



**Arizona Court of Appeals
Division One
2013: The Year in Review**



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Introduction



The Arizona Legislature created the Arizona Court of Appeals in 1964 to accommodate a growing number of appeals presented to the Arizona Supreme Court as the state expanded 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 started with three

judges and expanded over time to its current complement of 16 judges as the state's population increased from 1.5 million in 1965 to 6.5 million at present.

Division One considers appeals from eight of Arizona's 15 counties: Apache, Coconino, La Paz, Navajo, Maricopa, Mohave, Yavapai and Yuma. Under the Arizona Constitution, judges of the Court of Appeals are chosen by merit selection; they are appointed by the Governor from a list of nominees forwarded by a non-partisan selection commission. Ten of the judges must reside primarily in Maricopa County. Five of the others must reside primarily outside Maricopa County but in one of the other counties encompassed within Division One, and one may reside in any county within Division One. After their appointment, judges stand for retention by the voters, who are afforded the opportunity to review information about the judges' performance published by the Commission on Judicial Performance Review. A judge first stands for retention in the first general election held two years after his or her appointment; thereafter, the judge stands for retention every six years.

The court is entirely funded through the state's general fund. The sole work of the court is to resolve the appeals and special actions that come before it; the court operates no related programs requiring legislative appropriation. In addition to its 16 judges, Division One employs 80 other employees, including the Clerk of the Court, Ruth Willingham, who oversees the appellate record and distribution of decisions, and Anthony Mackey, Chief Staff Attorney.¹ Despite Arizona's continued population growth, Division One has not added a panel of three judges since 1989 and last received a new judge position in 1995. All judges and employees must comply with codes of conduct adopted by the Arizona Supreme Court, and each calendar year must complete a required number of hours of continuing education.

Division One decides appeals in three-judge panels, which rotate in composition every four months. The judges elect one of their number to serve as Chief Judge. In light of the Chief Judge's administrative duties, he or she is not assigned to a regular panel but

¹ After nearly 28 years of service to the court, Mr. Mackey retired in 2014. Barbara Vidal Vaught is Division One's current Chief Staff Attorney.

instead sits on various panels as required 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. The court also reviews decisions made by the Industrial Commission in workers' compensation cases, 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 three judges after they meet to consider the case and hear any necessary oral argument. Each decision is memorialized in writing, and opinions, memorandum decisions and decision orders are posted on the court's website. Although all of the court's decisions are subject to discretionary review by the Arizona Supreme Court, the Court of Appeals' decision is the final word in more than 99% of all cases filed in Division One.

The judges and employees of Division One of the Arizona Court of Appeals work diligently to decide cases impartially and efficiently. Despite budget restrictions resulting from Arizona's fiscal

crisis over the last few years, the court's judges and employees remain dedicated to public service and take great pride in their work. This, the court's fifth Year in Review report, is offered to inform the public about the court and its vital role as part of Arizona's justice system.

Respectfully submitted,

Diane M. Johnsen
Chief Judge

Judges of the Court of Appeals

Current Judges

Judge	Home County	Appointed
Jon W. Thompson	Coconino	04/03/95
John C. Gemmill*	Maricopa	05/11/01
Lawrence F. Winthrop*	Maricopa	10/15/02
Maurice Portley	Maricopa	06/12/03
Donn Kessler	Maricopa	06/23/03
Patricia K. Norris	Maricopa	12/17/03
Patricia A. Orozco	Yuma	12/15/04
Diane M. Johnsen	Maricopa	10/03/06
Michael J. Brown	Navajo	01/02/07
Margaret H. Downie	Maricopa	11/05/08
Peter B. Swann	Maricopa	11/05/08
Andrew W. Gould	Yuma	01/01/12
Randall M. Howe	Maricopa	04/11/12
Samuel A. Thumma	Maricopa	04/11/12
Kent E. Cattani	Maricopa	06/09/13
Kenton D. Jones	Yavapai	10/28/13

Judge Philip Hall retired from the court in June 2013. His replacement, Judge Kenton D. Jones, joined the court in October.

*Former Chief Judge

Former Judges

Judge	Service Dates	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
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
Philip Hall	2001-2013	Yuma
G. Murray Snow	2002-2008	Maricopa
Patrick Irvine	2002-2011	Maricopa

* Former Chief Judge ^ Deceased

How the Court Makes Decisions

Appeals

When all the 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 panels of the court. The Clerk assigns the cases without reviewing the subject matter of the appeal or considering the composition of the panels (except to ensure that none of the judges assigned to hear a case has a conflict of interest). 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, usually grouped by subject matter. For example, a panel may have a calendar of criminal cases 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 meet to discuss and decide 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 judges are assisted in this effort by their law clerks and staff attorneys. By the time they meet on the cases assigned to a weekly calendar, the judges are well-versed in each case's material facts and relevant legal issues. If a party requests oral argument and the court believes argument would be helpful in deciding the case, the panel will hear oral argument the same day it discusses the case in a conference. Typically, the panel will decide how to resolve each of the cases on the calendar during the panel's weekly conference.

At the beginning of their term together, the judges of each panel elect a presiding judge, who assigns final writing responsibility for each case on the calendar to one of the three panel members. If a judge on the panel disagrees with the majority's decision, that judge may write a dissent. If a 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 court staff work diligently to issue written decisions expeditiously. The timing of the release of a decision, however, may be affected by a number of factors:

(1) The court is required by statute or rule to give priority to juvenile delinquency and dependency/parental termination cases, criminal cases, election cases, mental health appeals, workers' compensation cases, and child support appeals. Also, on application by a party and for good cause, the court may accelerate some civil appeals pursuant to court rule.

