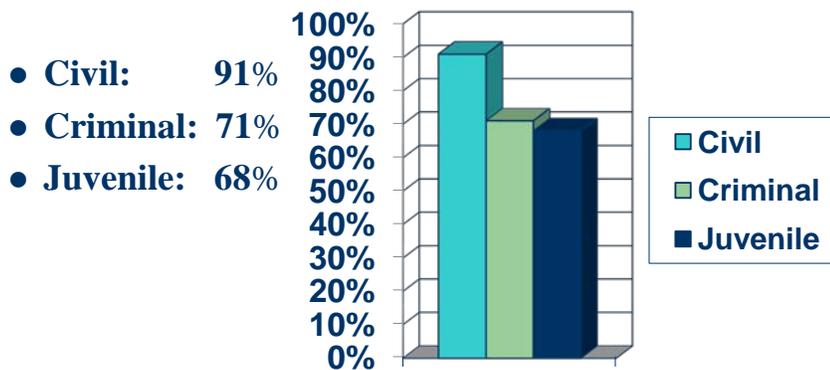
## Stage Measurements

In order to understand the pace of appeals through various points in case-processing, the court also set the following time reference points for the various stages of an appeal:

1. Target reference times, as measured by case type, from the time a party files a notice of appeal in the superior court to the time that court notifies Division One of the appeal (inapplicable to SA and WC cases):

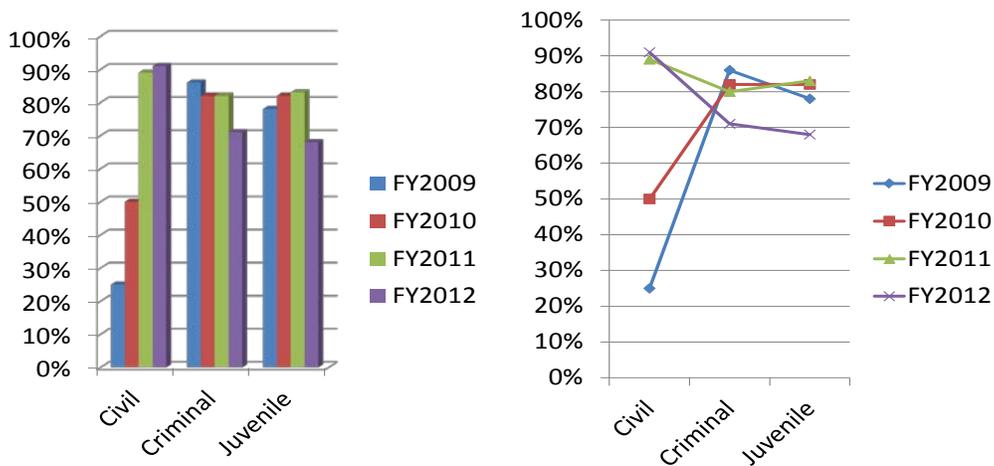
Civil:	40 days
Criminal:	8 days
Juvenile:	5 days

### Percentage of Cases Meeting Time Reference Points: Transmittal of Notice of Appeal FY 2012



Compared to FY 2011, this beginning phase of the appellate process (as initiated by the trial court) in FY 2012 saw continued improvement in civil appeals meeting the target reference point. The initial phases of both criminal and juvenile appeals were extended in FY 2012 as compared to prior years, and we will continue to work with superior court staff concerning the timely transmittal of the notice of appeal to our court. The numbers, however, are affected by the fact Maricopa County now transmits notices of appeal in juvenile cases twice a week, rather than on an as-filed basis, which makes it difficult, if not impossible, to meet the five day target point in many cases. The following graphs illustrate the comparison between the fiscal years:

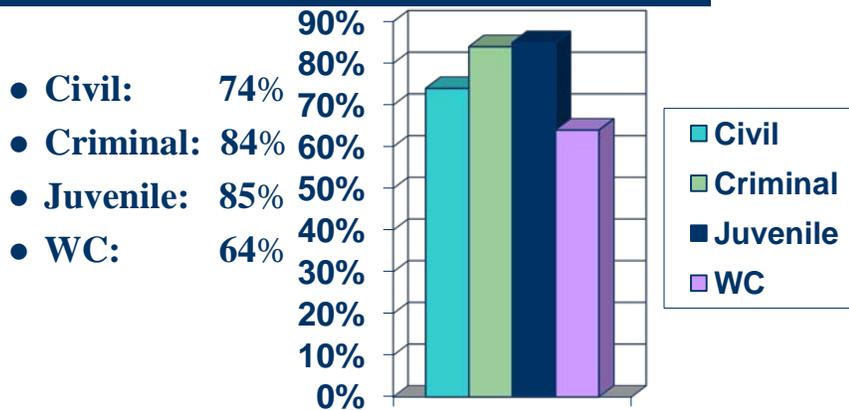
**Time from Filing Notice of Appeal to Delivery of Notice to Court of Appeals  
FY 2009 - 2012**



