



**Arizona Court of Appeals
Division One
2010: 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. The court 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 presented 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.¹

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 86 full-time and part-time employees, including our Acting Clerk of the Court, Ruth Willingham, who oversees the appellate record and distribution of decisions, and Anthony Mackey, our

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

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 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 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 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.

The judges and employees of Division One of the Arizona Court of Appeals work diligently to decide and distribute cases impartially and efficiently. Despite the stress brought about by the state's fiscal crisis in the current and 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 second Year in Review report, to better inform the public about our court and its vital role in Arizona's justice system.

Respectfully submitted February 2011.

Ann A. Scott Timmer
Ann A. Scott Timmer
Chief Judge
Arizona Court of Appeals
Division One
Phoenix, Arizona

Judges of the Court of Appeals

Current Judges

Judge	Joined	Home County
Ann A. Scott Timmer, Chief	2000	Maricopa
Lawrence F. Winthrop, Vice Chief	2002	Maricopa
Sheldon H. Weisberg*	1992	Mohave
Jon W. Thompson	1995	Coconino
Philip Hall	2001	Yuma
John C. Gemmill*	2001	Maricopa
Daniel A. Barker	2001	Maricopa
Patrick Irvine	2002	Maricopa
Maurice Portley	2003	Maricopa
Donn Kessler	2003	Maricopa
Patricia K. Norris	2003	Maricopa
Patricia A. Orozco	2004	Yuma
Diane M. Johnsen	2006	Maricopa
Michael J. Brown	2007	Navajo
Margaret H. Downie	2008	Maricopa
Peter B. Swann	2008	Maricopa

*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
E.G. Noyes, Jr.*	1992-2003	Maricopa
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
G. Murray Snow	2002-2008	Maricopa

^ Deceased

* Former Chief Judge

How the Court Makes Decisions

*Appeals*²

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 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

² In addition to appeals, some cases come before the court in 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 the 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 cases in the areas of criminal, juvenile, workers' compensation, mental health, and unemployment board appeals. Also, the court may, on application by a party, 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 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, and consideration. Because a judge assigned to one of these time-consuming matters typically is not relieved of other ongoing case responsibilities in the meantime, 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 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 body, officer, or person to take some action or refrain from action. For the most part, such petitions seek immediate relief and the petitioner asserts 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 order of their receipt 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 appeals, the court has discretion whether to accept jurisdiction to consider 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 the necessity of a responsive brief. 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. 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 2010, Division One was funded by monies appropriated by the legislature in the latter half of fiscal year ("FY") 2010 and the first half of FY2011.

With the onset of the state's economic downturn, Division One's budget has been cut in recent years. In FY2008, the court's budget was \$9,087,500. In FY2011, the current budget year, Division One is budgeted \$8,577,620 with further reductions possible.³

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 storm, for the past few 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. Unfortunately, the court

³ The budget amounts do not include funds budgeted for employees' health and dental expenses or the court's risk management expense, which are taken and administered by the Arizona Department of Administration. The FY2011 budget amount additionally omits the required increase in the court's contribution to the Elected Officials Retirement Plan, which the legislature did not separately fund.

was forced to lay off three employees in 2010 due to an insufficient budget; two of those employees secured jobs in other parts of the judiciary. We also eliminated our finance department; the finance department of the Administrative Office of the Courts has assumed finance duties for the court. The court also declared three furlough days for FY2011 and, effective January 1, 2011, the court eliminated personal days and reduced the number of vacation hours eligible for annual rollover. Finally, the court is continuing measures to convert 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 2010 towards its goal of transitioning from a fully paper-based court to one that operates electronically to the greatest extent possible. By implementing electronic filing, record access, and decision distribution, the court expects to minimize postage and archival costs and increase efficiency and public access to the court.

E-Records

Since 2006, through a pilot project, the superior court in Yavapai County has electronically transmitted 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 Yavapai superior court in gathering and transmitting paper records and thereby cuts costs for that court.

In 2010, the court worked extensively with the Clerk of the Superior Court in Maricopa County to increase electronic transmittal of case records from that very large court. Since mid-2009, the Maricopa court has transmitted its records electronically in family court and probate appeals. In

2010, the court commenced transmitting records in civil appeals. Although the transmittal has worked well for both courts, we did not achieve our goal of expanding electronic transmission to all case types by mid-2010. This delay was due primarily to the court's efforts to implement e-filing and pursuit of the judiciary's plan to develop statewide electronic case records that can be accessed by multiple courts (and eventually the public) without the need for transmission.

E-Filing

The court worked exhaustively with the supreme court and its vendor in 2010 to implement e-filing for parties in all case types through a system called "AZTurboCourt." In December, 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 has allowed the court to detect flaws in the filing system and refine policies for e-filing. So far, the system has performed well, and the court expects to open e-filing through AZTurboCourt to all parties in 2011. The court additionally anticipates implementing mandatory e-filing in 2011 for all attorneys appearing in the court. By the close of the year, the Administrative Office of the Courts and the State Bar association were conducting training sessions for attorneys on how to use the AZTurboCourt system.

In 2010, the court accepted e-filed briefs and other papers from the Attorney General's Office, the Maricopa County Public Defender's Office, the Legal Advocate's Office, and the Maricopa County Attorney's Office through a pilot project known as "ACE." The court will continue to accept filings from these offices in 2011 through ACE until the complete transition to AZTurboCourt.

E-Distribution

In 2010, the Court continued to electronically distribute decisions and orders to superior court judges in all case types and to parties in criminal appeals who have e-mail addresses on file with the court. With an upgrade to its case management system this year, 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 provided quicker access to decisions and saved postage.