(2) A judge's pending caseload may affect the speed with which the judge completes work on the cases assigned to him or her. Every judge from time to time draws cases that are exceptionally lengthy, difficult and/or complicated, requiring extraordinary periods of focused time for research, record review, analysis and drafting. Because a judge assigned to draft one of these time-consuming cases typically is not relieved of other ongoing case responsibilities in the meantime, these large cases can slow disposition of the judge's other assigned cases for a significant period of time.

(3) After an authoring judge submits a draft to the panel, the other two judges review it and submit comments and suggestions. A judge wishing to write a dissent or special concurrence then will do so. Several drafts may be exchanged before the panel agrees on a final draft.

(4) An opinion is generally more time-consuming to draft than other decisions. Because opinions may be cited as precedent in future cases, they usually include more legal authority, provide more reasoning and require more time and attention to avoid language or reasoning that may lead to unintended consequences in future cases. Further, all draft opinions are circulated for comment by each of the other 13 judges on the court. The judges who are not members of the panel deciding a case do not vote on the outcome of the decision, but their comments often are helpful to the panel members as they refine the decision. Memorandum decisions and decision orders are not subjected to this full-court review.

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 a particular action. For the most part, such petitions seek immediate relief and the petitioner must demonstrate that the matter cannot be resolved (or cannot wait to be resolved) during the regular appeal process.

Each panel of judges is assigned about once a month to a special action calendar of up to eight cases. As petitions are filed, the Clerk of the Court sends them to the panel in the order received. The panel assigned to consider special actions during a particular time period is known as the "hot panel" because the judges on that panel must remain available to immediately address any requests for emergency relief. When one panel's calendar of special action cases closes, the next panel's special action calendar opens and that panel becomes "hot."

If a petitioner needs an immediate order from the Court of Appeals staying a challenged decision, the petitioner first must ask

the judge who issued the order to stay it pending resolution of the special action. If that judge denies the request, the petitioner then may request a stay order from the Court of Appeals. Once a stay request is made at the Court of Appeals, the hot panel usually will set a telephonic hearing and issue its ruling at the conclusion of the hearing, with a written order to follow.

Unlike in direct appeals, in special actions, the Court of Appeals has discretion to decline jurisdiction or to accept jurisdiction and proceed to decide the merits of the issue presented. To save the parties time and money and to decide petitions more expediently, the hot panel reviews each petition before the response is due to discern whether the petition sufficiently sets forth allegations that may entitle the petitioner to special action relief. When it is clear that a petition does not do so, the panel may decline jurisdiction immediately without requiring a response brief. If the petition sets forth sufficient allegations, the panel will wait to determine whether to accept jurisdiction until after it has received full briefing. The panel then will confer and decide the petition in the same manner as an appeal. If the court decides to decline jurisdiction, it usually will issue only a

short order to that effect. The brevity of an order declining jurisdiction may not reflect the considerable extent of the analysis underlying the court's decision.

Motions

The court receives many motions filed in cases on appeal. These include, for example, motions to dismiss all or part of an appeal, motions to supplement the superior court record on appeal, and motions to strike all or a portion of a party's brief. 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.

The Court's Budget

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 ("FY") expires. In FY 2014, the current budget year, Division One has a baseline budget of

\$9,896,900.² Approximately 96 percent of the court's current budget is devoted to salaries and employee-related expenditures (for example, health and dental expenses and retirement fund contributions). Division One has no state-funded court programs that can be reduced to free up funds during times of tight budgets. As a result, the court has weathered budget shortfalls over the past several years by putting off filling budgeted employee positions that come vacant and by other measures, such as drastically reducing its library resources. While the court was forced to lay off three employees due to a shortfall in 2010, it has not experienced any forced layoffs since then. The court did delay filling some positions that came open during 2013, asking current judges and staff to carry the extra workload. Over the last several years, the court also has taken advantage of technology advances and, to a large extent, has

² The FY 2014 baseline budget does not include funds to cover certain health and dental insurance costs and required increases in the court's contribution to the Elected Officials Retirement Plan and the Arizona State Retirement System. The court absorbed these costs through savings that resulted from the June 2013 retirement of one of the judges and a handful of other staff vacancies.

converted to electronic filing, review and distribution of decisions in order to reduce postage and paper expenses.

Transitioning to the E-World

The court continued to work throughout 2013 toward transitioning from a paper-based court to one that operates electronically, to the greatest extent possible. 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

With only a few exceptions, Division One receives case records for each of its appeals electronically from the originating court. Electronic access to the record allows each judge on a panel of the court to review the lower-court record without exchanging paper copies of the record. It also minimizes the time spent by the superior court staff in gathering and transmitting paper records, and thereby reduces costs for that court.

The Arizona state court system is working toward a system of statewide electronic case records that can be accessed by multiple courts (and eventually the public).

E-Filing

The court continued to work closely with the Supreme Court and its vendor in 2013 to implement e-filing for parties in all case types through a system called "AZTurboCourt." By order of the Chief Justice, e-filing is mandatory in Division One and the Supreme Court for most attorneys appearing in those courts.

