



**Arizona Court of Appeals
Division One
2009: The Year in Review**

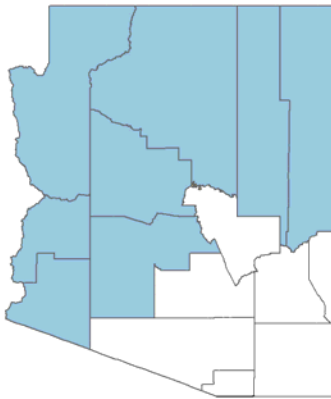


Table of Contents

Welcome	<u>1</u>
Budget Overview.....	<u>2</u>
Transitioning to the E-world	
E-records	<u>4</u>
E-filing	<u>5</u>
E-distribution	<u>5</u>
Court Performance	
Filing and Termination Rates	<u>7</u>
Comparison to 2008	<u>10</u>
Multi-Year Comparison	<u>11</u>
Oral arguments	<u>11</u>
Decisions	<u>12</u>
Dispositions in the Arizona Supreme Court	<u>13</u>
Performance Measures: CourTools	<u>14</u>
Surveys.....	<u>15</u>
Time to Disposition.....	<u>18</u>
Filing-to-Disposition Measure.....	<u>19</u>
Stage Measurements	<u>20</u>
Conclusion	<u>23</u>
Case Clearance	<u>24</u>
Age of Pending Caseload	<u>25</u>
Settlement Program.....	<u>28</u>
Connecting With the Community	
High School Program	<u>29</u>
Victims Assistance	<u>31</u>
Community Outreach	<u>32</u>
Employee Recognition	<u>34</u>
Contact Information	<u>36</u>

Welcome

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 inaugural Year in Review report, and our companion Meet the Court overview, to better inform the public about our court and its vital role in Arizona's justice system.

Respectfully submitted February 5, 2010.

Ann A. Scott Timmer
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Chief Judge
Arizona Court of Appeals
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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 2009, Division One was funded by monies appropriated by the legislature in the latter half of fiscal year (“FY”) 2009 and the first half of FY2010.

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 \$9,123,000. In FY2009, the budget was \$8,929,500. In FY2010, the budget year at the time of this report, after a mid-year reduction, Division One is budgeted \$8,781,400 with further reductions possible.¹

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. Currently, the court is holding vacant positions for two full-time

¹ The budget amounts for FY2008 – FY2010 do not include funds budgeted for employees' health and dental expenses, which are taken and administered by the Arizona Department of Administration.

and one part-time staff attorneys, one full-time and one part-time staff secretaries, four deputy clerks, one information systems technician, and one part-time judicial assistant. The court is also taking measures to convert to electronic filing and distribution of cases in order to reduce postage expenses.

In 2009, Division One created a committee tasked with the job of identifying ways in which the court could reduce its operating expenses. As a result, we reduced expenses and saved a few trees by taking measures such as circulating memoranda and draft decisions electronically rather than by paper, printing on both sides of paper, and printing to copy machines rather than using more-expensive toner cartridges. Although these measures may seem slight, Division One is committed to the notion that small savings add up and are necessary in this economy.

Transitioning to the E-world

The court continued to work throughout 2009 towards its goal of transitioning from a fully paper-based court to one that operates electronically to the 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 2009, the court worked extensively with the Clerk of the Superior Court in Maricopa County to commence 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.

The transmittal has worked well for both courts, and we are working with the Superior Court Clerk in Maricopa County to expand electronic transmission to all case types by mid-2010. The Court of Appeals will also work with the clerks of the superior court in the remaining counties within Division One in 2010 to convert to electronic transmission of records.

E-Filing

In 2009, the Court of Appeals joined the Supreme Court's ACE project, which allows the Attorney General's Office, the Maricopa County Public Defender's Office, the Legal Advocate's Office, and the Maricopa County Attorney's Office to file briefs and other papers electronically in criminal cases. The court is working to expand the ACE project in 2010 to other agencies in counties outside Maricopa County.