2. Target reference times, by case type, as measured from the day all records and briefs are filed in Division One (when the case is “at issue”) to the time the case is decided (inapplicable to special actions):

Civil:	225 days
Criminal:	150 days
Juvenile:	100 days
WC:	150 days

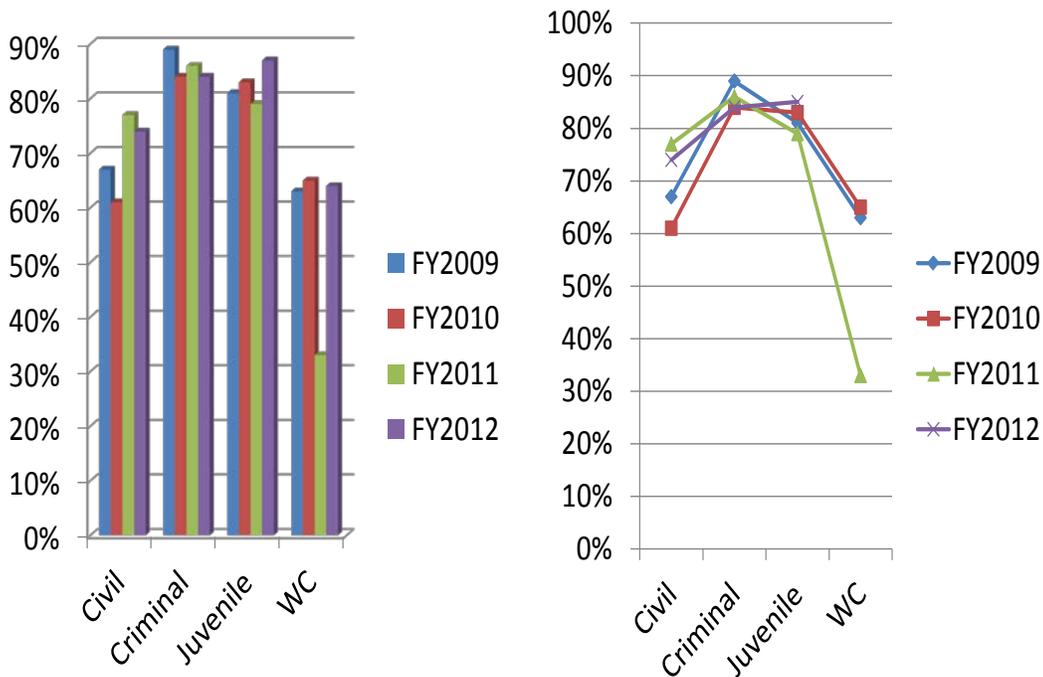
### Percentage of Cases Meeting Time Reference Points: At Issue to Decision FY 2012



Compared to FY 2011, the percentage of both civil and criminal appeals meeting the target reference point remained relatively the same. The number of juvenile cases meeting the target reference point improved by 6%. As noted in last year’s report, the workers’ compensation statistic for FY 2011 was substantially lower as compared to FY 2010; however, that

number was skewed by the comparative few numbers of workers' compensation appeals that year, and the exceptionally aggressive disposition target goal established. In FY 2012, the percentage of workers' compensation appeals meeting the target reference point nearly doubled, returning to a more historically consistent performance level. The following graphs illustrate the comparison between the fiscal years:

### Time from Filing all Records and Briefs to Disposition FY 2009 - 2011

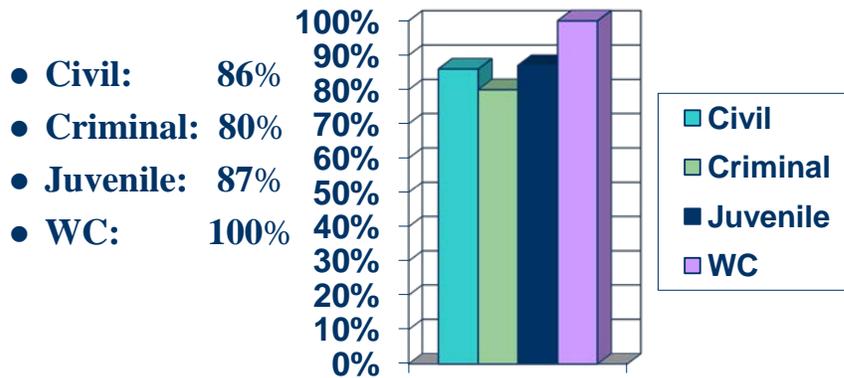


3. Target reference times, by case type, as measured from the day the panel of judges hears a case and takes it “under advisement” to the day the

panel issues its decision (Interlocutory appeals, otherwise known as “special actions” are not measured in this particular analysis):

Civil:	120 days
Criminal:	90 days
Juvenile:	40 days
WC:	100 days

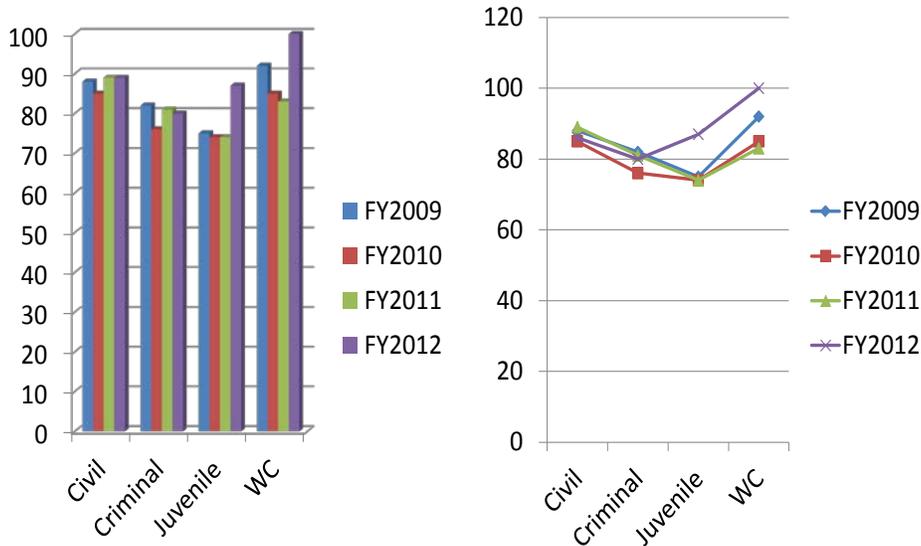
### Percentage of Cases Meeting Time Reference Points: Under Advisement to Decision FY 2012



Compared to FY 2011, the court overall maintained or improved its performance. The percentage of both civil and criminal cases meeting the reference point decreased slightly, but the percentages of both juvenile and workers’ compensation cases meeting the target reference point increased significantly. The number of juvenile cases meeting the target reference point increased by 13%, while the percentage of workers’ compensation

cases meeting the target reference point increased by 17%. The following graphs illustrate the comparison between the fiscal years:

### Time from Under Advisement to Decision FY 2009 - 2012



### Conclusion

Having statistics covering multiple fiscal years allows us to compare performance and draw some conclusions about whether Division One’s case processing has improved as compared to earlier years. This is particularly true when examining the data related to stages.

From an over-all standpoint, in all case types except criminal appeals, the court continues to see improvement in meeting or exceeding the filing-to-disposition benchmark reference points. This is particularly true once the

record from the lower court is complete, the briefs are filed by the parties and the case is set on a calendar for consideration. Despite budget cuts that were put in place some years ago, the judges and court staff through creative use of technology have been able to work more efficiently, and remain committed to reducing the time to appellate disposition in all case types.

As previously noted, however, only 54% of criminal appeals met the filing-to-disposition time reference point. At the same time, however, a substantial number of criminal appeals met or exceeded the reference points for the measured stages. Indeed, once all records and briefs in criminal appeals were filed in the court, 84% of the cases in FY 2012 met the given time reference point from that point until disposition by a panel of judges. It is evident that these appeals are being “delayed” in a stage not specifically measured by CourTools: The time period starting from the date in which the appeal is initiated to the date the superior court record and transcripts are complete and transmitted, and all briefs are filed by the parties.

Division One has been aware of this statistical anomaly for some time and has been working with the superior courts and their court reporters to expedite completion of the record and, most particularly, transmission of hearing and trial transcripts. We have also changed our practices regarding granting continuances of dates for filing briefs and have reduced the number

of continuances (and the length of continuances) granted. As noted above, the court holds “show cause” hearings at least every two weeks to assist in expediting the filing of transcripts and briefs.