Court Performance

Filing and Termination Rates

In calendar year 2010, the court began the year with 2,576 pending cases. An additional 3,062 appeals were filed and 41 cases were reinstated after dismissal during the prior year. The court terminated 3,258 cases during the year through decisions on the merits of a case or dismissal orders, leaving 2,422 cases pending at the start of 2011. The cases break down into the case types set forth on the following page:

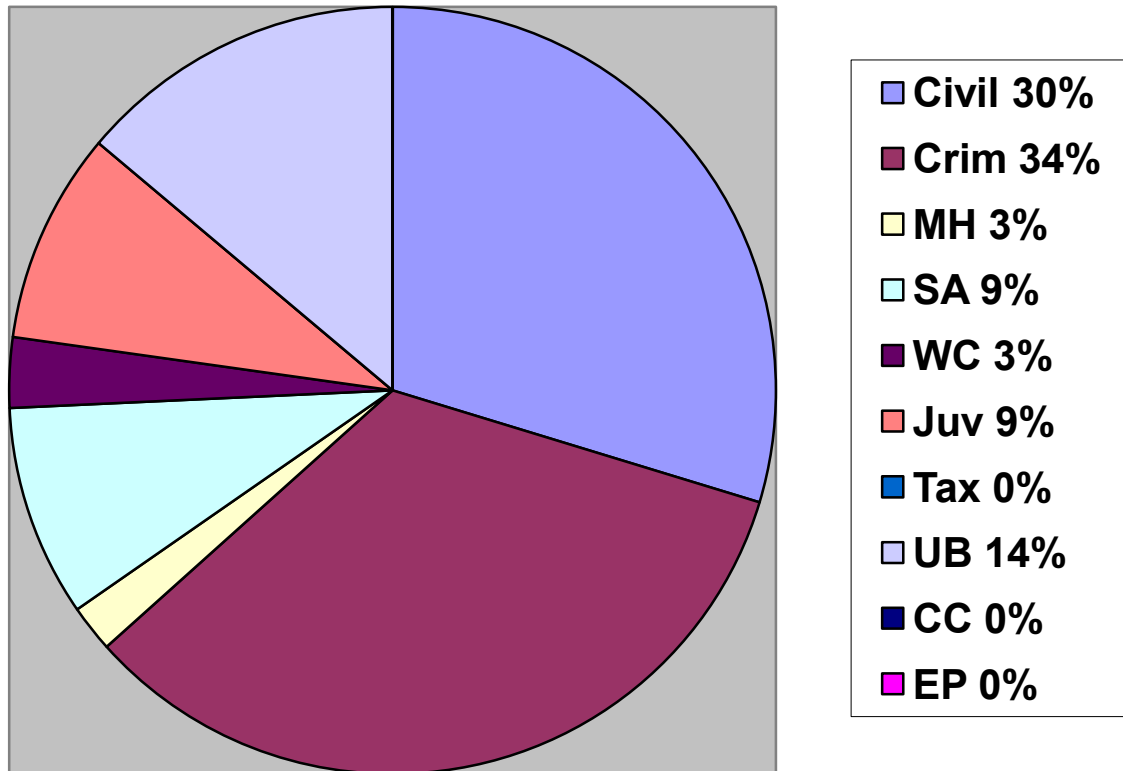
Case Type	Begin Pending	Filed/Reinstated	Terminations	End Pending
Civil	779	927	881	825
Criminal ⁴	1324	1050	1107	1267
Juvenile (“Juv”)	102	269	272	99
Mental Health (“MH”)	67	72	116	23
Workers’ Comp (“WC”)	70	87	103 ⁵	54
Special Actions (“SA”)	98	269	300	67
Unemployment Board (“UB”)	120	428	464	84
Tax	11	7	9	9
Corporation Commission (“CC”)	5	2	6	1
Electrical Power (“EP”)	0	0	0	0
TOTAL	2,576	3,104	3,258	2,429

⁴ Criminal cases includes criminal appeals, petitions for review of post-conviction relief rulings, and habeas corpus filings.

⁵ In addition to the terminations, Division One transferred seven 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 2010, based on the numbers set forth above, the percentages of new filings and reinstatements in the various case types broke down as follows:⁶

**Percentage of New Filings/Reinstatements by Case Type
2010**



⁶ Division One had too few new tax (.01%), Corporation Commission (.01%), and electrical power (0%) appeals in 2010 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 2009

The number of new filings/reinstatements over all case types increased 13% in 2010 with increases experienced in the majority of case types. The court experienced a 15% increase in civil appeals and a 75% increase in tax appeals. Criminal filings increased 6% while juvenile filings increased 12%. Unemployment board appeals increased 109%. Unlike the increases in these categories of filings last year, the court experienced decreases in mental health (23%), workers' compensation (40%), and special actions (16%). Corporation Commission cases decreased from three to two new cases, and the court remained without any electrical power appeals.

The court was more efficient overall in 2010 as reflected by a 23% increase in case terminations as compared to terminations in 2009. The court left fewer cases (2,429) pending at the end of 2010 than the number of cases (2,576) pending at the end of 2009.

Multi-Year Comparison

Over the past five fiscal years (2006 – 2010), 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. In 2010, the court held oral arguments in 218 cases, which was 1 fewer than the number of oral arguments held in 2009.



Decisions

In 2010, Division One issued 1,385 merit-based decisions in the form of opinions, memorandum decisions, and decision orders. The opinions are

published by Thomson Reuters and by court rule may be used as persuasive authority in future cases. In response to comments from attorneys, Division One has increased the number of published opinions issued during the past few years. Compared to 2009, when Division One issued 139 opinions, the number of opinions in 2010 (156) increased 12%.

Memorandum decisions and decision orders explain the court's reasoning but by 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 simple search engine and permits Thomson Reuters to publish them on 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 216 such motions in 2010, which was 13% more than the number of such motions (191) filed in 2009. Division One granted 28 motions for

reconsideration in 2010, which was 10% fewer than the number of motions (31) granted in 2009.

Dispositions in the Arizona Supreme Court

In 2010, parties filed petitions for review with the Arizona Supreme Court to challenge 529 decisions issued by Division One. This constituted a 9% increase in the number of petitions (486) filed for review of Division One cases in 2009.

The Arizona Supreme Court granted review of 25 petitions for review in 2010, which was the same number of petitions for review granted in 2008 and 2009.