The court is also working with the supreme court and its vendor to implement e-filing for parties in all case types through a system called "TurboCourt." According to the vendor, it plans to institute TurboCourt in the Court of Appeals by the end of 2010.

E-Distribution

In 2009, the Court began electronic distribution of 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. By doing so, the court provided quicker access to decisions and saved postage. With the implementation of an upgrade to its case management system, the court will work in 2010 toward electronically distributing all decisions and orders to parties with e-mail addresses on file with the court.

Court Performance

Filing and Termination Rates

In calendar year 2009, the court began the year with 2,449 pending cases. An additional 2,732 appeals were filed and 30 cases were reinstated after dismissal during the prior year. The court terminated 2,641 cases during the year through decisions on the merits of a case or dismissal orders, leaving 2,576 cases pending at the start of 2010. The cases break down into the case types set forth on the following page:

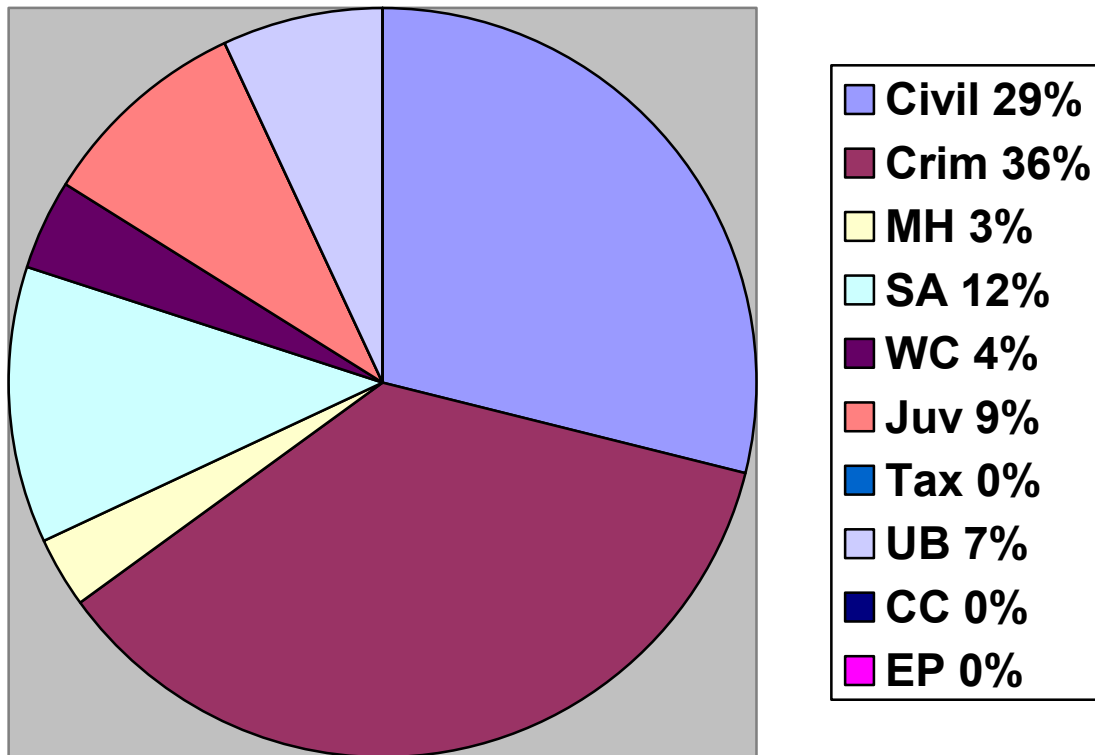
Case Type	Begin Pending	Filed/Reinstated	Terminations	End Pending
Civil	769	811	808	779
Criminal ²	1310	993	985	1324
Juvenile (“Juv”)	99	241	238	102
Mental Health (“MH”)	49	87	69	67
Workers’ Comp (“WC”)	52	98	74 ³	70
Special Actions (“SA”)	77	322	300	98
Unemployment Board (“UB”)	71	204	155	120
Tax	20	3	12	11
Corporation Commission (“CC”)	2	3	0	5
Electrical Power (“EP”)	0	0	0	0
TOTAL	2,444	2,762	2,641	2,576

² Criminal cases includes criminal appeals, petitions for review of post-conviction relief rulings, and habeas corpus filings.