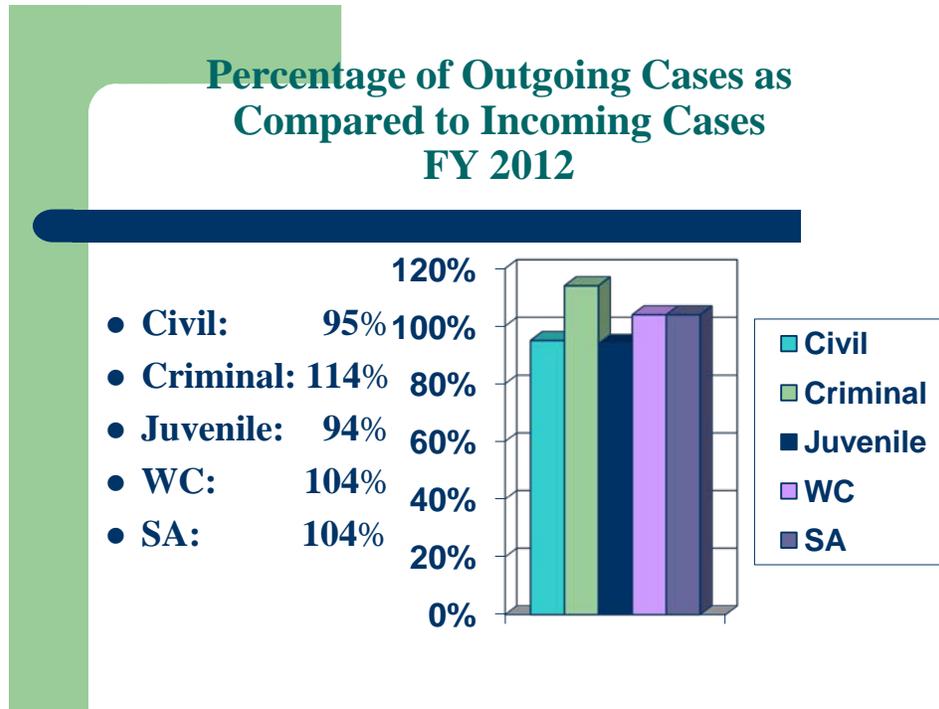
An additional factor affecting criminal appeals is that, in many instances, the lawyer appointed to represent the defendant on appeal is not the same lawyer who represented the defendant in the trial proceedings. Unless privately retained, new counsel must go through a court-appointment process. The newly-appointed defense lawyer is ethically required to carefully review all of the pre-trial and trial proceedings, and determine whether there are any arguable questions of law that are not frivolous. This painstaking process often causes the lawyer to ask for additional trial court transcripts and for additional time to complete such review. If there are such arguable questions of law, those discrete issues are identified and briefed. If counsel concludes there are no arguable questions of law that in his or her view are not frivolous, a notice is filed with the court certifying that conclusion, and asking the appellate court to review the entire record for fundamental error. State appellate courts are obligated to conduct such time-consuming review pursuant to the mandate of the United States Supreme Court.

Additionally, once counsel files the certification as described above, the defendant is entitled to disagree with the lawyer's assessment, and submit his or her own supplemental brief. Finally, in relatively rare instances, as a result of the court's own independent review of the record for fundamental error, the court may identify an issue and order the parties to submit supplemental briefing. In short, the constitutionally-mandated due process requirements for criminal appeals may, in some cases, extend the time until the appeal is considered "at issue" for up to two years.

### **Case Clearance**

**Case Clearance** measures the number of decided cases in a fiscal year as a percentage of the number of new cases filed that year. The point of the measurement is to assess how efficiently the court is resolving older cases as it accepts and processes newly filed appeals. Our goal is to have a 100% clearance rate, which means the court resolves at least the same number of cases as the number newly filed that year; in that fashion, the danger of a growing backlog of cases -- particularly in an era of budget challenges -- is minimized.