Occasionally, the supreme court “depublishes” 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 never provides 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 2010, the supreme court depublished 2 opinions issued by Division One, compared with 5 such actions in 2009.



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 as they progress from their initiation until their 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 proud to be among them.

The Committee selected three performance measures for Arizona's appellate courts to use in Fiscal Year 2010: (1) Time to Disposition; (2) Case Clearance; and (3) Age of Pending Caseload.⁷ An explanation of these measures and their results follow.

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).⁸ 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 2009 ("FY2009"). Commencing with Fiscal Year 2010 ("FY2010"), we measure

⁷ In Fiscal Year 2009, the Committee also used an anonymous Appellate Bar and Trial Bench Survey as a performance measure. The Committee elected to conduct the survey biennially. Consequently, the survey will be conducted next in Fiscal Year 2011.

⁸ The cases do not terminate when decided as they are subject to post-decision motions and the like.

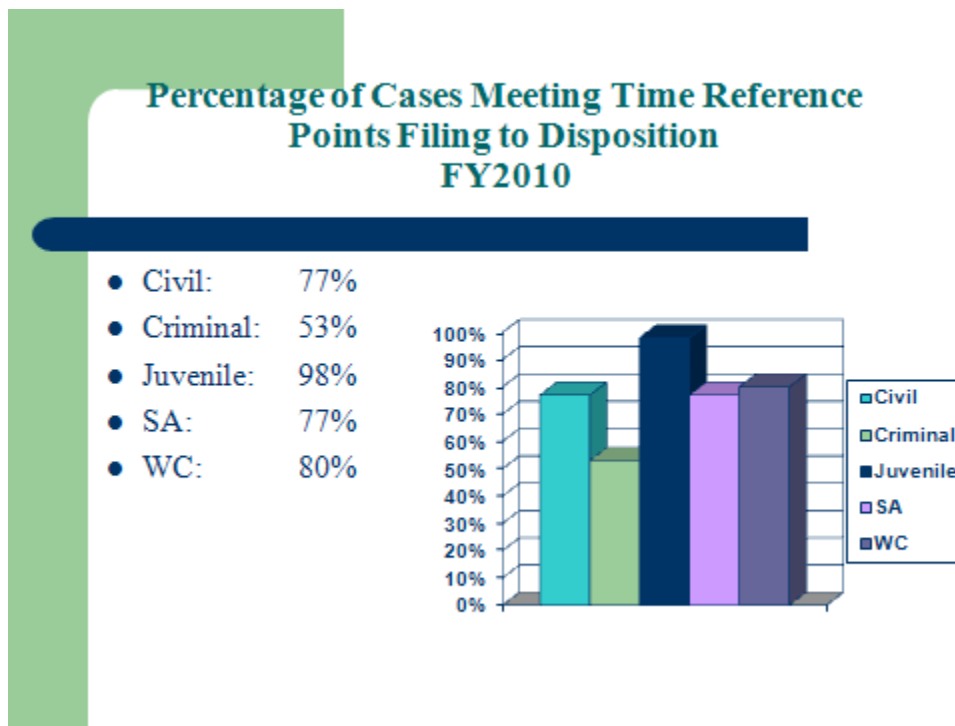
our results against our performance in FY2009 with an eye toward determining the effects of changes in funding, personnel levels, the efficiency of record gathering, and the like.

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:⁹

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

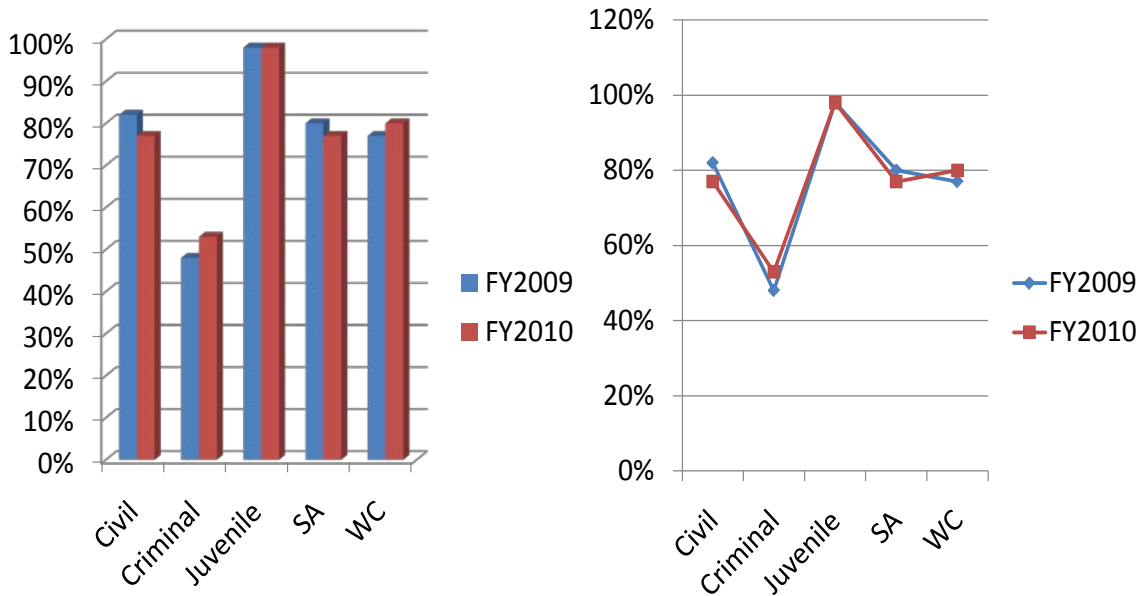
In FY2010, the percentage of cases that met these reference points is as follows:



⁹ 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 FY2009, the court improved its processing of criminal cases by 5% but slowed processing civil cases by 5%. Similarly, the court processed 3% more workers' compensation cases in FY2010 but processed 3% fewer special actions. The percentage of juvenile cases meeting the time reference points in FY2009 and FY2010 were identical. The following graphs illustrate the comparison between the fiscal years:

