



# Arizona Court of Appeals Division One 2016: The Year in Review



# Table of Contents

<b>Introduction .....</b>	<b>1</b>
<b>Judges of Division One of the Court of Appeals .....</b>	<b>4</b>
Current Judges.....	4
Former Judges.....	5
<b>How the Court Makes Decisions .....</b>	<b>7</b>
Appeals .....	7
Special Actions.....	9
Motions .....	11
<b>The Court’s Budget.....</b>	<b>11</b>
<b>Enhancing Technology .....</b>	<b>12</b>
<b>Court Statistics.....</b>	<b>13</b>
Filings and Terminations .....	13
Oral Arguments.....	16
Decisions.....	16
Dispositions in the Arizona Supreme Court.....	18
<b>Performance Measures: CourTools .....</b>	<b>19</b>
<b>Settlement Program .....</b>	<b>35</b>
<b>Connecting with the Community .....</b>	<b>35</b>
Pro Bono Attorney Program.....	35
High School Oral Argument Program.....	36
Appellate Update Programs.....	38
Community Outreach.....	39
<b>Employee Recognition.....</b>	<b>39</b>
<b>Contact Information .....</b>	<b>41</b>



# Introduction



The Arizona Legislature created the Arizona Court of Appeals in 1964. The court serves as an intermediate appellate court with two divisions: Division One, based in Phoenix, and Division Two, based in Tucson. Division One (hereinafter referred to as “the Court” or “Division One”) started with three judges and, over time, expanded with the state’s population to its current complement of 16 judges. 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.

Division One resolves 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 Division One judges must reside primarily in Maricopa County. Five must reside primarily in one of the other counties within Division One, and one may reside in any county within Division One. After their appointment, judges stand for retention by the voters based on information 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 funded through the state's general fund. The Court resolves the appeals that come before it; it operates no related programs requiring legislative appropriation. In addition to its 16 judges, Division One employs more than 80 other employees, including the Clerk of the Court, Amy Wood, who oversees all appellate records and coordinates distribution of decisions, and Barbara Vidal Vaught, Chief Staff Attorney, who supervises the Court's staff attorneys and assists with preparing cases for each Court calendar. All judges and employees must comply with codes of conduct adopted by the Arizona Supreme Court and must complete a designated amount of continuing education each year.

The Court decides appeals in three-judge panels, which rotate in composition every few months. The 16 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 instead sits on various panels as required to accommodate vacancies and workload issues.

The Court decides appeals in a wide variety of substantive areas, including civil, criminal, juvenile, family, mental health, probate, and tax law. Along with considering appeals from administrative decisions first considered by the superior court and some matters from limited jurisdiction courts, 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 three judges after they meet to consider the case and hear any necessary oral argument. Each decision is memorialized in writing, and opinions and memorandum decisions are posted on the Court's website. Although all the Court's decisions are subject to discretionary review by the Arizona Supreme Court, in 2016, Division One's decision was the final word in more than 98 percent of the cases it resolved.

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

and employees remain dedicated to public service and take great pride in their work. This, the Court's seventh Year in Review report, is offered to inform the public about the Court's integral role in Arizona's justice system.

## **Judges of Division One of the Court of Appeals as of January 2017**

### **Current Judges (listed by seniority in order of their service on this court)**

<b>Judge</b>	<b>Home County</b>	<b>Appointed</b>
Jon W. Thompson	Coconino	04/03/95
Lawrence F. Winthrop*	Maricopa	10/15/02
Donn Kessler	Maricopa	06/23/03
Patricia K. Norris	Maricopa	12/17/03
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
Randall M. Howe	Maricopa	04/11/12
Samuel A. Thumma	Maricopa	04/11/12
Kent E. Cattani	Maricopa	02/09/13
Kenton D. Jones	Yavapai	10/28/13
Paul J. McMurdie	Maricopa	11/14/16
James P. Beene	Maricopa	12/12/16
Vacant Position (pending appointment)		
Vacant Position (pending appointment)		

\*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	Apache
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
John C. Gemmill	2001-2016	Maricopa
G. Murray Snow	2002-2008	Maricopa
Patrick Irvine	2002-2011	Maricopa
Maurice Portley	2003-2016	Maricopa
Patricia A. Orozco	2004-2016	Yuma
Andrew W. Gould	2012-2016	Yuma

\* 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 cases without reviewing their subject matter 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 by the Clerk to any panel. The cases on a calendar usually are grouped by subject matter. For example, a panel may have a calendar of criminal cases one week, a civil calendar the next and a combined civil/workers' compensation calendar the week after that. The case calendars are posted on the Court's website at least one month in advance.

All panels meet weekly, typically either on Tuesday or Wednesday. Before meeting, each judge reads the briefs for each case, conducts legal research and reviews pertinent parts of the record. The judges are assisted in this effort by their law clerks and the Court's staff attorneys. By the time they meet, the judges are well-versed in each case's material facts and legal issues. If a party requests oral argument and the court believes argument would be helpful, 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 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 several factors:

(1) The Court is required by law to give priority to juvenile delinquency and dependency/parental termination cases, criminal cases, election cases, mental health appeals, matters involving child support, child custody, spousal maintenance, workers' compensation and other types of cases. Also, on application by a party and for good cause, the court may accelerate some civil appeals pursuant to court rule. Otherwise, general civil cases have the lowest priority of all the appeals the court handles.

(2) A judge's pending caseload may affect the speed with which the judge completes work on a case. From time to time, a judge draws a case that may be 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 decisions typically is not relieved of other

ongoing case responsibilities in the meantime, such a case can slow disposition of the judge's other assigned cases.

(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 concurrence then will do so. Several drafts may be exchanged before the panel agrees on a final version.