E-Distribution

With an upgrade to its case management system, the court has 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

The court began calendar year 2013 with 2,208 pending cases. An additional 2,740 appeals were filed and 52 cases were reinstated after dismissal during the prior year. The court terminated 2,750 cases during the year, leaving 2,017 cases pending at the start of 2014.

Case Type	Begin Pending	Filed/Reinstated	Terminations	End Pending ³
Civil	746	791	838	686
Criminal ⁴	1101	970	872	1002
Juvenile	119	327	323	122
Mental Health	26	90	83	33
Workers' Comp	49	75	58	45
Special Actions	83	345	329	99
Unemployment Board	64	185	238	11

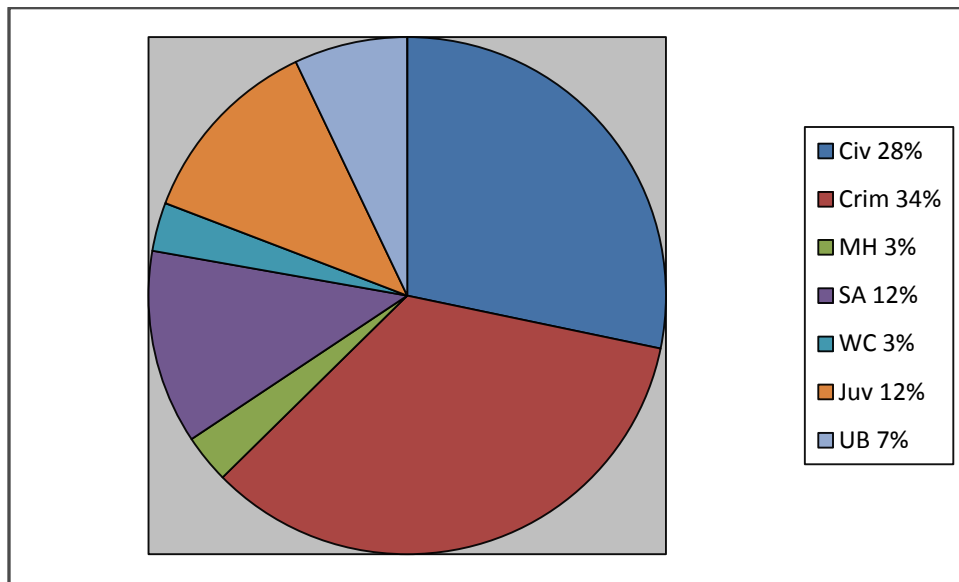
³ "End pending" column states the total number of cases pending at year's end by category, including transfers in and out not reflected in the other columns.

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

Tax	14	7	8	13
Corporation Commission	0	2	1	1
Electrical Power	0	0	0	0
TOTAL	2202	2792	2750	2244

In 2013, based on the numbers set forth above, the percentages of new filings and reinstatements in the various case types broke down as follows:⁵

**Percentage of New Filings/Reinstatements by Case Type
2013**



⁵ Division One had too few new tax, Corporation Commission, and electrical power appeals in 2013 to register measurable percentages of new filings and reinstatements. Additionally, all percentages are rounded to the nearest percentage point and therefore do not add up to 100%.

Comparison to 2012

Likely as a result of the gradual upturn in the Arizona economy, new case filings over all case types decreased by 160 cases (5 percent) to 2,740 in 2013 from 2,900 in 2012. The bulk of the decrease was seen in civil case filings, down 13 percent in 2013, and unemployment appeals, down by 57 percent in 2013 from 2012. Filings in other case types increased: Criminal/post-conviction relief filings were up 16 percent, juvenile filings were up 13 percent and special action filings were up by 15 percent.

Even though the court was short-handed by one judge for part of the year, it was effective in continuing its on-going effort to reduce the number of pending cases. The court had fewer cases pending at the end of 2013 (2,017) than at the end of 2012 (2,208).

Multi-Year Comparison

Over the past 10 calendar years (2003–2013), new filings over all case types ranged from a high of 3,062 filings (2010) to a low of 2,615 (2006).

Oral Arguments

Oral arguments are set when warranted, usually on motion of a party. The court may deny a request for oral argument 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. Consistent with the decreased number of civil case filings in 2013, the number of oral arguments held also was down. In 2011, the court heard oral argument in 188 cases. It heard oral argument in 177 cases in 2012, and in 128 cases in 2013.



Decisions

Division One issued 1,171 decisions in 2013 by way of opinions, memorandum decisions and decision orders. All of these 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 2013 (122) represents a slight increase over the number published in 2012 (116) but fewer than published in 2011 (156). Pursuant to Rule 111(b), Rules of the Supreme Court and 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; (2) call attention to a rule of law that appears to have been generally overlooked; (3) criticize existing law; or (4) 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 issued 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 search engine and permits Thomson Reuters to include them in the online database WestLaw.

Parties occasionally ask the court to reconsider its decision in a case. The court carefully considers these requests, and may grant such a motion when a decision requires clarification or revision. Parties filed 216 motions for reconsideration in 2013 (up slightly from 208 such motions in 2012). Division One granted 25 motions for reconsideration in 2013, compared to 30 in 2012.

Dispositions in the Arizona Supreme Court

In 2013, parties filed petitions for review in the Arizona Supreme Court concerning 444 decisions issued by Division One. (During 2012, 464 petitions for review were filed in Division One cases.) The Arizona Supreme Court in 2013 granted review in only

14 cases involving decisions issued by Division One, one fewer than in 2012. The Supreme Court accepts review for a number of reasons, including when the issue involves an issue of significant statewide concern or 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, a decision issued by Division One is the final word in the matter more than 99 percent of the time.