Time from Filing to Disposition FY 2009 - 2010

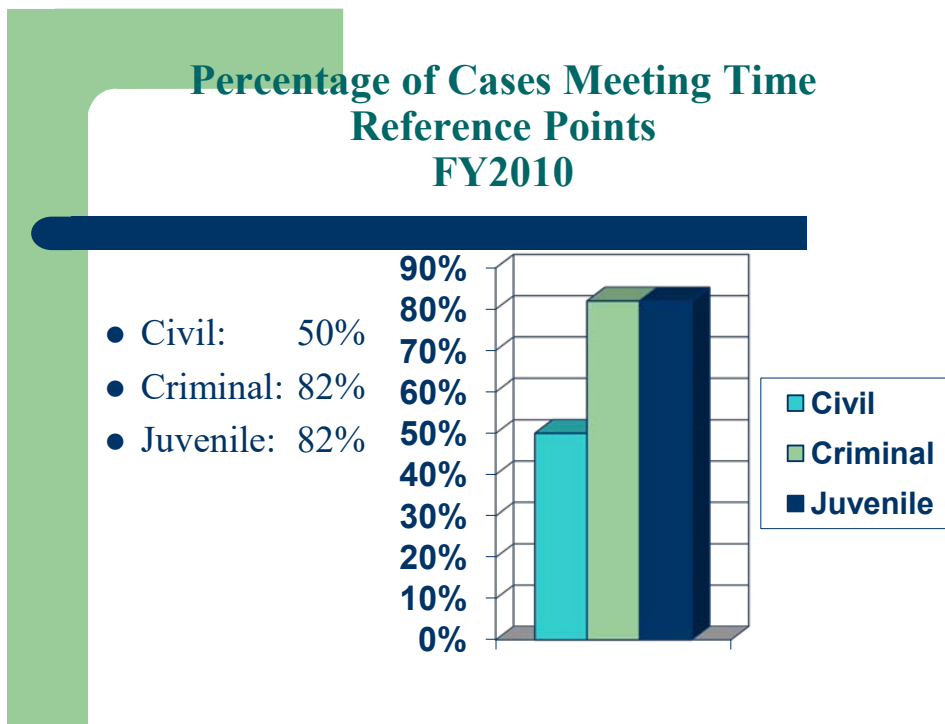


Stage Measurements

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:

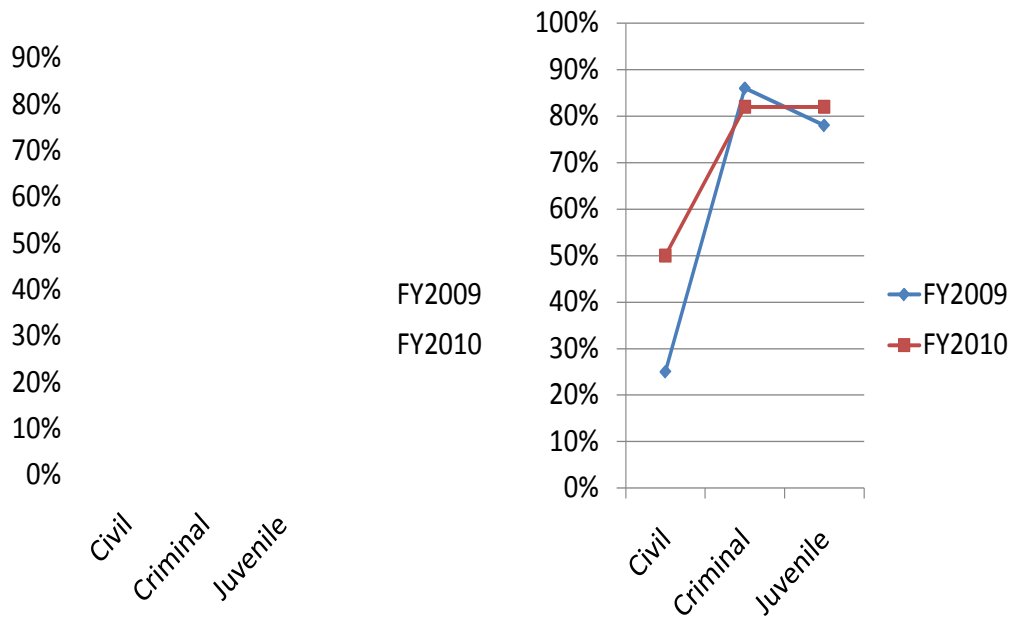
1. Time a party files a notice of appeal in the superior court to the time that court notifies Division One of the appeal (inapplicable to SA and WC):

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



Compared to FY2009, 25% more civil appeals and 4% more juvenile appeals met the time reference point. The number of criminal appeals meeting the time reference point, however, fell by 4%. The following graphs illustrate the comparison between the fiscal years:

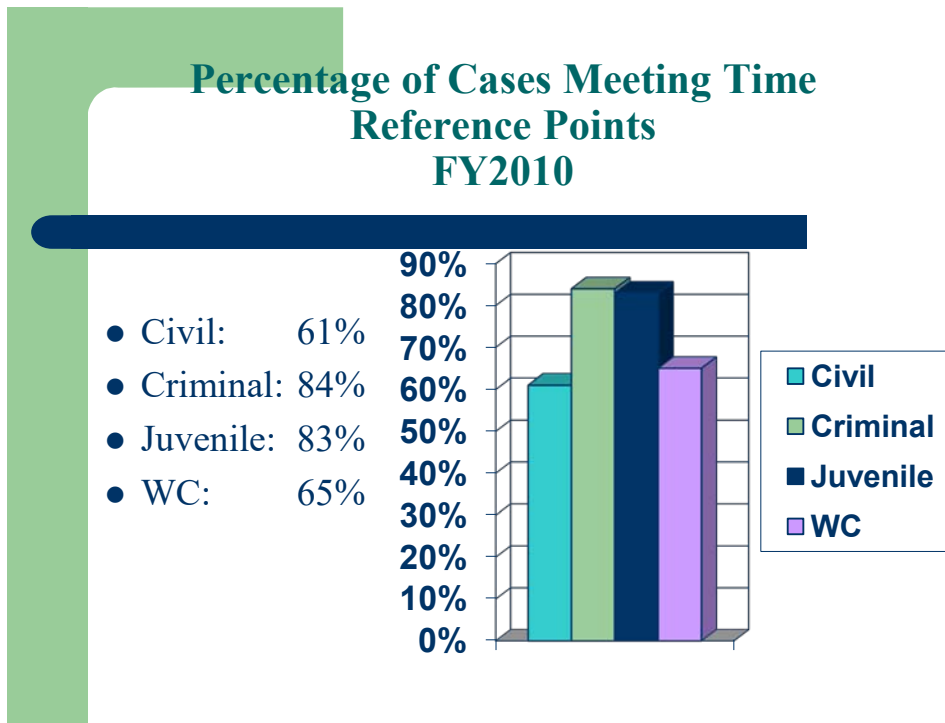
Time from Filing Notice of Appeal to Delivery of Notice to Court of Appeals
FY 2009 - 2010