(4) An opinion generally is more time-consuming to draft than a memorandum decision. Because opinions may be cited as precedent in future cases (memorandum decisions do not constitute controlling precedent), opinions usually contain more legal authority, provide more reasoning and require more time and care 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 are not subject to such review by the full Court.

## **Special Actions**

Petitions for special action relief are filed by parties asking the Court to order a public officer or entity to take some action or refrain from a particular action. Such petitions usually 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 receive special actions at any particular time is known as the “hot panel” because the judges on that panel must be available to address any requests for emergency relief.

If a petitioner needs an immediate order from Division One staying a decision by the superior court, the petitioner usually first must ask the superior court judge who issued the order to stay it pending resolution of the petition for 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 in Division One, the hot panel usually will set a telephone 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 has discretion to decline jurisdiction of the matter. To save the parties time and money and to decide petitions more expediently, the hot panel reviews each petition before any response is due to determine whether the petition 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 waiting to receive 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 a manner similar to a direct appeal. If the court decides to decline jurisdiction, it usually will issue a short order to that effect. The brevity of an order declining jurisdiction may not reflect the extent of the analysis underlying the Court's decision.

## **Motions**

The court receives many motions filed in cases on appeal and in special actions. These include, for example, motions to dismiss all or part of an 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 substantive 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. Additionally, the Chief Judge, Vice Chief Judge, and staff attorneys who serve as *pro tem* judges handle several thousand motions each year relating to administrative procedures governing appeals, such as requests for additional time for court reporters to file transcripts, motions for extensions of time to file briefs, requests for oral argument, motions to supplement the superior court record on appeal, and requests for participation in the Court's settlement program.

## **The Court's Budget**

The Court of Appeals is 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”) ends. In FY 2017, the current budget year, Division One has a baseline appropriation of \$9,963,900. Approximately 96 percent of the court’s current budget is devoted to salaries and employee-related expenditures (for example, health and dental expenses, travel expenses for judges who live outside of Maricopa County, and retirement fund contributions). The Court has weathered budget shortfalls in past years by delaying filling budgeted employee positions that come vacant and by other measures, such as drastically reducing its library resources. The Court also has taken advantage of technological advances and, to a large extent, has converted to electronic filing, review and distribution of decisions and orders.

## **Enhancing Technology**

With only a few exceptions, the superior courts deliver electronic versions of their records to Division One for cases that are on appeal. Electronic access to the record allows each judge on a panel of the Court to more easily review the trial court record. It also minimizes the time spent by the superior court staff in gathering and transmitting paper records.

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

The Court has recently implemented various web-based collaboration tools, using SharePoint, which allow judges and staff to more easily share pertinent case records, draft decisions, comments, and suggested edits. This step is consistent with the Court's goal to continually identify and implement technological advances that will assist judges and staff to accomplish their duties in a more efficient manner.

## **Court Statistics**

### **Filings and Terminations**

The court began calendar year 2016 with a total of 2,342 pending cases over all case categories. During the year, 2,746 appeals and special actions were filed and 70 cases were reinstated or transferred in. The court terminated 2,566 cases, leaving 2,592 cases pending at the start of 2017.

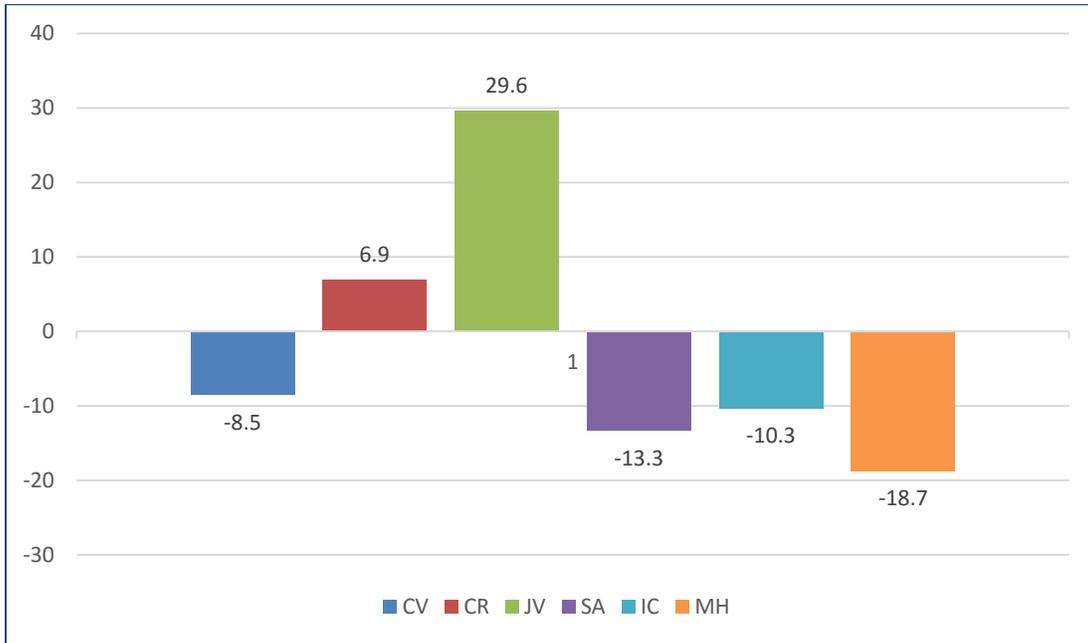
Here are the annual statistics for the court's major case categories:

<b>Case Type</b>	<b>Number of Cases Pending at Start of Year</b>	<b>Cases Filed/Reinstated During Year</b>	<b>Cases Resolved During the Year</b>	<b>Number of Cases Pending at End of Year</b>
Civil	624	547	588	583
Family	219	274	283	210
Criminal <sup>1</sup>	1131	942	742	1331
Juvenile	169	561	465	265
Mental Health	29	87	86	30
Workers' Comp	68	78	77	69
Special Actions	68	281	274	75

---

<sup>1</sup> Includes criminal appeals, petitions for review of post-conviction relief rulings, and habeas corpus filings.