³ In addition to the terminations, Division One transferred eight 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 2009, based on the numbers set forth above, the percentages of new filings and reinstatements in the various case types broke down as follows:⁴

**Percentage of New Filings/Reinstatements by Case Type
2009**



⁴ Division One had too few new tax (.01%), Corporation Commission (.01%), and electrical power (0%) appeals in 2009 to register measurable percentages of new filings and reinstatements. Thus, these categories reflect zero percentages.

Comparison to 2008

The number of new filings/reinstatements over all case types increased slightly in 2009, although fluctuations occurred within case types. The court experienced a 5% drop in civil appeals, an 8% decrease in special actions, and an 80% decrease in tax appeals, all of which may reflect parties' increasing inability in this economy to pay for counsel to proceed with appeals. Criminal filings decreased 10% while juvenile filings increased 18%. The decrease in criminal filings occurred due to a 26% decrease in the number of post-conviction petitions filed by inmates after completion of their direct appeals to Division One. The court experienced significant increases in filings in mental health (23%), workers' compensation (40%), and unemployment board (70%) appeals. Corporation Commission cases decreased from three to two cases.

Case terminations decreased 5% compared to terminations in 2008, leaving a higher number of cases (2,576) pending at the end of 2009 than the number of cases (2,449) pending at the end of 2008. The decrease in productivity resulted from the decrease in resources in Division One.

Multi-Year Comparison

Over the past five calendar years (2005 – 2009), new filings/reinstatements over all case types ranged from a high of 3,086 filings (2005) to a low of 2,657 (2006). The higher number of filings in 2005 was attributable to an increased number of petitions for review of post-conviction relief rulings in criminal cases. The court received a swell of petitions that year in the wake of *Blakely v. Washington*, 542 U.S. 296 (2004), a decision issued by the United States Supreme Court concerning sentencing. During the past four years, the number of such petitions filed has steadily declined until *Blakely* issues were exhausted.

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 2009, the court held oral arguments in 219 cases, which was a 2% decrease in the number of oral arguments (224) held in 2008.

Decisions

In 2009, Division One issued 1,912 merit-based decisions in the form of opinions, memorandum decisions, decision orders, and orders. The opinions are published by Thomson West 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 five years. Division One published 43% more opinions in 2009 (139) than it did in 2005 (79). Compared to 2008, when Division One issued 151 opinions, the number of opinions in 2009 decreased 7%, likely due to dwindling court resources that have tended to decrease the number of opinions, which take more time to author.

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 West 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 191 such motions in 2009, which was 12% fewer than the number of such motions (217) filed in 2008. Division One granted 31 motions for reconsideration in 2009, which was 55% more than the number of motions (20) granted in 2008.

Dispositions in the Arizona Supreme Court

In 2009, parties filed petitions for review with the Arizona Supreme Court to challenge 486 decisions issued by Division One. This constituted a 17% decrease in the number of petitions (585) filed for review of Division One cases in 2008.

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

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 2009, the supreme court depublished 5 opinions issued by Division One, compared with 4 such actions in 2008.

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 four performance measures for Arizona's appellate courts to use in 2009: (1) Appellate Bar and Trial Bench Survey; (2) On-Time Case Processing; (3) Case Clearance; and (4) Age of Pending Caseload. An explanation of these measures and their results follow.

Surveys

Early in 2009, the Committee administered an anonymous e-mail survey to attorney members of the Appellate Practice Section of the State Bar of Arizona, to a random list of attorneys who had appeared before Division One within a designated time period, and to superior court judges and commissioners. The survey asked respondents to rate their agreement regarding statements about Division One on a five-point scale ranging from “strongly agree” to “undecided/unknown.” Two hundred and seventeen people responded to the survey, although many answered “undecided” or “unknown” regarding some statements.