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 when it depublishes 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. In 2013, the Supreme Court depublished a portion of just one opinion issued by Division One.



Performance Measures: CourTools

The Arizona Supreme Court established the Appellate CourTools Committee in 2008 to recommend measures to track case processing by Arizona's appellate courts using a methodology developed by the National Center for State Courts. Only a handful of appellate courts across the country have undertaken this project, and Division One is committed to gathering and publishing this

information on an annual basis. The Appellate CourTools Committee selected three performance measures for Arizona's appellate courts: (1) Time to Disposition; (2) Case Clearance; and (3) Age of Pending Caseload. Each is discussed below. Also discussed below are the results of the Court's biannual opinion survey of trial judges and appellate counsel.

A. Time to Disposition

The purpose of this assessment is to measure various stages of appeals against the same timeframes in successive years. In preparation for using CourTools, the Court selected reference timeframes for certain milestone periods in the handling of an appellate case. In fiscal-year annual reports commencing with FY 2009, the Court has reviewed its performance against the selected time reference points. Three time periods are described below: (1) The time between the filing of an appeal and the Court's disposition of the appeal; (2) the time between the day an appeal comes at-issue and disposition; and (3) the time between the day an appeal is taken under advisement to disposition.

1. Filing to Disposition

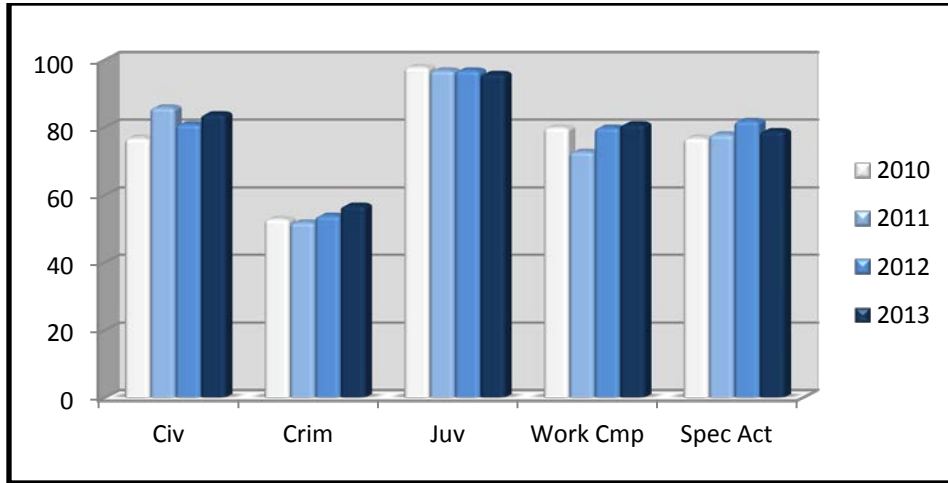
The table below shows, for each case type, the number of days chosen as the reference period for the time between the filing of an appeal or special action and the day the Court decides the case, and the percentage of cases that met that reference period during FY 2013:

Case Type	Reference Period (filing to disposition)	Percent of FY 2013 Cases Decided Within Reference Period
Civil	400 days	84%
Criminal	375 days	57%
Juvenile	275 days	96%
Workers Comp.	300 days	81%
Special Actions	25 days	79%

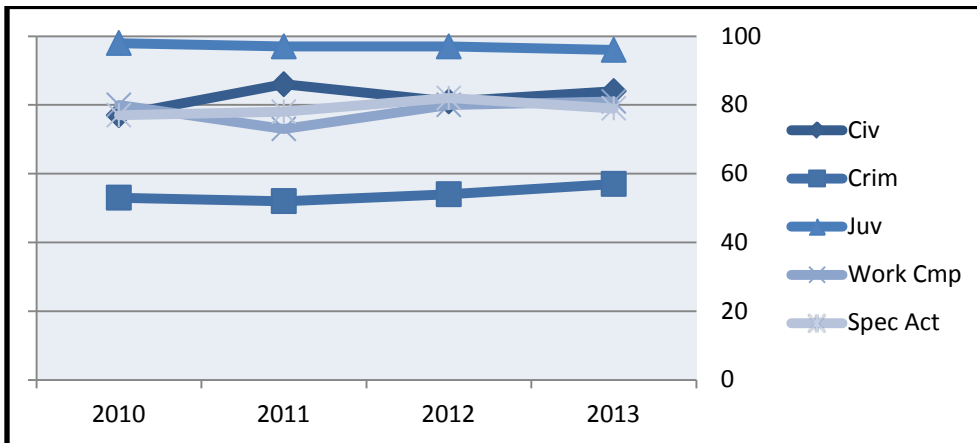
The table and graphs below show the Court's performance with respect to these reference points during FY 2013 and in prior years.