In FY 2012, Division One achieved the following case clearance rates:

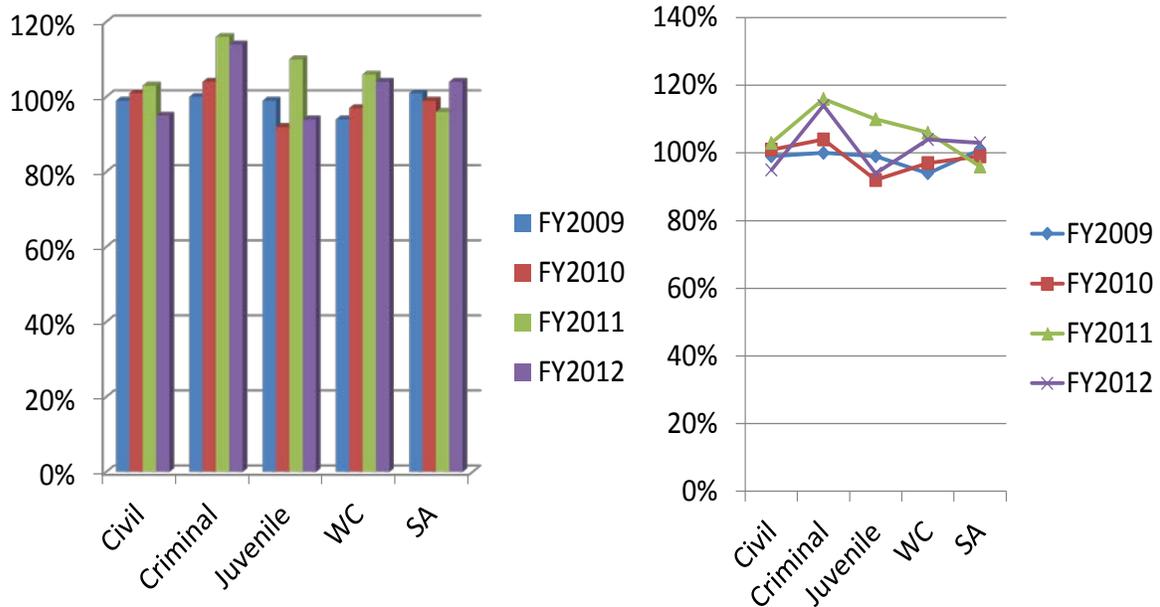


Overall, the blended case clearance rate for all case types in FY 2012 was 102%. By individual case type, compared with FY 2011, the court maintained or improved its case clearance rate in FY 2012 for criminal, workers' compensation and special action cases, but fell behind slightly in clearing civil and juvenile cases. Our preliminary analysis indicates that the increasing complexity of some civil filings is one potential explanation for the clearance rate on civil cases falling slightly below the 100 % mark. On a calendar basis analysis, the clearance rate for juvenile cases increased to

96%. These appeals have priority by statute, and we will continue to monitor and resolve them on an expedited basis.

The following charts show the comparison between FY 2012 and the prior three fiscal years:

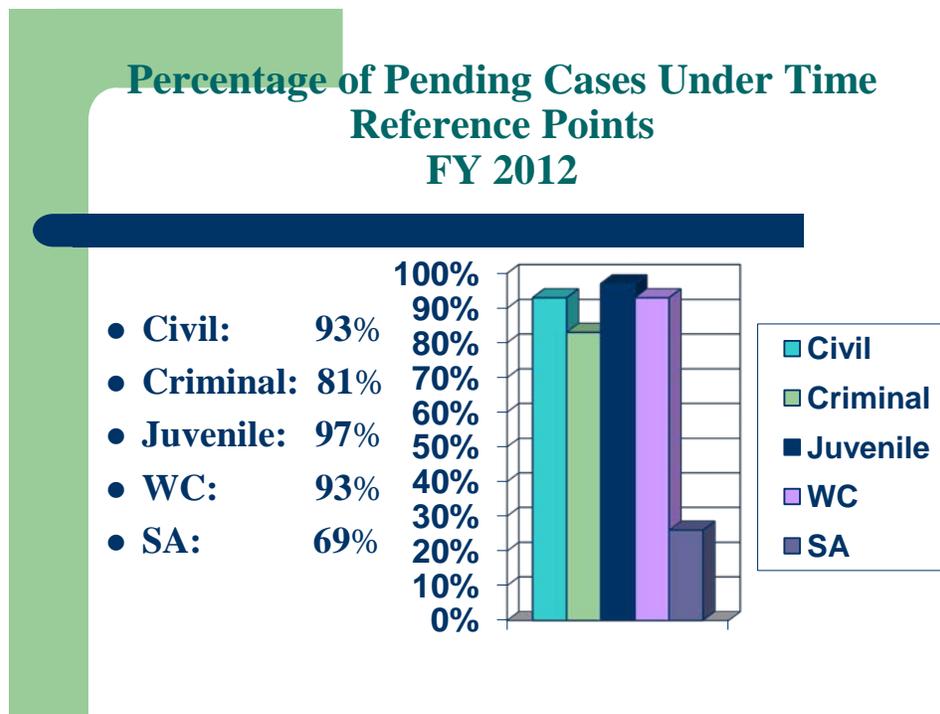
**Percentage of Cases Resolved as Compared to Incoming Cases  
FY 2009 - 2012**