Of particular note, more than 90% of respondents with an opinion strongly agreed or agreed that Division One renders its decisions without any improper outside influences, treats trial court judges and attorneys with courtesy and respect, effectively informs attorneys and trial judges of its procedures, operations, and activities, provides a useful website, has a responsive clerk’s office, and assists the public by making its memorandum decisions available for online review. The court received its lowest marks for expeditious resolution of cases, although 74.8% of respondents with an opinion strongly agreed or agreed that Division One resolves its cases expeditiously.

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

Statement	Percentage Agreeing
1. Division One resolves its cases expeditiously.	74.8%
2. Division One renders decisions without any improper outside influences.	93.3%
3. Division One considers each case based upon its facts and applicable law.	88.1%
4. Division One’s written decisions reflect thoughtful and fair evaluation of the parties’ arguments.	83.4%
5. Division One’s written decisions clearly state the applicable legal principles that govern the decision.	86.2%
6. Division One’s written decisions clearly inform the trial courts and parties of what additional steps, if any, must be taken.	86.9%
7. Division One’s written decisions treat trial court judges with courtesy and respect.	94.3%

Statement**Percentage Agreeing**

8. Division One treats attorneys with courtesy and respect.	95.3%
9. Division One is procedurally and economically accessible to the public and attorneys.	86%
10. Division One effectively informs attorneys and trial judges of its procedures, operations, and activities.	91.5%
11. Division One's website is a useful tool.	90.7%
12. Division One's Clerk's office responds well to inquiries.	92.2%
13. It is useful to have memorandum decisions available for review on Division One's website and through Westlaw.	91.9%

The goal of the court is to elevate all statements above a 90% agreement level. The results have been shared and discussed with the leaders of Division One, including all judges. Focus in 2010 will be on achieving the often-fragile balance between quickly resolving cases and drafting decisions that fully explain the court's reasoning. As the number of Division One's personnel continues to dwindle in these poor economic times, the court has its work cut out for it.

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).⁵ 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 FY2009. We will measure our results in the future 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.

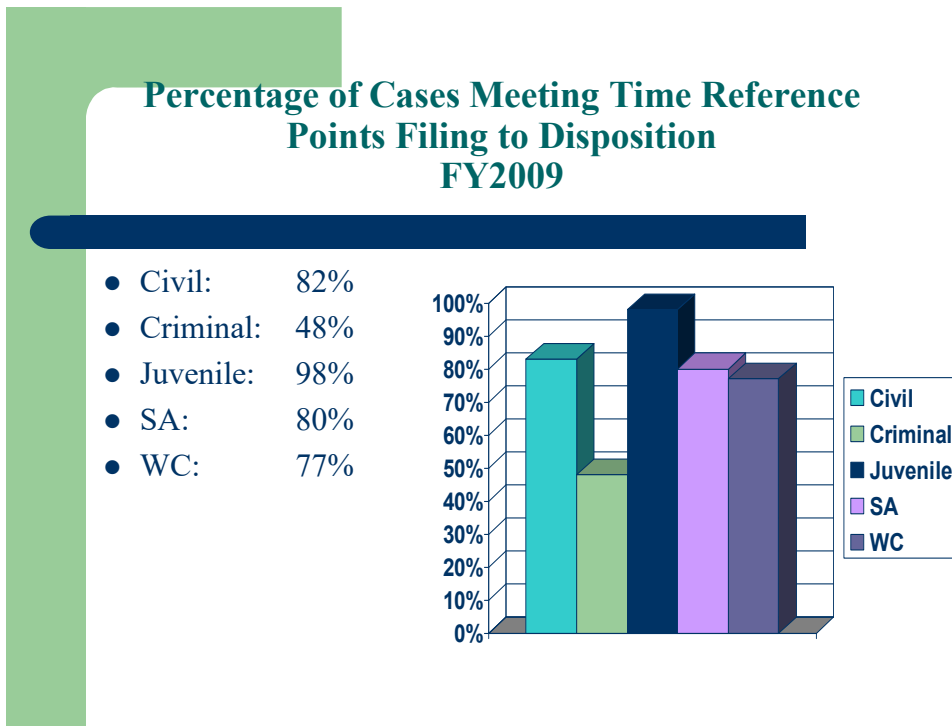
⁵ The cases do not terminate when decided as they are subject to post-decision motions and the like.