2. Time measured from day all records and briefs are filed in Division

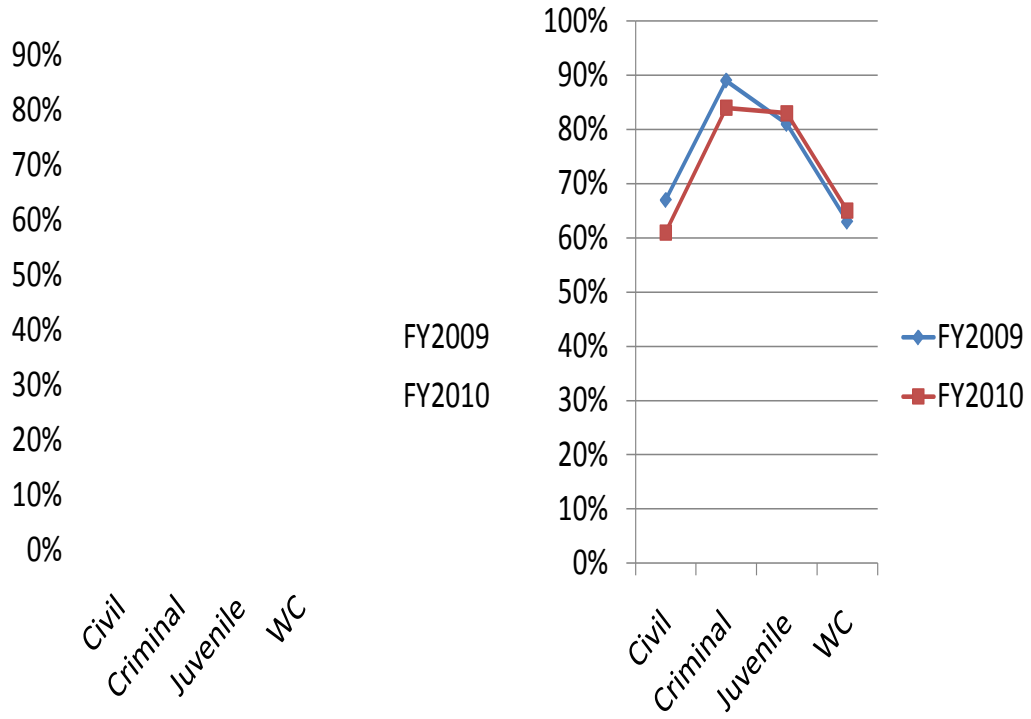
One to the time the case is decided (inapplicable to special actions):

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



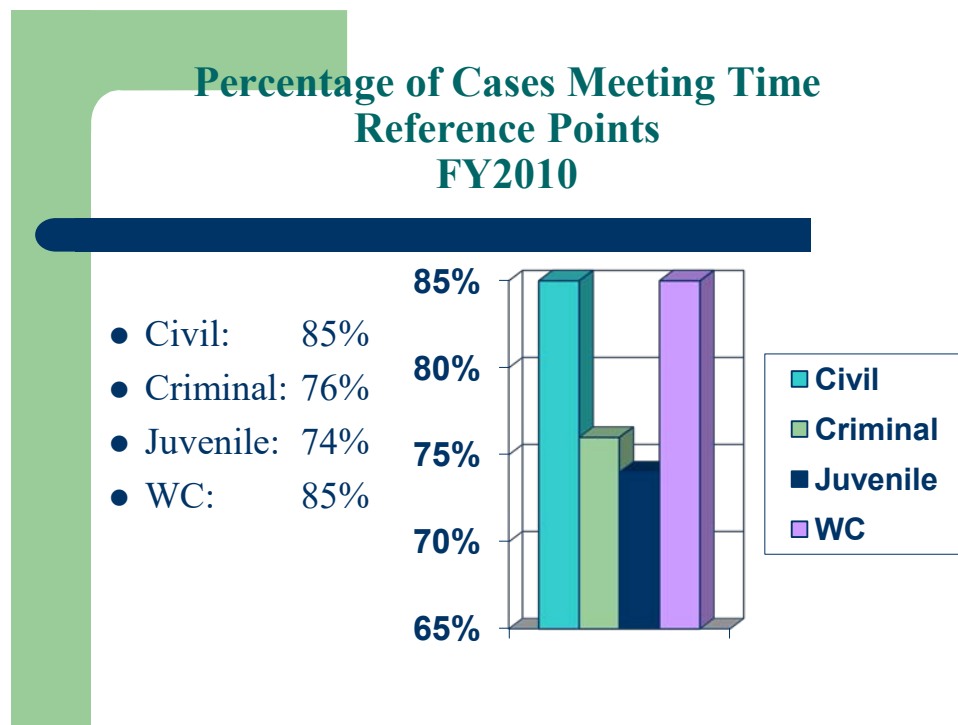
Compared to FY2009, 6% fewer civil cases and 5% fewer criminal cases met the time reference points. Conversely, 2% more juvenile and workers' compensation cases met these points. The following graphs illustrate the comparison between the fiscal years:

Time from Filing all Records and Briefs to Disposition FY 2009 - 2010



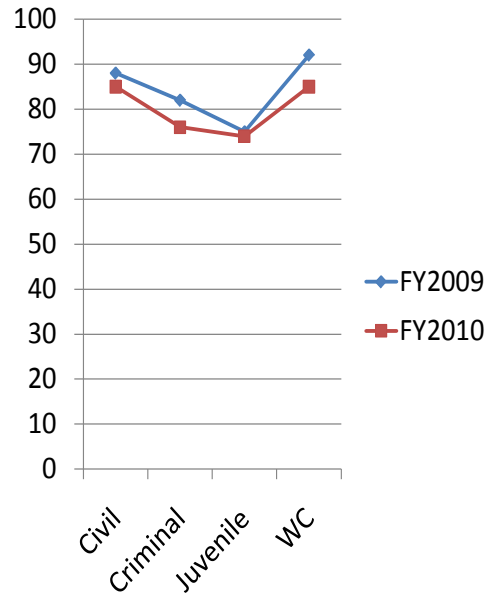
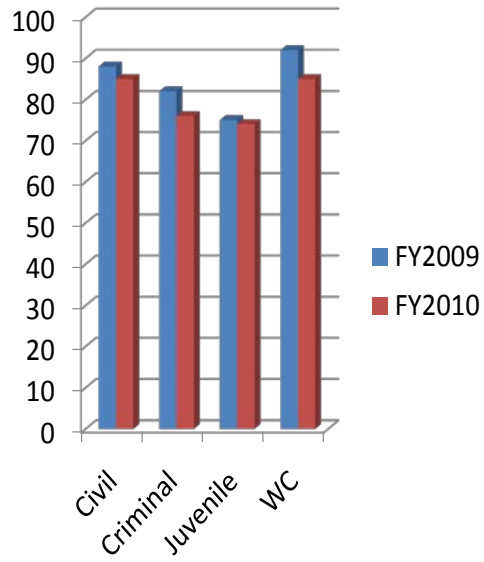
3. Time measured from day the panel of judges hears a case and takes it under advisement to the day the panel issues its decision (special actions not measured):

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



Compared to FY2009, fewer cases in each subject area met the time reference points. The following graphs illustrate the comparison between the fiscal years:

Time from Under Advisement to Decision FY 2009 - 2010



Conclusion

Until multiple years can be measured against the time reference points, it is not possible to draw many conclusions about whether Division One's case processing has improved over other years. We are able to glean some useful information, however, particularly when examining the data related to stages.

As was the case in FY2009, in all case types except criminal appeals, a higher percentage of cases met the time reference points for filing to disposition than the 75% of cases that typically met these points in past years.

Of note is that only 53% of criminal appeals met the filing-to-disposition time reference point. A substantial number of criminal appeals met 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 met the given time reference point from that point until disposition by a panel of judges. It is evident that these cases bogged down in a stage not 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 transmitted and all briefs are filed by the parties. Division One has been aware of this problem for some time and has been working with the superior courts and

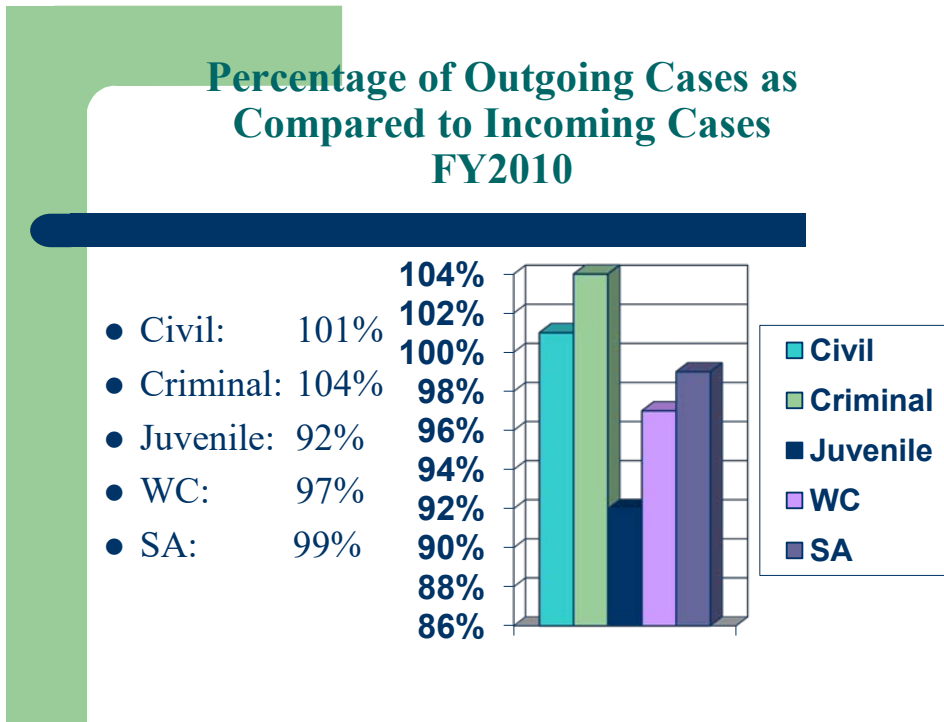
their court reporters to expedite transmissions of records and, most particularly, hearing and trial transcripts. We have also examined our practices regarding granting continuances of dates for filing briefs and have reduced the number of continuances (and the length of continuances) granted. The court regularly holds “show cause” hearings to assist in expediting the filing of transcripts and briefs. Unfortunately, as the number of court reporters shrinks at the superior court and public lawyer agencies lose resources, it is increasingly difficult to expedite the record-gathering and brief-filing processes.