## Age of Pending Caseload

This measurement is intended to provide information about the age of Division One's complement of pending but not yet decided cases. Specifically, the measurement calculates the percentage of cases pending at the end of a fiscal year that had not reached the time reference points identified for the Time to Disposition Measure described above.

The percentage of all cases pending at the end of FY2012 that had not reached the time reference points is as follows:

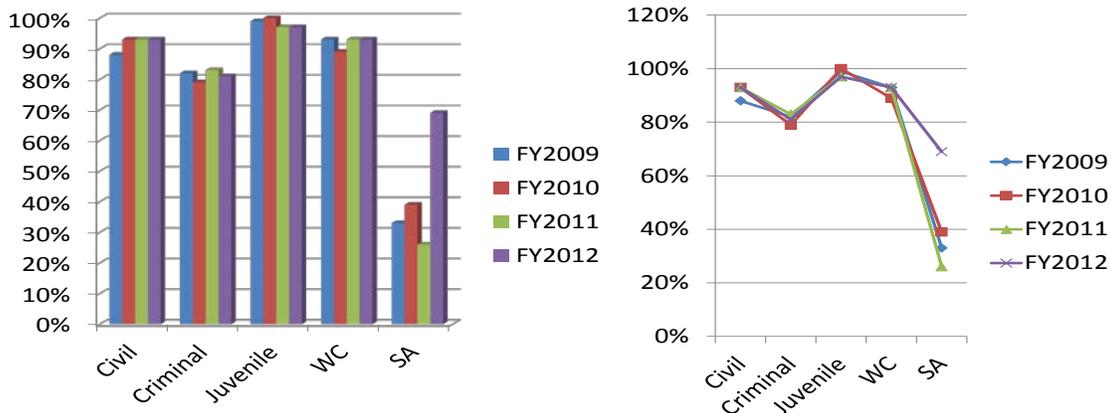


The Age of Pending Caseload measurement shows that at the end of FY 2012, Division One's pending cases were relatively new, as most had not yet reached their time reference points. For example, 97% of the pending

juvenile cases had not yet reached their time reference point. Although 69% of the special actions pending at the end of FY 2012 had not yet met their time reference point, this result does not demonstrate that Division One’s pending special actions were particularly aged because only 56 special actions remained pending at the end of FY 2012. The statistics indicate that the court considered and resolved 313 special actions that year and, indeed, 82% of all special actions met the filing-to-disposition reference point established for FY 2012 (an increase of 4% over the prior fiscal year).

On the whole, Division One’s age of pending cases remained substantially the same at the end of FY 2012 as compared with the end of FY 2011, as depicted in the following graphs:

**Percentage of Pending Cases Under Time Reference Points  
FY 2009 - 2012**



## Surveys

In the spring of 2011, an anonymous e-mail survey was sent to attorney members of the Appellate Practice Section of the State Bar of Arizona, to a random list of attorneys who had appeared before Division One within a designated time period, and to superior court judges and commissioners. The survey asked respondents to rate their agreement regarding statements about Division One on a five-point scale ranging from “strongly agree” to “undecided/unknown.” One hundred fifty-nine people responded to the survey, although several answered “undecided” or “unknown” regarding some statements.

Of particular note, greater than 90% of respondents with an opinion strongly agreed or agreed that Division One (1) renders its decisions without any improper outside influences; (2) treats trial court judges and attorneys with courtesy and respect; (3) is procedurally and economically accessible to the public and attorneys; (4) effectively informs attorneys and trial judges of its procedures, operations, and activities; (5) provides a useful website; (6) has a responsive clerk’s office; and (7) assists the public by making its memorandum decisions available for online review. The court received its lowest marks for expeditious resolution of cases, although 72% of

respondents with an opinion strongly agreed or agreed that Division One resolves its cases expeditiously.