The percentages of change of new and reinstated filings between 2015 and 2016 in the various case types is broken down as follows:<sup>2</sup>



New case filings (plus reinstatements) over all case types in Division One decreased by 51 cases to 2,746 in 2016 from 2,797 in 2015, a decrease of 1.9 percent. New and reinstated filings in civil appeals decreased by 76 cases (8.5 percent), whereas criminal cases were up by 61 cases, an increase of 6.9 percent. There was a substantial increase (29.6 percent) in juvenile appeals with 561 cases filed and/or reinstated while special actions decreased by 13.3 percent. Workers'

---

<sup>2</sup> Division One had too few new Tax, Corporation Commission, and Electrical Power appeals in 2016 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%.

compensation cases were reduced by 10.3 percent, and the number of new and reinstated mental health filings decreased by 18.7 percent.

Over the past 11 calendar years (2006–2016), 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 held when warranted, usually on motion of a party. The Court may deny a request for oral argument if it determines that the briefs adequately present the facts and legal arguments and that 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. The Court heard oral arguments in 165 cases in 2016 (it heard 202 oral arguments in 2015 and 178 in 2014).

## **Decisions**

Division One issued 1,219 decisions in 2016 by way of opinions and memorandum decisions. These decisions are available on the court's website, <http://www.azcourts.gov/coal>.

Opinions are published by Thomson Reuters and by court rule may be cited as precedent in future cases. Compared to recent years, the number of published opinions in 2016 (119) increased from the number published in 2015 (108) but slightly decreased from the number published in 2014 (131) and in 2013 (122). Pursuant to

Supreme Court Rule 111(b) and Arizona Rule of Civil Appellate Procedure 28(b), 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 writes a concurrence or dissent, that judge may request that the decision be issued in the form of a published opinion.

Pursuant to Supreme Court Rule 111(c), the Court's memorandum decisions may not be cited as precedent. An amendment to Rule 111(c), effective January 1, 2015, allows a party to cite a memorandum decision issued after January 1, 2015 for persuasive value in certain circumstances. Division One posts its memorandum decisions on its website with a search engine and permits Thomson Reuters and other online research companies to include such decisions in online databases.

Parties occasionally ask the Court to reconsider a decision. The Court carefully considers these requests and may grant such a motion when a decision requires clarification or revision. Parties filed 227 motions for reconsideration in 2016 (up from 205 in 2015). The Court granted 32 of the motions for reconsideration (it granted 24 in 2015).

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

In 2016, parties filed petitions for review in the Arizona Supreme Court concerning 454 decisions issued by Division One. (During 2015, 473 petitions for review were filed in Division One cases.) The Arizona Supreme Court in 2016 granted review in 39 cases issued by Division One, up from 22 cases in 2015. The Arizona Supreme Court accepts review for a number of reasons, including when a case involves an issue of significant statewide concern or a rule of procedure or evidence, or when different panels of the Court of Appeals have reached conflicting decisions on an issue of law. These statistics indicate that, although Division One is an “intermediate” appellate court, its decision is the final word in the matter more than 98 percent of the time.

Occasionally, the Arizona 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 2016, the Supreme Court did not depublish any opinions issued by Division One.

## Performance Measures: CourTools

“CourTools” is a package of metrics by which an appellate court measures the timeliness of its processing of cases. The metrics are nationally accepted performance standards designed for tracking the length of time a court takes to resolve different types of cases on appeal. Because appellate cases vary greatly in difficulty and complexity, a court meets the standard if 75 percent of its cases are resolved within the applicable time period.

During FY 2016, which ended June 30, 2016, the Court met the overall time standard for case processing of 74.7 percent of its appeals in civil, criminal, juvenile, special action, and workers’ compensation cases. As shown below, the Court met the overall time standard in 73.5 percent of civil cases and in 97.7 percent of juvenile cases. Due to delays by some court reporters in preparing trial transcripts and some attorneys in submitting briefs, the time standard for resolving criminal cases has always been a significant challenge. During FY 2016, the Court met the overall time standard in 57.4 percent of its criminal cases. A different standard measures the point when the Court has received all the transcripts, briefs and other records it needs to decide a case, to when the Court issues its decision in the case. The Court has more direct control over these events. Significantly, the Court met that standard in 81.2 percent of criminal cases.

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 the Court is committed to gathering and publishing this information on an annual basis. Three performance measures selected by the Appellate CourTools Committee, (1) Time Standards; (2) Case Clearance; and (3) Age of Pending Caseload, are discussed below. Also discussed are the results of the Court's biannual opinion survey of trial judges and appellate counsel.<sup>3</sup>

The time standards employed by CourTools measure the length of time it takes the Court to process various categories of cases. In preparation for implementing CourTools, the Court selected specific reference points for certain key periods in the handling of an appellate case. In annual reports commencing with FY 2009, the Court has reviewed its performance against the selected time standards. Three time standards are most relevant to assessing the timeliness of the Court's processing of its cases:

---

<sup>3</sup> Effective July 1, 2016, the Arizona Supreme Court adopted Appellate Time Standards for special actions and for civil, family, criminal, workers' compensation, and juvenile appeals. *See* Arizona Supreme Court Administrative Order No. 2016-66. Accordingly, starting with FY 2017, the court's formal performance measures will be reported pursuant to the newly-adopted Appellate Time Standards.