Another noteworthy measure is that only 50% of civil notices of appeal are meeting the 40-day reference point (time between filing of the notice of appeal in the superior court and transmittal of that notice to this court). This is despite a court rule that requires the superior court clerk to transmit the notices within 40 days. The court worked with the superior court in FY2010 to resolve this problem. Although the percentage compliance remains low, this figure represents a 100% increase of civil notices meeting the time reference point in FY2009. Regardless, with the transition to electronic record keeping, Division One expects to receive notices more quickly.

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 deciding older cases as it handles newly filed ones. The goal is to have a 100% clearance rate, which means the court decided at least the same number of cases as the number newly filed that year, and therefore the danger of a growing backlog of cases is minimized.

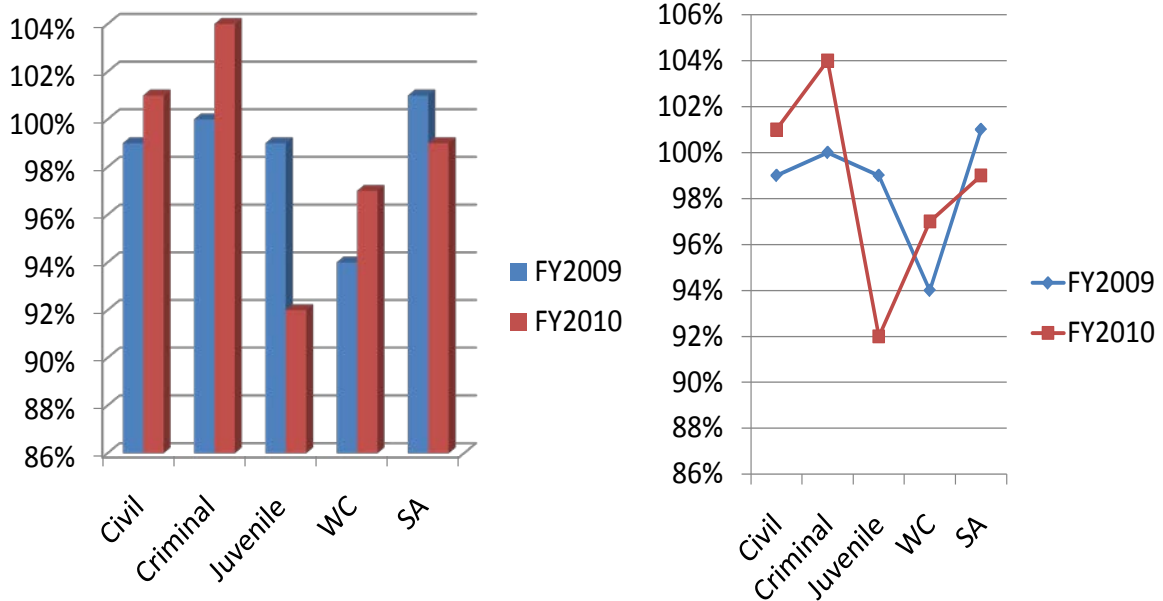
In FY2010, Division One achieved the following case clearance rates:



Overall, the Case Clearance measurement shows that in FY2010 Division One substantially kept pace, lagging minimally in juvenile cases.

Compared with FY2009, the court improved its case clearance rate for civil and criminal cases but fell behind slightly in clearing juvenile, workers' compensation, and special action cases. The following charts show the comparison between FY2009 and FY2010:

Percentage of Outgoing Cases as Compared to Incoming Cases
FY 2009 - 2010

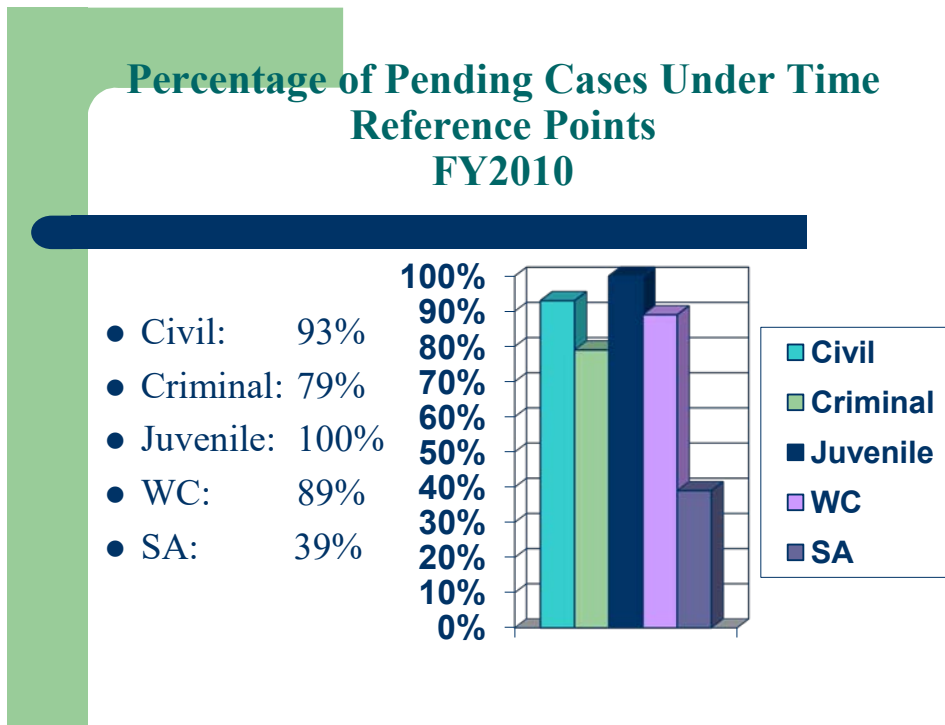


Age of Pending Caseload

The Age of Pending Caseload measurement applies to all cases pending but not decided in FY2010 and is intended to provide information about the age of Division One's complement of 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 FY2010 that had not reached the time reference points is as follows:



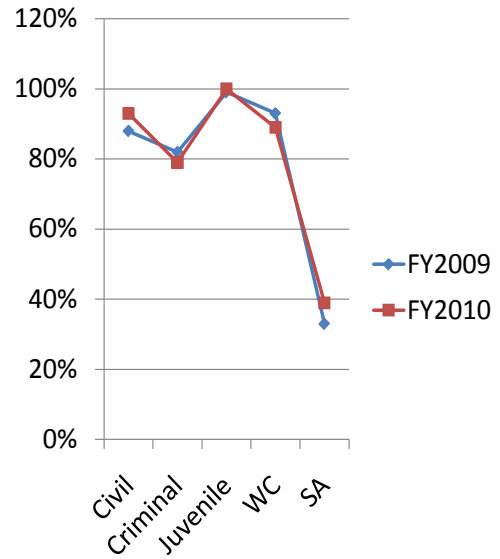
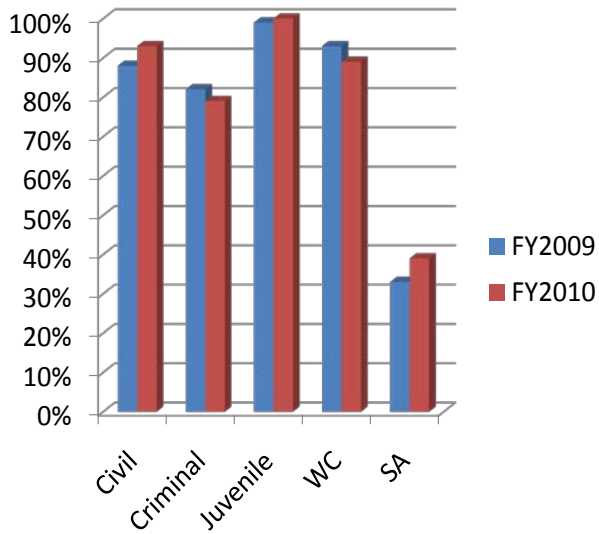
The Age of Pending Caseload measurement shows that at the end of FY2010, Division One’s pending cases were relatively young, as most had not yet reached their time reference points. For example, 100% of the pending juvenile cases had not yet reached their time reference point. Although only 39% of the special actions pending at the end of FY2010 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 a handful of pending special actions remained at the end of FY2010. Specifically, only thirteen special actions remained at the end of FY2010 because the court had decided hundreds of other special actions that year; indeed, 77% of all special actions met the time reference point in FY2010. The age-of-pending-caseload measure shows that five of the thirteen remaining cases had met the time reference point.

On the whole, Division One's age of pending cases remained substantially the same at the end of FY2010 as compared with the end of

FY2009, as depicted in the following graphs:

Percentage of Pending Cases Under Time Reference Points
FY 2009 - 2010



Settlement Program

Since approximately 1995, Division One has operated a settlement program free of charge, which saves parties time and resources in resolving 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 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 coordinated the settlement conference program for 2010 in addition to her other duties at the court.

In calendar year 2010, Division One mediated 17 cases through the settlement program. Of those, 9 appeals were resolved¹⁰ resulting in a 53% settlement rate. This represents a 26% decrease from the number of appeals mediated in 2009 (23) but a 1% increase in the settlement rate compared with 2009 (52%).

¹⁰ Some unresolved cases may settle in 2011.

Connecting with the Community

Pro Bono Attorney Matching Program

Throughout 2010, the court worked with the Appellate Section of the Arizona Bar Association, the Volunteer Lawyers Program of the Maricopa County Bar Association, and the Modest Means Program of the Arizona Foundation for Legal Services and Education to establish a program to match indigent persons involved in family court and civil appeals to receive legal assistance for free or at a reduced rate. The court launched a pilot program in Maricopa County in February 2011.

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 the appellate process by providing them briefs in real appeals and then allowing the students to watch oral arguments in their school auditoriums (with the parties' permission). After oral argument, judges, attorneys, and law clerks have lunch with the students to answer questions about the judicial process and 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 and local elected officials 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 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 sends it 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 2010, Judge Michael J. Brown headed Division One’s Connecting With the Community Committee, which is charged with responsibility for the program. Division One held oral arguments in 2010 at Maryvale High School in Phoenix and Mesa High School in Mesa.



Division One 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)

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.

Community Outreach

Division One is proud 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 2010, Division One employees were particularly happy to provide support for a class at Wilson Elementary School for a third consecutive year. Court employees provided financial support and sacrificed a few lunch hours to help out with class celebrations. Employees also participated in school supply, book, holiday gift, and food drives for the children.

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 parts of the court, including one judge, and is chaired by a judicial assistant. Throughout 2010, small awards were bestowed on various deserving employees. Additionally, in the Spring, the Committee (without public funds!) hosted the second "Employee Appreciation Lunch." The Committee also selected the court's inaugural Employees of the Year for 2009, honoring employees for exemplary efforts on behalf of the court. Each employee honored received a commemorative plaque presented by Vice Chief Judge Lawrence Winthrop and shared use of a designated parking space for one year.

Staff Attorney of the Year: **FRED COLE**



Judicial Staff Employee of the Year: **LINDA SCHNEIDER**



Clerk's Office Employee of the Year: **PATSY LESTIKOW**



Contact Information

Hon. Ann A. Scott Timmer
Chief Judge
Arizona Court of Appeals
Division One
1501 West Washington
Phoenix, Arizona 85007
(602) 542-1479
atimmer@appeals.az.gov

Hon. Lawrence F. Winthrop
Vice Chief Judge
Arizona Court of Appeals
Division One
1501 West Washington
Phoenix, Arizona 85007
(602) 542-1430
lwinthrop@appeals.az.gov

Ruth Willingham
Acting Clerk of the Court
Arizona Court of Appeals
Division One
1501 West Washington
Phoenix, Arizona 85007
(602) 542-4821
rwillingham@appeals.az.gov

Anthony Mackey, Esq.
Chief Staff Attorney
Arizona Court of Appeals
Division One
1501 West Washington
Phoenix, Arizona 85007
(602) 542-4824
tmackey@appeals.az.gov



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