Complete survey results setting forth the percentage of respondents expressing an opinion who “strongly agree” or “agree” with statements regarding Division One are as follows:

<b>Statement</b>	<b>Percentage Agreeing:</b>
1. Division One resolves its cases expeditiously.	72%
2. Division One renders decisions without any improper outside influences.	94%
3. Division One considers each case based upon its facts and applicable law.	87%
4. Division One’s written decisions reflect thoughtful and fair evaluation of the parties’ arguments.	84%
5. Division One’s written decisions clearly state the applicable legal principles that govern the decision.	87%
6. Division One’s written decisions clearly inform the trial courts and parties of what additional steps, if any, must be taken.	85%
7. Division One’s written decisions treat trial court judges with courtesy and respect.	97%
8. Division One treats attorneys with courtesy and respect.	94%
9. Division One is procedurally and economically accessible to the public and attorneys.	91%

10. Division One effectively informs attorneys and trial judges of its procedures, operations, and activities.	92%
11. Division One's website is a useful tool.	90%
12. Division One's Clerk's office responds well to inquiries.	95%
13. It is useful to have memorandum decisions available for review on Division One's website and through Westlaw.	97%

The goal of the court is to elevate all statements above a 90% agreement level. Compared to the results of the 2009 survey, the court has continued to improve in most of the surveyed areas. These results have been shared and discussed with the leaders of Division One, including all judges. This survey will be refined and repeated in 2013.

The court's focus in 2013 will be on achieving the often-fragile balance between quickly resolving cases and providing decisions that fully explain the court's reasoning. Achieving this balance will continue to be a challenge, particularly if the economy compels any further reduction in the court's workforce.

## Settlement Program

Since approximately 1995, Division One has operated a settlement program free of charge, which saves parties time and resources in resolving appellate disputes. Most civil matters are eligible for the program, including domestic relations and workers' compensation cases. Parties may request that a case be mediated, or the court may identify appropriate cases and ask the parties to attempt mediation of their dispute through the settlement program. An active or retired judge serves as a mediator. If the appeal does not settle, the appeal is placed back on track for decision by a panel of judges, and the judge who served as mediator will have no further involvement with the case. One of the court's staff attorneys continued to coordinate the settlement conference program for 2012 in addition to her other duties at the court.

In calendar year 2012, the litigants in nineteen cases went through the settlement program. Of those, thirteen appeals were resolved.<sup>9</sup> Of those cases that were resolved, the litigants reported an estimated savings in attorneys' fees and costs of \$183,000 - \$234,000. Additionally, countless hours of judicial and staff time was freed up to address other pending cases.

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<sup>9</sup> Some unresolved cases may yet settle in 2013.

The mediation program is yet one additional tool we utilize to reduce the overall appellate time to disposition. Because of this, and the obvious value to the parties on appeal, the court will continue to aggressively identify eligible cases, and will also consider different approaches to make the program more accessible and successful.

## **Connecting with the Community**

### **Pro Bono Attorney Matching Program**

Throughout 2010 and 2011, the court worked with the Appellate Section of the Arizona Bar Association, the Volunteer Lawyers Program of the Maricopa County Bar Association, the State Bar Modest Means Program and the Arizona Foundation for Legal Services and Education to establish a program to match indigent persons involved in family court and civil appeals with volunteer lawyers to receive legal assistance for free or at a reduced rate. Lawyers agreeing to take these cases on a pro bono basis are guaranteed the opportunity to argue the case before our court. A successful pilot program was launched in Maricopa County in February 2011, and two cases were concluded by decision that year. Three other cases were argued and resolved by memorandum decision or opinion in 2012. Additional cases

are currently pending or are in the intake process with VLP and Modest Means staff.

### High School Program

In 2002, Division One responded to the Arizona Supreme Court's challenge for courts to connect with their communities and started a program to hold oral arguments before students at their high schools. The idea was to educate the students about our State's legal system and the appellate process by providing them with briefs in real appeals, by organizing discussion sessions in the week leading up to the hearing, and then allowing the students to watch oral arguments in their school auditoriums (with the parties' permission). After oral argument, judges, attorneys, law clerks school administrators and teachers meet with the students to answer questions about the judicial process and potential careers in the legal profession. The court typically works with the Arizona Foundation for Legal Services and Education and with a local or specialty bar association to put on the program. Superior court judges, local elected officials,



teachers and school district leaders have been generous with their time in attending these sessions.