- **“Filing to Disposition.”** This standard measures the length of time between when an appeal begins at the Court and when the Court issues its decision in the appeal.
- **“At-Issue to Disposition.”** This standard measures the length of time between when the Court has received all the briefs, transcripts and other records that are required to decide an appeal, and when the Court issues its decision in the appeal.
- **“Under Advisement to Disposition.”** This standard measures the length of time between when a panel of judges meets to consider an appeal and when the Court issues its decision in the appeal.

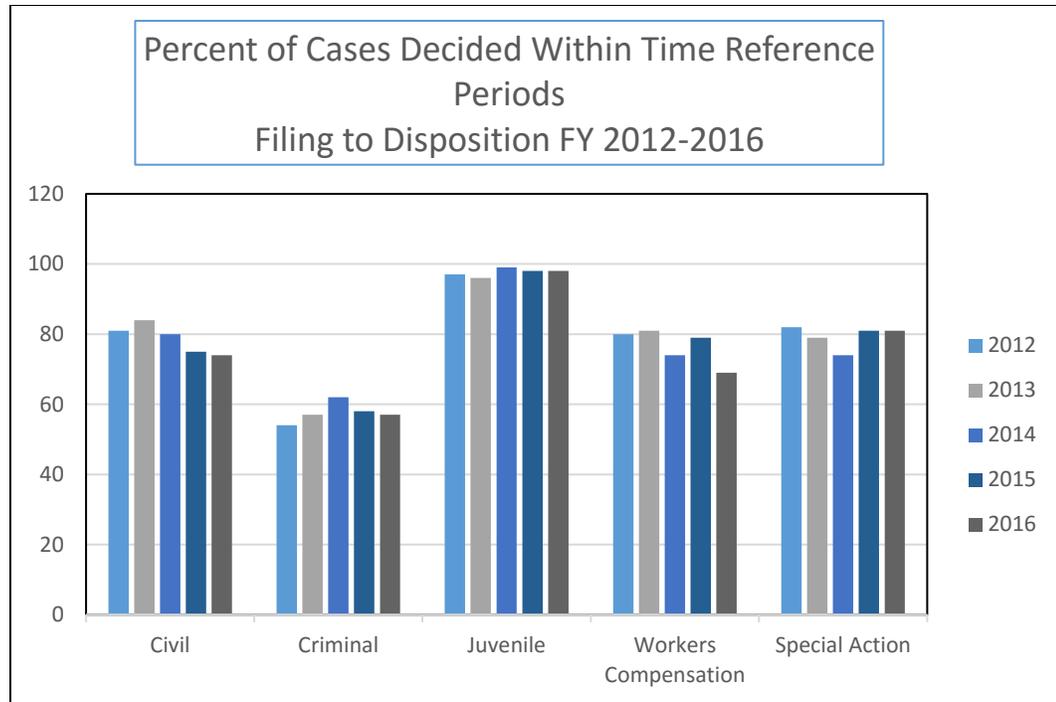
Although the Court strives to timely resolve all cases that come before it, the goal of an appellate court using the CourTools methodology is that 75 percent of its cases will be handled within the applicable time standard.

The Court met the standard (time reference point) for filing to disposition (i.e., commencement of the appeal to issuance of a decision) in 74.7 percent of all the cases it completed during FY 2016. 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 2016:

<b>Case Type</b>	<b>Reference Period (filing to disposition)</b>	<b>Percent of FY 2016 Cases Decided Within Reference Period</b>
Civil	400 days	73.5%
Criminal	375 days	57.4%
Juvenile	275 days	97.7%
Workers Compensation	300 days	69.3%
Special Actions	25 days	81.1%

The table and graph which follow show the Court's performance with respect to these reference points during FY 2016 and in prior years:

<b>Filing to Disposition FY 2012-2016 (percent of cases, rounded, decided within reference periods)</b>					
	Civil	Criminal	Juvenile	Workers Compensation	Special Action
2012	81	54	97	80	82
2013	84	57	96	81	79
2014	80	62	99	74	74
2015	75	58	98	79	81
2016	74	57	98	69	81



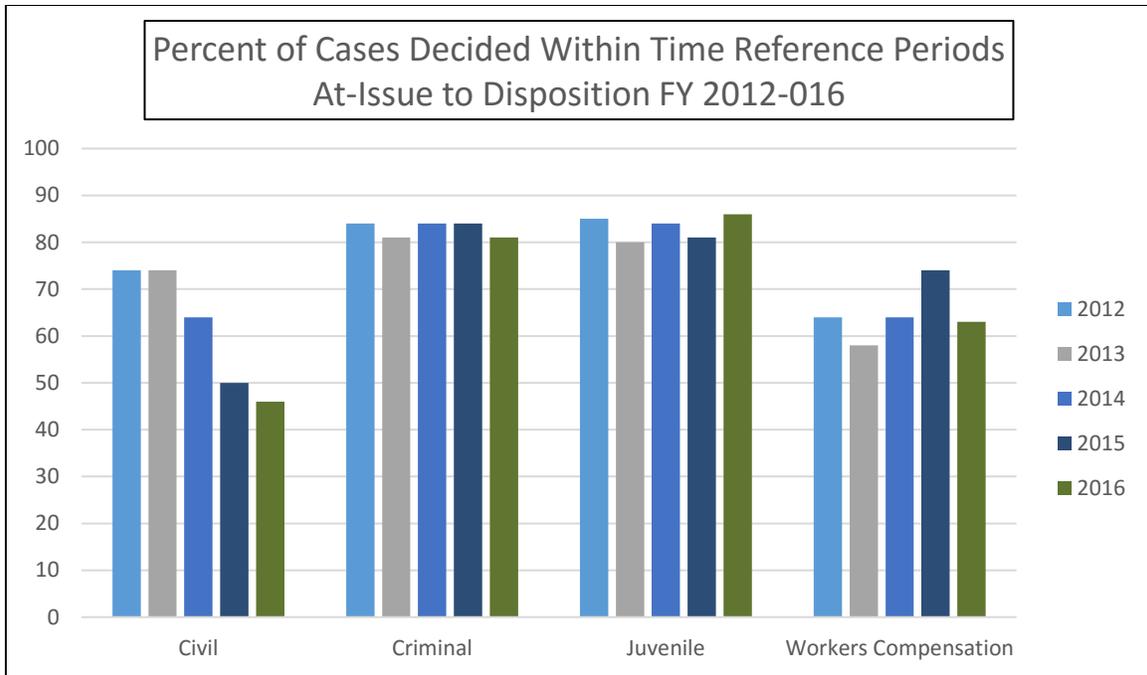
The Court also tracks the time it takes to decide an appeal from the day all records, transcripts and briefs have been filed in the Court (i.e., from when the case is “at-issue”) and from the day a panel of the court meets to discuss the case and/or holds oral argument on the case (i.e., from when the case is “under advisement”).