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:⁶

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

In fiscal year 2009 (“FY2009”), the percentage of cases that met these reference points is as follows:



⁶ 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.

Stage Measurements

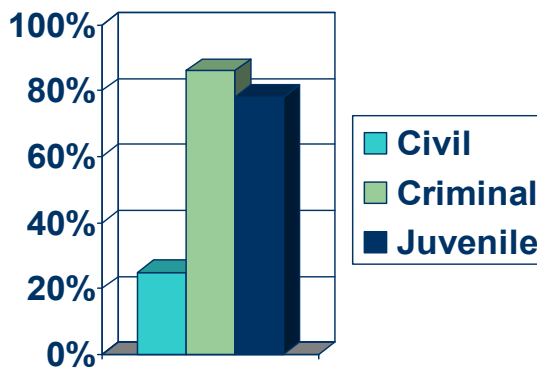
In order to understand the pace of appeals through various points in case-processing, the court also set the following time reference points for the various stages of an appeal:

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

Percentage of Cases Meeting Time Reference Points FY2009

- Civil: 25%
- Criminal: 86%
- Juvenile: 78%

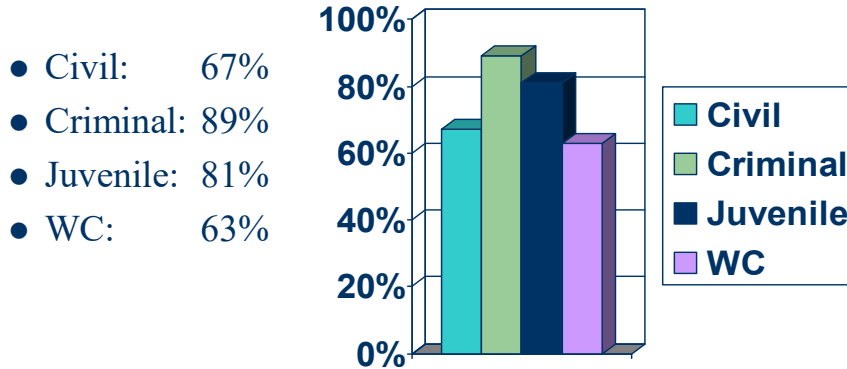


2. Time measured from day all records and briefs are filed in Division

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

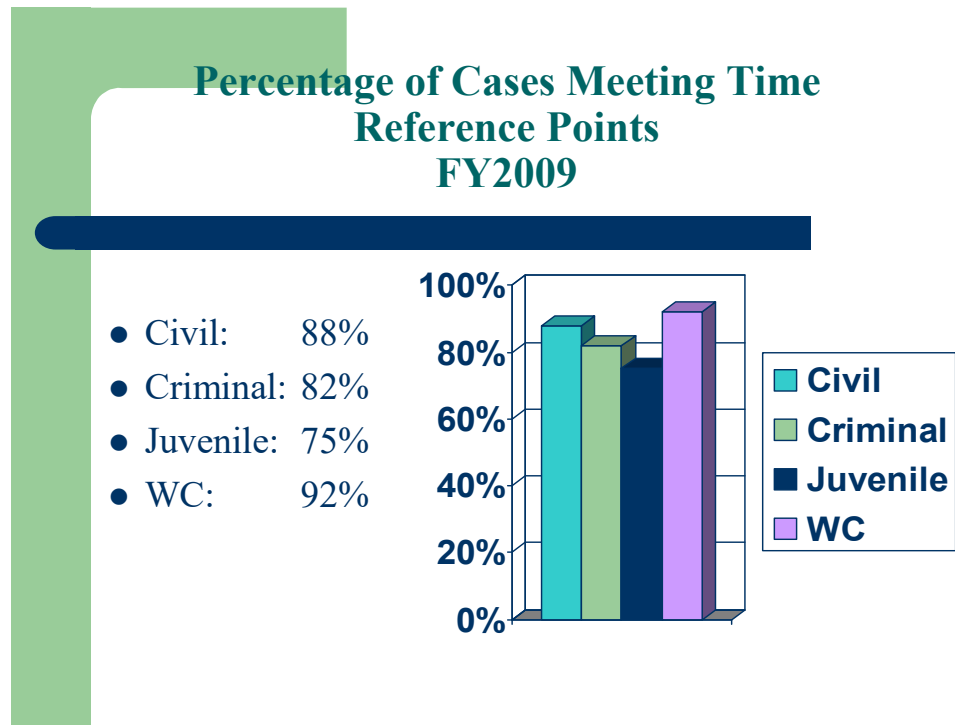
Civil:	225 days
Criminal:	150 days
Juvenile:	100 days
WC:	150 days