In recent years, Division One has worked to increase the educational impact of the program. The Arizona Foundation for Legal Services and Education provides staff and volunteer attorneys to go into the students' classrooms to discuss the facts and issues in the selected case in the weeks before an oral argument so the students are well-versed in the appeal process and the issues raised by the particular case before seeing the lawyers and judges in action. After the panel of judges issues the decision, the court provides the written decision to the classrooms for review and discussion by the students who attended the argument. The program has been highly successful, as schools welcome opportunities for their students to observe the appellate process in action. In 2005, the Arizona Supreme Court recognized the program by bestowing its "2005 Justice for a Better Arizona Achievement Award."

In 2011 and 2012, Judge Margaret H. Downie chaired Division One’s Connecting with the Community Committee, which is charged with responsibility for the program. In 2012, the Arizona School for the Arts asked to participate and, because it could not accommodate the event on its campus, the school was invited in May to the State Courts Building for the argument and related education session. Later, in November, the court traveled to Deer Valley High School for another argument and educational program.





Division One has previously held oral arguments at the following high schools:

- Cesar Chavez High School (2002)
- South Mountain High School (2002)
- Central High School (2003)

Carl Hayden High School (2004)  
Highland High School (2004)  
Horizon High School (2005)  
Queen Creek High School (2005)  
Marcos De Niza High School (2006)  
Dysart High School (2006)  
South Mountain High School (2007)  
Cesar Chavez High School (2007)  
Shadow Mountain High School (2008)  
Centennial High School (2008)  
Agua Fria High School (2009)  
Perry High School (2009)  
Maryvale High School (2010)  
Mesa High School (2010)  
Moon Valley High School (2011)  
Coronado High School (2011)

### Victims Assistance

In 2009, the court learned that the now-adult victim of a brutal child molestation case had been traumatized by the knowledge that her full name was revealed in a published Court of Appeals Division Two case issued in the 1970s. Because opinions previously published only in law books are now readily available for online viewing, she was horrified to discover that people could learn of the crime by searching the internet. In response, with the consent of Division Two, the Court contacted law book publisher Thomson Reuters and secured its agreement to substitute letters for the victim's name so she could not be identified in the version of her case available online.

After this experience, Division One formed a committee of volunteers, which searched the legal database to identify other cases that identified victims of personal crimes by their full names. In mid-2010, the court informed Thomson Reuters of 155 such cases and asked that the names of victims be shielded from the online version of decisions. Thomson Reuters agreed and made the changes. This practice continued in 2012, as a few additional decisions were identified for victim name redaction.

### Community Outreach

Division One is grateful to have generous employees who reach out to the community around us when not performing court duties. Among other things, many employees support local shelters with monetary and other donations.

In 2012, Division One employees continued its ongoing support for a class at Wilson Elementary School for a fourth consecutive year. Court employees provided financial support and devoted many lunch hours to help out with class programs and celebrations. Employees also participated in school supply, book, holiday gift, and food drives for the children.

Additionally, through the leadership of Court Clerk Ruth Willingham, the court sponsored a “Career Education Day” for one of our local area schools.

## Employee Recognition

In Spring 2009, the court formed the Employee Recognition Committee to acknowledge employees for their outstanding achievements within the court. This Committee seeks to reward creativity and innovation and provide an incentive for employees to find effective and cost-efficient ways of performing their jobs. The Committee's work is further intended to enhance employee morale by acknowledging jobs well done and promoting a sense of community within our court family.

The Committee is comprised of employees from all departments of the court, including one judge, and is usually chaired by a judicial assistant or staff attorney. Throughout 2012, small awards were bestowed on various deserving employees. Additionally, in the Spring, the Committee (without public funds!) hosted the third "Employee Appreciation Lunch." The Committee also again selected the court's Employees of the Year for 2012, honoring employees for exemplary efforts on behalf of the court. Each employee honored received a commemorative plaque and shared use of a designated parking space for one year. The court also used the occasion to acknowledge judges and other employees with 5, 10, 15 and 20 years of service with the court.

Our award winners for 2012:

**Staff Attorney of the Year:** *Barbara Vidal Vaught*

(with Vice Chief Judge Johnsen)



**Judicial Staff Employee of the Year:** *Jami Taylor*

(No Picture )

**Clerk's Office Employee of the Year: *Patsy Lestikow***



**Quality Customer Service Award: *Ian Carr***  
(with Chief Judge Winthrop and Vice Chief Judge Johnsen)

Additional employee recognition awards included:

**Value Award: *Stacy Stolz***



**Great Idea Award: *Brandie Castle***

**Journey Award: *Linda Colwell***



**Community Service Award: *Ruth Willingham***

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