The Court met the standards for at-issue to disposition in 67.4 percent of all the cases it completed during FY 2016. 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 2016:

Case Type	Reference Period (at-issue to disposition)	Percent of FY 2016 Cases Decided Within Reference Period
Civil	225 days	45.6%
Criminal	150 days	81.2%
Juvenile	100 days	86.4%
Workers' Compensation	150 days	63.3%

The table and graph which follow show the Court's performance with respect to these reference points during FY 2016 and in prior years:

At-Issue to Disposition FY 2012-2016 (percent of cases decided within reference periods)				
	Civil	Criminal	Juvenile	Workers' Compensation
2012	74	84	85	64
2013	74	81	80	58
2014	64	84	84	64
2015	50	84	81	74
2016	46	81	86	63

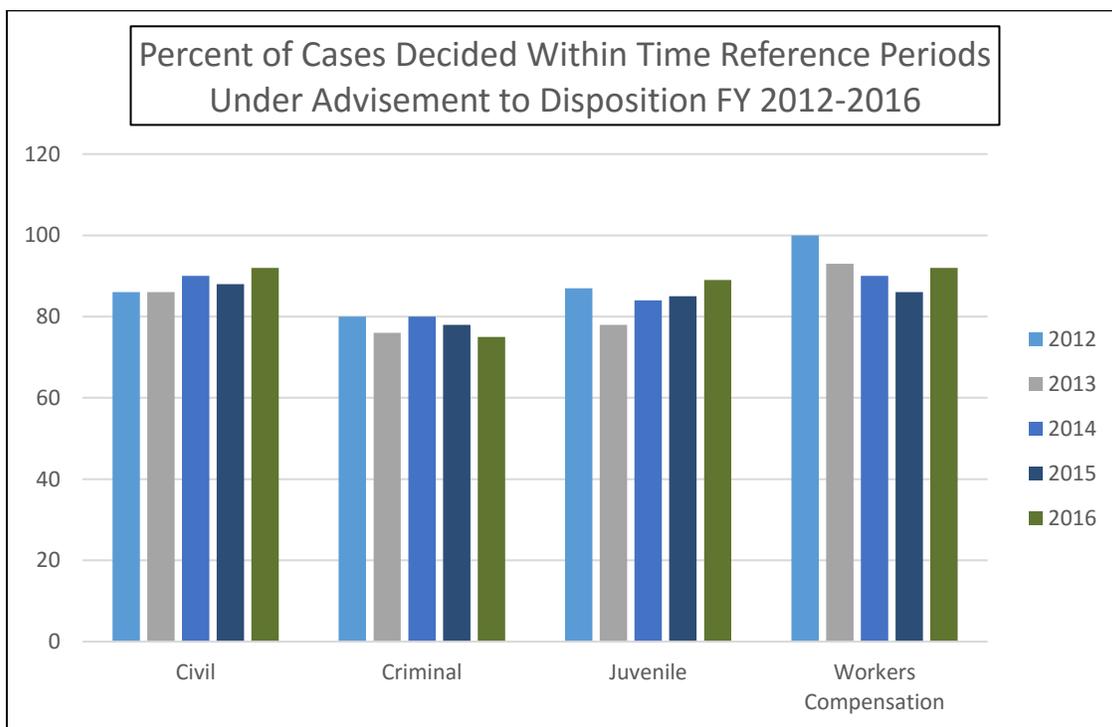


The Court met the standards for under advisement to disposition in 83.7 percent of all the cases it completed during FY 2016. The table below shows, for each case type, the number of days chosen as the reference period for the time between the day an appeal is taken under advisement and the day the Court decides the case, and the percentage of cases that met that reference period during FY 2016:

Case Type	Reference Period (under advisement to disposition)	Percent of FY 2016 Cases Decided Within Reference Period
Civil	120 days	91.7%
Criminal	90 days	74.8%
Juvenile	40 days	88.8%
Workers' Compensation	100 days	91.7%

The table and graph below show the court's performance with respect to these reference points during FY 2016 and in prior years:

Under Advisement to Disposition FY 2012-2016 (percent of cases decided within reference periods)				
	Civil	Criminal	Juvenile	Workers' Compensation
2012	86	80	87	100
2013	86	76	78	93
2014	90	80	84	90
2015	88	78	85	86
2016	92	75	89	92



Together, the data recounted in the pages above show that compared to FY 2015, the Court saw a slight decline in FY 2016 in criminal cases in the broadest time reference period - filing to disposition. By statute, the Court must grant priority to handling juvenile cases, and the number of cases resolved within the target timeframe has remained the same as the previous year, well over 75 percent. The percentage of civil cases resolved within the target

timeframe declined slightly, but still well above the 75 percent goal. Special action cases remained the same, while workers' compensation cases declined by ten percentage points.