Filing to Disposition FY 2010 - 2013 (percent of cases decided within reference periods)					
	Civil	Criminal	Juvenile	Workers Compensation	Special Action
2013	84	57	96	81	79
2012	81	54	97	80	82
2011	86	52	97	73	78
2010	77	53	98	80	77

**Percent of Cases Decided Within Time Reference Points
Filing to Disposition FY 2010-2013**



**Percent of Cases, by Case Type, Decided Within Time
Reference Points for Filing to Disposition FY 2010-2013**



**2. At-Issue to Disposition and Under-
Advisement to Disposition**

The Court also reviews the time it takes to decide an appeal from the day all records and briefs have been filed in the Court (i.e.,

from when the case is "at issue") and from the day a panel of the court meets to discuss the case and/or holds oral argument on the case (i.e., from when the case is "under advisement").⁶

The table below shows, for each case type, the number of days chosen as the reference period between the day an appeal is at issue and the day the Court decides the case, and the percentage of cases that met that reference period during FY 2013:

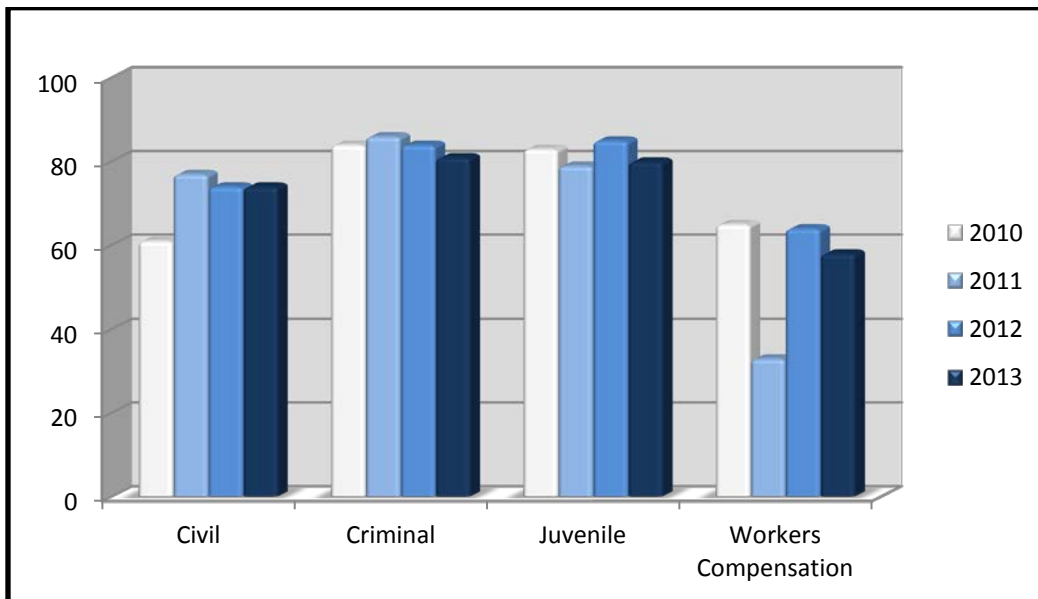
Case Type	Reference Period (at-issue to disposition)	Percent of FY 2013 Cases Decided Within Reference Period
Civil	225 days	74 %
Criminal	150 days	81 %
Juvenile	100 days	80 %
Workers Compensation	150 days	58 %

The table and graph below show the Court's performance with respect to these reference points during FY 2013 and in prior years:

⁶ These reference periods are not relevant to special actions (interlocutory appeals).

At-Issue to Disposition FY 2010 - 2013 (percent of cases decided within reference periods)				
	Civil	Criminal	Juvenile	Workers Compensation
2013	74	81	80	58
2012	74	84	85	64
2011	77	86	79	33
2010	61	84	83	65

**Percent of Cases Decided Within Time Reference Points
At-Issue to Disposition FY 2010-2013**



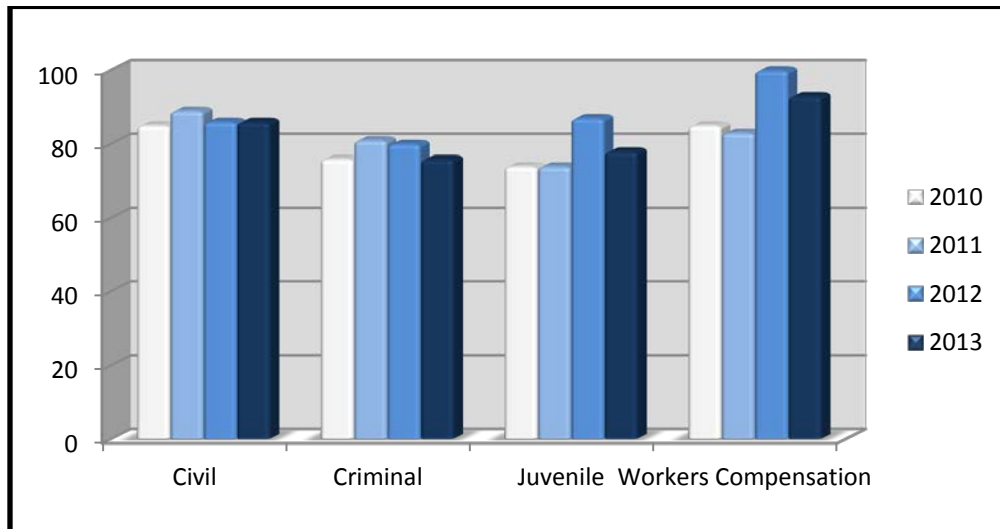
The table below shows, for each case type, the number of days chosen as the reference period for the time between the day an appeal is taken under advisement and the day the Court decides the case, and the percentage of cases that met that reference period during FY 2013:

Case Type	Reference Period (under- advisement to disposition)	Percent of FY 2013 Cases Decided Within Reference Period
Civil	120 days	86 %
Criminal	90 days	76 %
Juvenile	40 days	78 %
Workers Compensation	100 days	93 %