Percentage of Cases Meeting Time Reference Points FY2009



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



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.

In all case types except criminal appeals, a higher percentage of cases met the time reference points than the 75% of cases that typically met these points in past years.

Of note was that only 48% 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 criminal appeals were submitted to panels of judges for decisions, 89% of the cases met the given time reference point. 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.

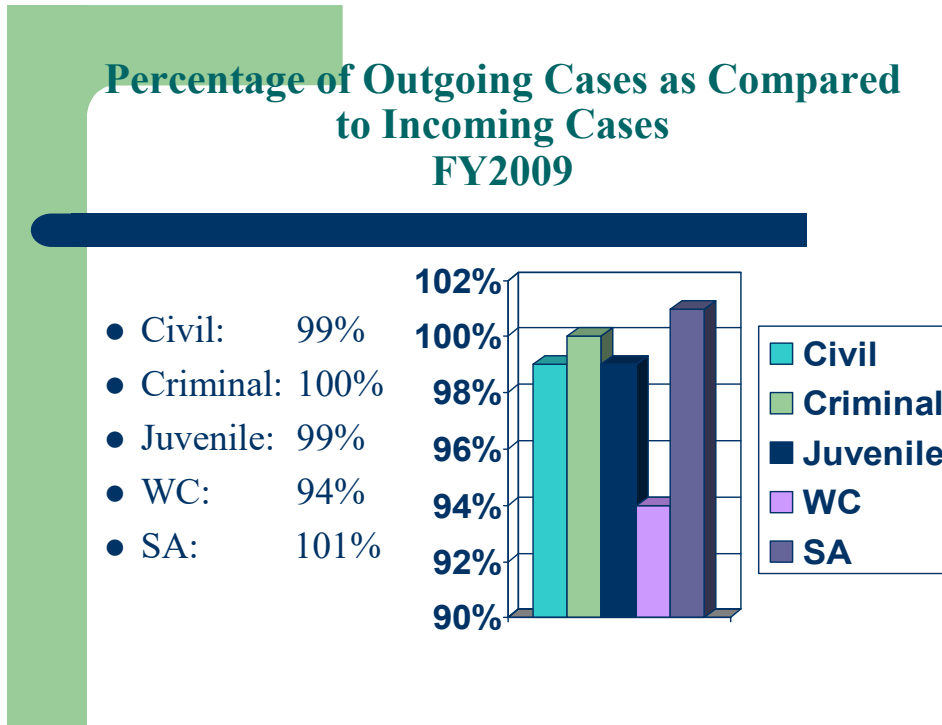
Another noteworthy measure is that only 25% of civil notices of appeal are meeting the 40-day reference point (time between filing of the notice of appeal in the superior court and transmittal of that notice to this court). This is despite a court rule that requires the superior court clerk to transmit the notices within 40 days. The court will work with the superior court in 2010 to resolve this problem. 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 FY2009, Division One achieved the following case clearance rates:



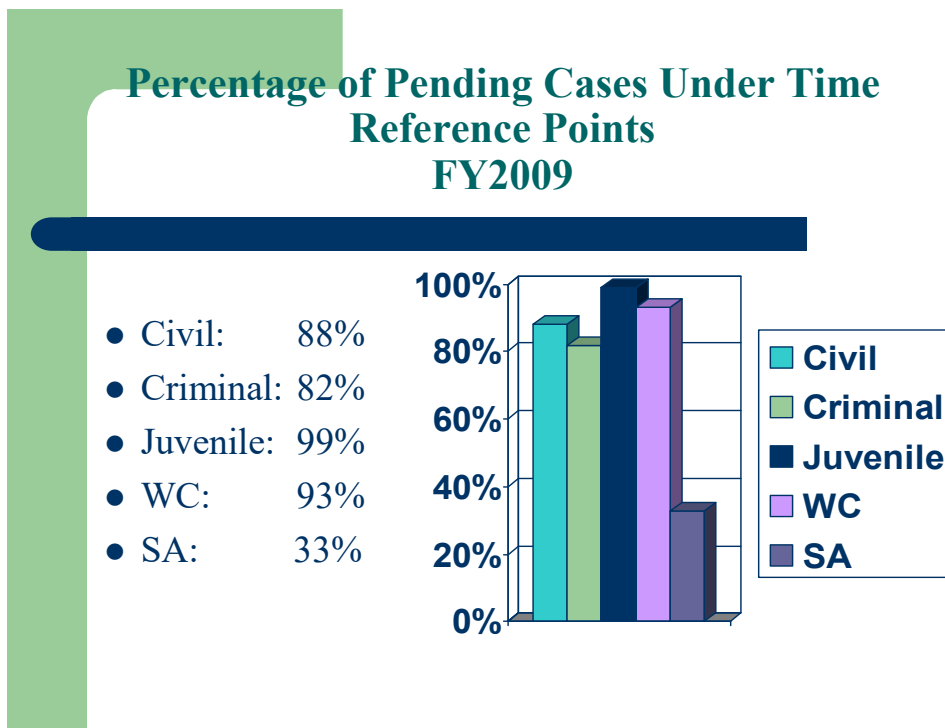
Overall, the Case Clearance measurement shows that in FY2009 Division One substantially kept pace, lagging minimally in civil and juvenile cases. The imbalance in the workers’ compensation cases reflects the large increase in the number of such cases filed during the fiscal year.

Age of Pending Caseload

The Age of Pending Caseload measurement applies to all cases pending but not decided in FY2009 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 FY2009 that had not reached the time reference points is as follows:



The Age of Pending Caseload measurement shows that at the end of FY2009, Division One's pending cases were relatively young, as most had not yet reached their time reference points. For example, 99% of the pending juvenile cases had not yet reached their time reference point. Although only 33% of the special actions pending at the end of FY2009 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 FY2009. Specifically, only nine special actions remained at the end of FY2009 because the court had decided hundreds of other special actions that year; indeed, 80% of all special actions met the time reference point in FY2009. The age-of-pending-caseload measure shows that six of the nine remaining cases had met the time reference point.

Settlement Program

Since approximately 1995, Division One has operated a highly successful 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 2009 in addition to her other duties at the court.

In calendar year 2009, Division One mediated 23 cases through the settlement program. Of those, 12 appeals were resolved⁷ resulting in a 52% settlement rate. This represents a 36% decrease from the number of appeals mediated in 2008 (36) but a 13% increase in the settlement rate compared with 2008 (39%).

⁷ Some unresolved cases may settle in 2010.

Connecting with the Community

High School Program

In 2002, Division One responded to the Arizona Supreme Court's challenge for courts to connect with their communities by starting 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 2009, 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 2009 at Agua Fria High School in Avondale and Perry High School in Gilbert.



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)

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 West 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 to search the legal database to identify other cases that may have identified victims of personal crimes by their full names. The court plans to inform Thomson West when such cases are located and request that the names of victims be shielded from the online version of decisions. The committee expects to conclude its work by Spring 2010.

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 2009, Division One employees were particularly happy to provide support for a third grade class at Wilson Elementary School for a second 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, 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 2009, small awards were bestowed on various deserving employees. Additionally, in September, the Committee (without public funds!) hosted the first “Employee Appreciation Lunch.” The Committee soon will select the court’s inaugural Employees of the Year for 2009, honoring employees for exemplary efforts on behalf of the court.



Also in 2009, the court established an intranet site for employees to use to make suggestions and learn of educational opportunities, among other things.

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