Timely handling of criminal cases continues to present a challenge, due in large part to delays in receiving trial court records, transcripts and briefs. The Court resolved 57 percent 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 trial court records and transcripts have been received and briefs have been filed. Moreover, the Court resolved 75 percent of criminal cases within the target time period for under advisement to disposition. Taken together, these data demonstrate that although the Court expeditiously resolves criminal cases once they are at-issue and under advisement, significant delays (*vis-a-vis* the reference time periods) 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 Court has taken steps to reduce continuances granted to counsel for the submission of appellate briefs. In December 2014, the Court issued an administrative order outlining updated policies for criminal appeals, and addressing requests for extensions of time for filing briefs and requests to supplement the record on appeal, with the

goal of reducing unnecessary delays in the appellate process. However, constitutional due process requires a careful review of the trial record by appellate counsel and by the Court for criminal appeals. This painstaking process often causes counsel to ask for additional trial transcripts to be prepared and for additional time to complete such review. If there are arguable questions of law, those issues need to be identified and 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 some instances, as a result of the Court's own independent review of the record for fundamental error, the Court may identify an issue and order the parties to submit supplemental briefing. In short, constitutionally mandated due process requirements for criminal appeals may extend the time until the appeal is considered at issue.

The volume of criminal appeals, extended staff shortages and budgetary constraints in the superior 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 twice a month to attempt to reduce this delay. The Court has continued to work collaboratively with superior court personnel, including court reporter supervisors, to resolve delays in the filing of transcripts. Significantly, in March 2015, the Court issued an administrative order outlining updated policies to

address the circumstances in which the Court allows additional time for the filing of transcripts in criminal appeals.

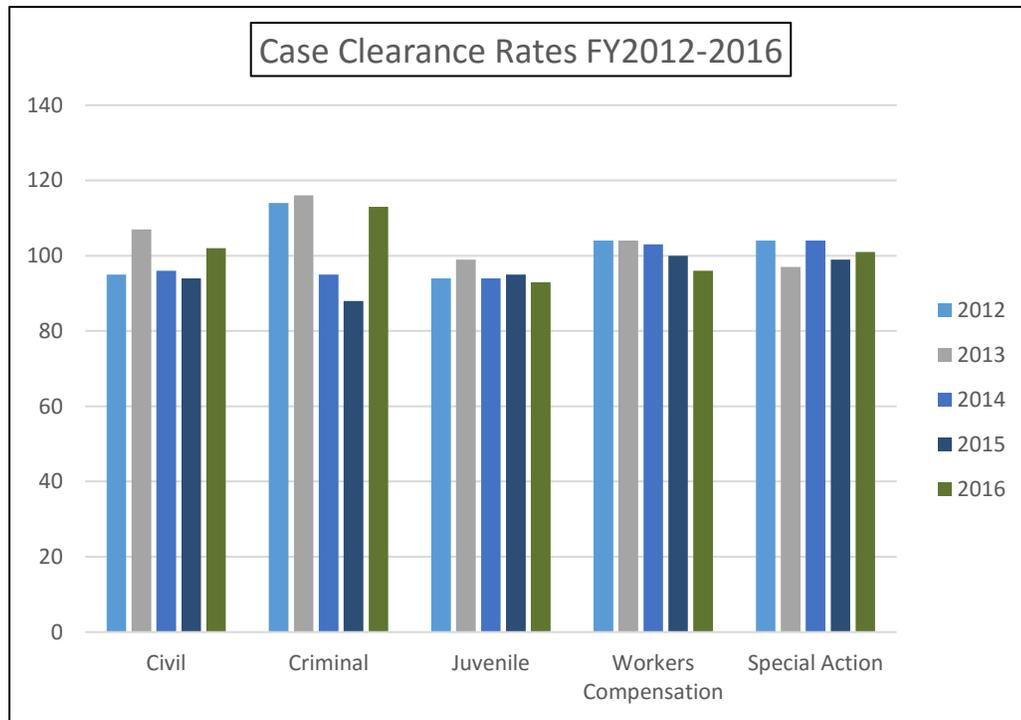
“Case clearance” measures the number of cases decided in a fiscal year as a percentage of the number of new cases filed that year. This is a measure of whether the Court is maintaining pace with the incoming caseload. Any measure over 100% reflects a decrease in pending cases; any measure under 100% indicates an increasing number of pending cases. The case clearance percentage for all types of cases that the Court completed during FY 2016 is 102.2 percent.

In FY 2016, the Court achieved the following case clearance rates:

Case Type	Case Clearance Rate FY 2016
Civil	101.5%
Criminal	113.0%
Juvenile	93.2%
Workers’ Compensation	95.7%
Special Action	100.7%

The table and graph below show the Court's case clearance performance during FY 2016 with prior years:

Case Clearance Rates FY 2012 - 2016					
	Civil	Criminal	Juvenile	Workers' Compensation	Special Action
2012	95%	114%	94%	104%	104%
2013	107%	116%	99%	104%	97%
2014	96%	95%	94%	103%	104%
2015	94%	88%	95%	100%	99%
2016	102%	113%	93%	96%	101%