The table and graph below show the Court's performance with respect to these reference points during FY 2013 and in prior years:

Under-Advisement to Disposition FY 2010 - 2013 (percent of cases decided within reference periods)				
	Civil	Criminal	Juvenile	Workers Compensation
2013	86	76	78	93
2012	86	80	87	100
2011	89	81	74	83
2010	85	76	74	85

Percent of Cases Decided Within Time Reference Points Under-Advisement to Disposition FY 2010-2013



Together, the data recounted in the pages above show that compared to FY 2012, the Court saw slight improvements in FY 2013 (three, three and one percentage points, respectively) in the numbers of civil, criminal and workers compensation cases resolved within the broadest time reference period – filing to disposition. The number of special actions resolved within that reference period declined three percentage points, to 79 percent, while the number of juvenile cases resolved within the reference period dropped by one point, to 96 percent. By statute, the Court grants priority to its handling of

juvenile cases, and the number of cases resolved within the target timeframe has remained very high.

Timely handling of criminal cases continues to challenge the Court, due in large part to delays in its receipt of trial court records, transcripts and briefs. The Court resolved 57 percent (an increase of three percentage points over 2012) of its criminal cases within the 375 days that is the reference time period for the overall handling of a criminal appeal (filing to disposition). The Court resolved a much higher percentage of criminal cases – 81 percent – within the target time period for after a case is at issue, that is, in the 150-day period after the briefs have been filed. Taken together, these data demonstrate significant delays (vis-a-vis the reference time periods) that continue to occur before the Court begins its analysis of the merits of many criminal cases, i.e., delays in the transmission of the record and trial transcripts and delays in filing of the briefs by counsel.

The volume of criminal appeals, extended staff shortages and budgetary constraints in the trial court seem to cause court reporters continued difficulty in completing the official transcripts of criminal

court proceedings in a timely fashion. The Court closely tracks deadlines for transcripts and orders tardy court reporters to appear at "show cause" hearings held every two weeks to attempt to reduce this delay. Because some trial transcripts are delayed when court reporters do not know whether the appellants will be represented by appointed counsel on appeal, the Court has begun reviewing newly filed criminal appeals and, when representation is not clear, contacting appellants' trial counsel in an effort to speed determination of the issue. The Court will continue to work collaboratively with superior court personnel, including court reporter supervisors, to resolve delays in the filing of transcripts.

The Court also has reduced continuances granted to counsel for the submission of appellate briefs; however, constitutional due process requires a careful review of the trial record by appellate counsel and by the court. This painstaking process often causes counsel to ask for additional trial transcripts to be prepared and for additional time to complete such review. When counsel identifies arguable questions of law, those issues need to be briefed. Additionally, if counsel certifies the absence of any arguable

questions on appeal, the defendant-appellant is entitled to 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 order the parties to submit supplemental briefing on an issue. In short, constitutionally mandated due process requirements for criminal appeals may extend the time before an appeal is considered at issue for as long as two years.

A final note about the relatively low (58 percent) of workers compensation cases that met the time reference period for at-issue to disposition. The court was able to resolve 81 percent of its workers compensation cases within the broader reference period for filing to disposition. This is because, as shown by the relatively high number (93 percent) of cases resolved within the reference timeframe for under advisement to disposition, once workers compensation cases are readied for consideration by panels of the court, the court tends to dispose of them in timely fashion.

B. Case Clearance

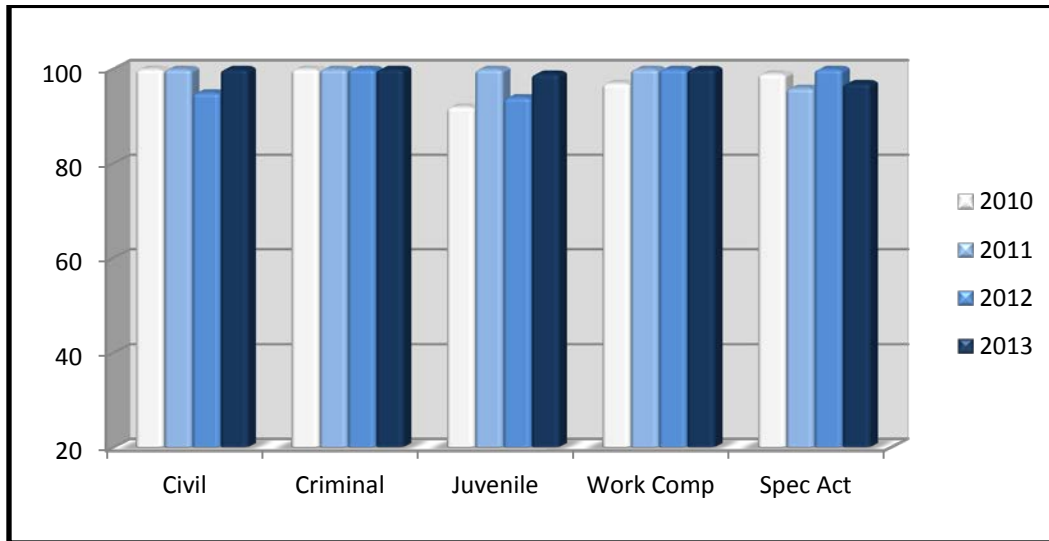
"Case clearance" measures the number of cases decided in a fiscal year as a percentage of the number of new cases filed that year. The measurement assesses the number of "older" cases the Court is resolving at the same time as it decides newly filed matters. In FY 2013, the Court achieved the following case clearance rates:

Case Type	Case Clearance Rate FY 2013
Civil	107%
Criminal	116%
Juvenile	99%
Workers Compensation	104%
Special Action	97%

The table and graph below show the Court's case-clearance performance during FY 2013 with prior years:

Case Clearance Rates FY 2010 - 2013					
	Civil	Criminal	Juvenile	Workers Compensation	Special Action
2013	107%	116%	99%	104%	97%
2012	95%	114%	94%	104%	104%
2011	103%	116%	110%	106%	96%
2010	101%	104%	92%	97%	99%

Case Clearance Rates FY 2010-2013



Overall, the blended case clearance rate in FY 2013 was 106 percent, showing that the Court made good progress in reducing the overall number of pending cases. By individual case type, compared with FY 2012, the court maintained or improved its case clearance rate for criminal, civil (an increase of 12 percentage points) and juvenile cases.

C. Age of Pending Caseload

This measurement is intended to provide information about the age of the Court's complement of pending cases. It calculates the

percentage of cases pending at the end of a fiscal year that had not reached the time reference points described above.

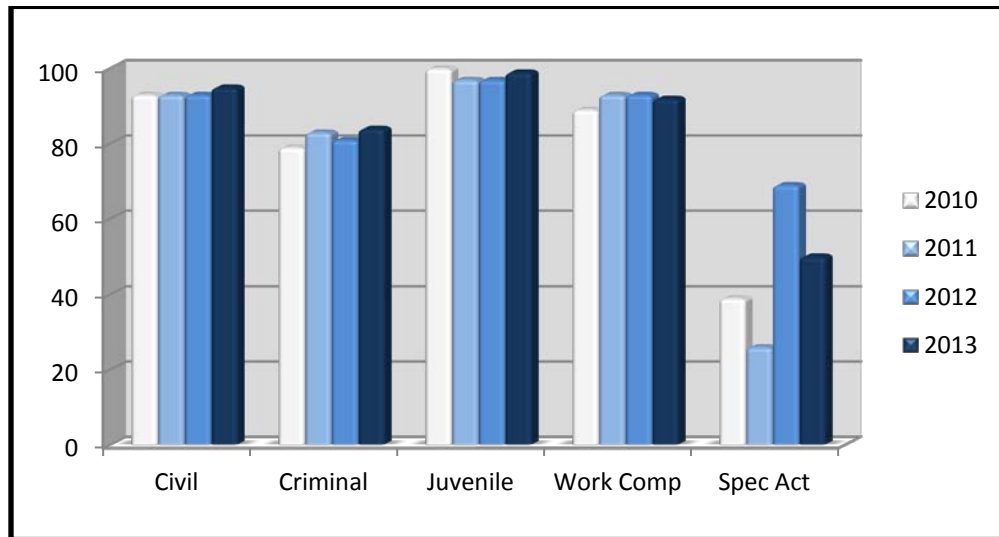
The percentage of all cases pending at the end of FY 2013 that had not reached the time reference points is as follows:

Percent of Pending Cases Short of Reference Points FY 2010 - 2013					
	Civil	Criminal	Juvenile	Workers Compensation	Special Action
2013	95	84	99	92	50
2012	93	81	97	93	69
2011	93	83	97	93	26
2010	93	79	100	89	39

These results show that at the end of FY 2013, the Court's pending cases were relatively new, as most had not yet reached their time reference points. Although 50 percent of the special actions pending at the end of FY 2013 had not yet met their time reference point, 79 percent of the special action cases the Court resolved during the year were disposed of within the time reference period for filing to disposition.

On the whole, as depicted in the following graph, the age of pending cases remained substantially the same at the end of FY 2013 as compared to prior years:

Percent of Pending Cases Short of Reference Points FY 2010-2013



D. Attorney/Trial Bench Survey

The Court conducts a biannual anonymous survey of attorney members of the Appellate Practice Section of the State Bar of Arizona, other attorneys who appeared before the Court, and superior court judges and commissioners. The survey asks respondents to rate their agreement with specified statements about the Court on a five-point scale ranging from "strongly agree" to "undecided/unknown." Responses to the 2013 survey were received from 416 individuals, or

33 percent of those surveyed. Results of the 2013 survey are shown below, along with results of the same survey conducted in 2011:

Survey Question	2011- Results⁷	2013- Results
The Court resolves its cases expeditiously.	72%	76%
The Court renders decisions without any improper outside influences.	94%	94%
The Court considers each case based upon its facts and applicable law.	87%	88%
The Court's written decisions reflect thoughtful and fair evaluation of the parties' arguments.	84%	86%
The Court's written decisions clearly state the applicable legal principles that govern the decision.	87%	90%
The Court's written decisions clearly inform the trial courts and parties of what additional steps, if any, must be taken.	85%	89%
The Court's written decisions treat trial court judges with courtesy and respect.	97%	97%
The Court treats attorneys with courtesy and respect.	94%	94%
The Court is procedurally and economically accessible to the public and attorneys.	91%	86%
The Court effectively informs attorneys and trial judges of its procedures, operations, and activities.	92%	89%
The Court's website is a useful tool.	90%	90%

⁷ Results indicate the percent of respondents who selected "Agree or Strongly Agree" and exclude all "Undecided or Unknown" responses.