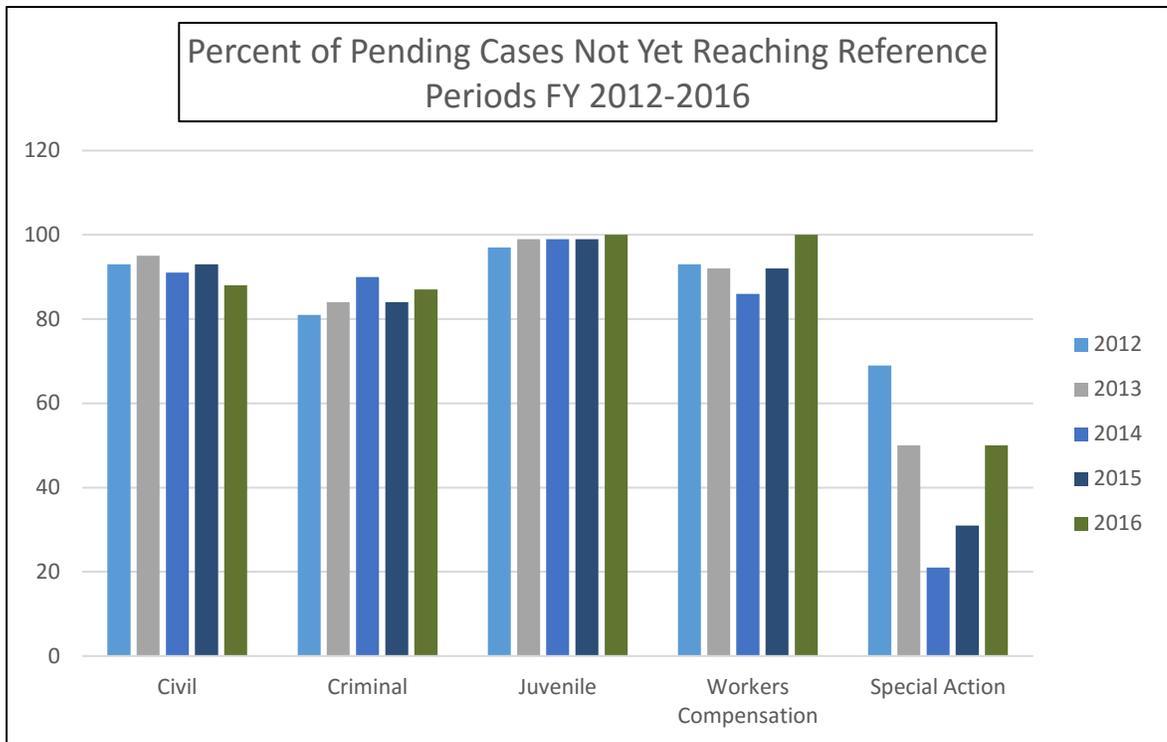
These data show that, compared with FY 2015, the Court's case clearance rate was up in each case category except for slight decreases in the juvenile and workers' compensation categories.

The percent of pending cases 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 2016 that had not reached the time reference points was 89 percent.

Broken down by case types, the data show:

Percent of Pending Cases Not Yet Reaching Reference Points FY 2012 - 2016					
	Civil	Criminal	Juvenile	Workers' Compensation	Special Action
2012	93	81	97	93	69
2013	95	84	99	92	50
2014	91	90	99	86	21
2015	93	84	99	92	31
2016	88	87	100	100	50



These data show that at the end of FY 2016, the Court’s pending cases were relatively new, as most had not yet reached their time reference points.

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 “strongly disagree.” The most recent survey was conducted in 2015, when responses were received from 318 individuals, or 27 percent of those surveyed. Results of the 2015 survey are shown below, along with results of the same survey conducted in 2011 and 2013.

<b>Survey Question</b>	<b>2011- Results</b>	<b>2013- Results</b>	<b>2015- Results</b>
<b>The Court resolves its cases expeditiously.</b>	72%	76%	71%
<b>The Court renders decisions without any improper outside influences.</b>	94%	94%	93%
<b>The Court considers each case based upon its facts and applicable law.</b>	87%	88%	85%
<b>The Court's written decisions reflect thoughtful and fair evaluation of the parties' arguments.</b>	84%	86%	81%
<b>The Court's written decisions clearly state the applicable legal principles that govern the decision.</b>	87%	90%	87%
<b>The Court's written decisions clearly inform the trial courts and parties of what additional steps, if any, must be taken.</b>	85%	89%	89%
<b>The Court's written decisions treat trial court judges with courtesy and respect.</b>	97%	97%	97%
<b>The Court treats attorneys with courtesy and respect.</b>	94%	94%	95%
<b>The Court is procedurally and economically accessible to the public and attorneys.</b>	91%	86%	84%

<b>The Court effectively informs attorneys and trial judges of its procedures, operations, and activities.</b>	92%	89%	89%
<b>The Court's website is a useful tool.</b>	90%	90%	92%
<b>The Court's Clerk's office responds well to inquiries.</b>	95%	96%	96%
<b>It is useful to have memorandum decisions available for review on the Court's website and through Westlaw.</b>	98%	96%	100%

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) treats trial court judges and attorneys with courtesy and respect; (3) provides a useful website; (4) has a responsive clerk's office; and (5) assists the public by making its memorandum decisions available for online review. The number of respondents with an opinion who strongly agreed or agreed that it is useful to have memorandum decisions available for review on the Court's website and through online research sites rose in 2015 by four percentage points to 100 percent. This may be in part because of the January 1, 2015 rule change that allows parties to cite to the Court's memorandum decisions in certain circumstances.

# Settlement Program

Division One operates 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 family law 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.

In 2016, litigants in nineteen cases participated in the settlement program, and of those, nine appeals were resolved, for a settlement rate of 47 percent.

## Connecting with the Community

### Pro Bono Attorney Program

In late 2014, the Court created a Pro Bono Representation Program for civil cases involving difficult or complex legal or factual issues. In this program, which applies to both Division One and Division Two of the Arizona Court of Appeals, the court will appoint a volunteer lawyer for an unrepresented party or parties when the

court determines that resolution of the appeal will be aided by a lawyer's briefing.

Collectively, since 2015, more than 100 attorneys have volunteered to participate in the program and the Court identified and successfully placed 11 cases in the program. Volunteer counsel also was placed with one case pending before the Arizona Supreme Court and in cases pending before Division Two of the Arizona Court of Appeals. Given the overwhelming response by attorneys volunteering to participate in the program, attorneys who have volunteered through the court's program have been encouraged to provide pro bono services through other programs. The Court is grateful to the volunteers in both programs and strives, where appropriate, to set oral argument in cases in which it has appointed volunteer lawyers. Additional information about the program, including a sign-up form and the Arizona Court of Appeals Pro Bono Representation Program Manual, can be found on the Court's website at <http://www.azcourts.gov/coa1/Pro-Bono-Representation-Program>.

## **High School Oral Argument Program**

Since 2002, Division One has scheduled a handful of oral arguments each year at high schools around the state. The Court provides students with the briefs ahead of time, then works with volunteer lawyers to organize discussion sessions in the weeks leading up to the argument. After the oral argument (typically held in the

school auditorium), judges, attorneys, law clerks, school administrators and teachers meet 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, local elected officials, teachers and school district leaders have been generous with their time in attending these sessions.



The program has been highly successful, as schools welcome opportunities for their students to observe the appellate process in action. Judge Kent E. Cattani chairs Division One's Connecting with the Community Committee. In 2016, the court was pleased to hold oral arguments and associated educational programs at Kingman High School in Kingman and Shadow Mountain High School in Phoenix.

Over the years, Division One has held oral arguments at the following high schools:

Cesar Chavez H.S. (2002)	Mesa H.S. (2010)
South Mountain H.S. (2002)	Moon Valley H.S. (2011)
Central H.S. (2003)	Coronado H.S. (2011)
Carl Hayden H.S. (2004)	AZ School for the Arts (2012)
Highland H.S. (2004)	Deer Valley H.S. (2012)
Horizon H.S. (2005)	Lee Williams H.S. (2013)
Queen Creek H.S. (2005)	North Canyon H.S. (2013)
Marcos De Niza H.S. (2006)	McClintock H.S. (2014)
Dysart H.S. (2006)	Sandra Day O'Connor H.S. (2014)
South Mountain H.S. (2007)	Mountain View H.S. (2015)
Cesar Chavez H.S. (2007)	Verrado H.S. (2015)
Shadow Mountain H.S. (2008)	Kingman H.S. (2016)
Centennial H.S. (2008)	Shadow Mountain H.S. (2016)
Agua Fria H.S. (2009)	
Perry H.S. (2009)	
Maryvale H.S. (2010)	

## **Appellate Update Programs**

Division One judges welcome opportunities to engage with members of the Bar outside the Court. During 2016, teams of judges from the Court presented continuing legal education programs to audiences in Mohave County, La Paz County, Yuma County, Navajo County, and Maricopa County about recent developments in civil law, criminal law, family law, juvenile law, as well as updates on various rules.

## **Community Outreach**

Division One is fortunate to have generous employees who reach out to the community when not performing court duties. Many employees support local shelters with monetary and other donations. In 2016, Division One employees continued their ongoing support for a class at Wilson Elementary School for an eighth 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. Finally, judges and employees frequently visit with other elementary, high school, or college groups during organized tours of the Court, and the Court has welcomed students from numerous schools within Arizona to observe oral arguments.

## **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.

Throughout 2016, awards were bestowed on various deserving employees. Additionally, in the spring, the Committee (without public funds) hosted the seventh annual “Employee Appreciation Lunch.” The Committee also selected the Court’s Employees of the Year for 2016, 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 3, 5, 10, 15 and 25 years of service with the Court. Our employee of the year winners for 2016 are June Nothwehr (Staff Attorney Section), Jakob Trierweiler (Clerk’s Office) and Alanna Duong (Judicial Chambers).

Other employees who were recognized for their contributions to the court include: **Rock Solid Award** – Andrew Angulo, Jami Taylor and June Nothwehr; **Quality Customer Service Award** – Jason U. Brenner; **Value Award** – Jakob Trierweiler; **Journey Award** – LaDonna Dawson; **Community Service Award** – Hon. Maurice Portley; **Above and Beyond Award** – Brandie Castle.

## For more information about Division One, contact:

Hon. Michael J. Brown  
Chief Judge  
Arizona Court of Appeals  
1501 West Washington  
Phoenix, Arizona 85007  
(602) 452-6720  
[mbrown@appeals.az.gov](mailto:mbrown@appeals.az.gov)

Hon. Samuel A. Thumma  
Vice Chief Judge  
Arizona Court of Appeals  
1501 W. Washington  
Phoenix, Arizona 85007  
(602) 452-6790  
[sthumma@appeals.az.gov](mailto:sthumma@appeals.az.gov)

Amy M. Wood  
Clerk of the Court  
Arizona Court of Appeals  
1501 West Washington  
Phoenix, Arizona 85007  
(602) 452-6700  
[awood@appeals.az.gov](mailto:awood@appeals.az.gov)

Barbara Vidal Vaught, Esq.  
Chief Staff Attorney  
Arizona Court of Appeals  
1501 West Washington  
Phoenix, Arizona 85007  
(602) 452-6713  
[bvaught@appeals.az.gov](mailto:bvaught@appeals.az.gov)

*Visit our website:*

[www.azcourts.gov/coal](http://www.azcourts.gov/coal)