The Court's Clerk's office responds well to inquiries.	95%	96%
It is useful to have memorandum decisions available for review on the Court's website and through Westlaw.	98%	96%

Of particular note, greater than 90 percent of those who responded agreed or strongly agreed that the Court (1) renders its decisions without any improper outside influences; (2) issues decisions that clearly state the applicable legal principles; (3) treats trial court judges and attorneys with courtesy and respect; (4) provides a useful website; (5) has a responsive clerk's office; and (6) assists the public by making its memorandum decisions available for online review. Although the Court fell just short of a 90 percent rating in several areas, the percentage of favorable responses to several survey questions increased in 2013 over 2011. The number of respondents with an opinion who strongly agreed or agreed that the Court resolves its cases expeditiously rose in 2013 from 2011 by four percentage points, to 76 percent.

Settlement Program

Since approximately 1995, Division One has operated a free-of-charge settlement program that allows parties to try to resolve their appeals at a minimum of expense and other resources. Most civil appeals, including domestic relations and workers' compensation cases, are eligible for the program. Cases may be assigned to the court's settlement program at the request of a party or on the court's own initiative. An active or retired judge serves as a settlement judge. If the case does not settle, it is placed back on track for decision by a panel of judges, and the judge who served as settlement judge will have no further involvement with the case. One of the court's staff attorneys coordinates the settlement conference program.

During 2013, litigants in 11 cases participated in the settlement program, and of those, two appeals were resolved.⁸ The court will continue to work to identify eligible cases and will consider different approaches to make the program more successful.

⁸ Some unresolved cases in which settlement conferences were held may yet settle in 2014.

Connecting with the Community

Pro Bono Attorney Matching Program

The court has 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 willing to provide 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 the court. A successful pilot program was launched in Maricopa County in February 2011.

High School Oral Argument Program

In 2002, Division One responded to the Arizona Supreme Court's challenge to courts to connect with their communities by commencing a program to hold oral arguments at high schools throughout the state. The court educates students about Arizona's legal system and the appellate process by providing them with briefs

in real appeals, organizing discussion sessions in the weeks leading up to the hearing, and then allowing the students to watch oral arguments in their school auditoriums. 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 effects 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 they see the lawyers and judges in action. After the court decides the case, it forwards 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 with its "2005 Justice for a Better Arizona Achievement Award."

In 2011 through 2013, Judge Margaret H. Downie chaired Division One's Connecting with the Community Committee, which runs the program. In 2013, the Court was pleased to hold oral arguments and associated educational programs at North Canyon High School (in Phoenix) and Lee Williams High School in Kingman (where students from Mohave High School and Lake Havasu High School also participated).





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

Cesar Chavez H.S. (2002)
South Mountain H.S. (2002)
Central H.S. (2003)
Carl Hayden H.S. (2004)
Highland H.S. (2004)
Horizon H.S. (2005)
Queen Creek H.S. (2005)
Marcos De Niza H.S. (2006)
Dysart H.S. (2006)
South Mountain H.S. (2007)
Cesar Chavez H.S. (2007)

Shadow Mountain H.S. (2008)
Centennial H.S. (2008)
Agua Fria H.S. (2009)
Perry H.S. (2009)
Maryvale H.S. (2010)
Mesa H.S. (2010)
Moon Valley H.S. (2011)
Coronado H.S. (2011)
AZ School for the Arts (2012)
Deer Valley H.S. (2012)

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 case

issued in the 1970s. Because opinions previously published only in law books are now available for online viewing, the victim was horrified to discover that the public could learn of the crime on the Internet. In response, 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 online version of the decision.

After this experience, Division One formed a committee of volunteers who searched the legal database to identify other cases that included the full names of victims of personal crimes. In mid-2010, the court informed Thomson Reuters of 155 such cases and asked that the victims' names be shielded from the online version of decisions. Thomson Reuters agreed and made the changes. Going forward, when possible and appropriate, the court refrains from including in its decisions identifying information concerning juveniles, victims and bystanders.

Community Outreach

Division One is grateful to have generous employees who reach out to the community when not performing court duties. Among other things, many employees support local shelters with monetary and other donations. In 2013, Division One employees also continued their ongoing support for a class at Wilson Elementary School for a fifth consecutive year. Court employees provided financial support and devoted many lunch hours to help with class programs and celebrations. Employees also participated in school supply, book, holiday gift and food drives for the children and their families. Additionally, through the leadership of Court Clerk Ruth Willingham, the court sponsored a "Career Education Day" for one of our local area schools. Finally, judges and other court employees frequently visit with other elementary or high school groups during organized tours of the court.

Employee Recognition

The court's Employee Recognition Committee acknowledges employees who have made outstanding achievements within the court. The 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. Throughout 2013, small awards were bestowed on various deserving employees. Additionally, in the Spring, the Committee (without public funds) hosted the fourth annual "Employee Appreciation Lunch." The Committee also selected the court's Employees of the Year for 2013, 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. 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 2013:

**Staff Attorney of the Year:
Geoffrey Butzine**



**Judicial Staff Employee of the Year:
Brandie Castle**



Clerk's Office Employee of the Year:
Stacy Stolz



Quality Customer Service Award:
Shirley Bindenagel and



Irma Johnson (pictured with Chief Judge Johnsen)



**Community Service Award:
Ruth Willingham and Linda Colwell
(pictured with Chief Judge Johnsen)**



and Janet Mathias



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