



Arizona Court of Appeals Division One 2017: The Year in Review

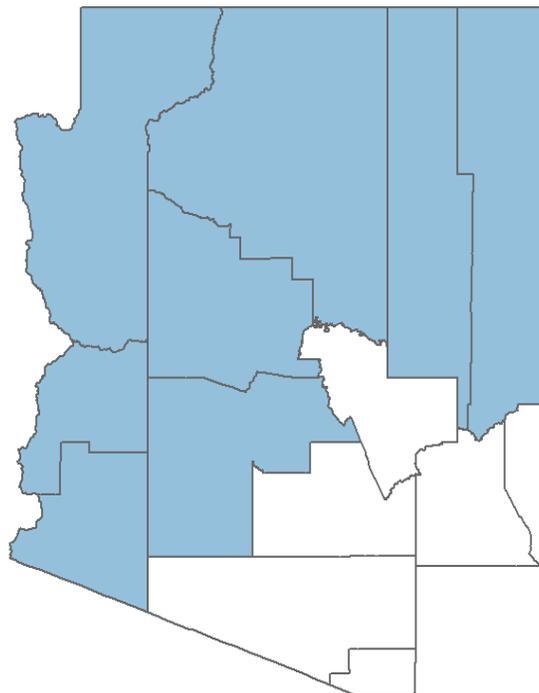


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Executive Summary

2017 was a busy, challenging, and productive year for the Arizona Court of Appeals, Division One. As described more fully in this Year in Review report, Division One highlights from 2017 include:

- Receiving more than 3,300 new appeals, an increase of more than 600 from the previous year and representing the largest number of new appeals filed in recent memory.
- Achieving a positive clearance rate, meaning the Court resolved more cases than were filed, ending the year with almost 350 fewer cases pending than when the year began.
- With the aid of Judges Pro Tempore, managing the caseload in light of five judicial vacancies created by retirements and an appointment of a Division One Judge to the Arizona Supreme Court, and welcoming five new Judges to fill those vacancies.
- Addressing the failure of the Arizona Department of Economic Security, over a period of years, to forward to the Court hundreds of applications for appeal from administrative decisions.
- Implementing and applying procedures to more timely resolve appeals, particularly juvenile and civil appeals, without delaying resolution of other appeals.
- Continuing outreach efforts in communities the Court serves.

In 2017, the Court had one of the most productive years in its history. The Court also continued to implement procedures to enhance the fair, impartial and prompt resolution of appeals both now and in the future. What follows is the 2017 Year in Review, summarizing the Court and what it is and has done this past year in resolving appeals and connecting with the communities it serves.

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 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 added 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. Division One is bordered by Mexico, California, Nevada, Utah and New Mexico; the geographic area the Court serves is larger than about 35 states.

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 the non-partisan Commission on Appellate Court Appointments. Ten 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.

Division One is funded through the State's general fund. Division One 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 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 staff attorneys and assists with preparing cases for Court calendars. 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.

Division One 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 three-judge panel but instead sits on various panels as required to accommodate vacancies, conflicts and workload issues.

Division One 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 superior court decisions, administrative decisions first considered by the superior court and some matters from limited jurisdiction courts, Division One also reviews decisions made by the Arizona Industrial Commission in workers' compensation cases, by the Arizona Corporation Commission and the Arizona Department of Economic Security appeals 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 oral argument provided. 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 2017, Division One's decision was the final word in more than 99 percent of the cases it resolved.

The judges and employees of Division One work diligently to decide cases impartially and efficiently. The Court's judges and

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

Judges of Division One of the Court of Appeals as of January 2018

Current Judges (listed by seniority in order of their service on this Court)

Judge	Home County	Appointed
Jon W. Thompson	Coconino	04/03/95
Lawrence F. Winthrop*	Maricopa	10/15/02
Diane M. Johnsen*	Maricopa	10/03/06
Michael J. Brown*	Navajo	01/02/07
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
Maria Elena Cruz	Yuma	04/12/17
Jennifer B. Campbell	Yavapai	04/12/17
Jennifer M. Perkins	Maricopa	09/29/17
James B. Morse Jr.	Maricopa	09/29/17
David D. Weinzweig	Maricopa	12/29/17

*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
Donn Kessler	2003-2017	Maricopa
Patricia K. Norris	2003-2017	Maricopa
Patricia A. Orozco	2004-2016	Yuma
Margaret Downie	2008-2017	Maricopa
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 three-judge panels of the Court. The Clerk assigns cases without reviewing their merits 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.

Panels typically meet weekly, usually 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 the material facts and legal issues for each case. 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 writing responsibility for each case on the calendar to one of the three panel members and presides over oral arguments. 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 special actions, juvenile delinquency and dependency/parental termination appeals, criminal appeals, election appeals, 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 is assigned 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 weekly 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 who are not on the panel assigned to resolve the case. 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 and comment 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 particular action or refrain from taking 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 for special action are filed, the Clerk of the Court sends them to the panel electronically 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 the Court 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 stay request, the petitioner then may request a stay from Division One. Once a stay request is made in Division One, at the request of the party, the hot panel usually will set a telephone hearing on the stay request and issue its ruling at the conclusion of the hearing, with a written order to follow.

Unlike direct appeals, in special actions, the Court has discretion to decline jurisdiction of a petition for special action. 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 additional briefing. The panel then will confer and decide the petition in a manner similar to a direct appeal. If the panel 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 panel's decision.

Motions

Each year, the Court receives thousands of 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 three-judge panel, that panel will decide the motion. If a substantive motion is filed before a case is assigned to a panel, a designated 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 resolve 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 record on appeal, and requests for participation in the Court's settlement program.

Court Budget

The Court 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 2018, the current budget year, Division One has a baseline appropriation of \$10,258,000. More than 95 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).

Courthouse and Technology

For nearly 30 years, the Court has been located in the State Courts Building, 1501 West Washington, Phoenix. The two Courtrooms and the Clerk of the Court's Office, including the filing counters, are located on the second floor of the State Courts Building.



To better serve the public, in 2017, the Court constructed a file reviewing room next to the public filing counter adjacent to the Clerk of the Court's Office. The file reviewing room allows attorneys, parties and the public to review publicly available electronic and paper

materials made available by the Court, to make copies, to make filings, and to make payments electronically.



The Court has welcomed technological advances and, to a large extent, has moved to electronic records as well as electronic filing, review, and distribution of decisions and orders. With only a few exceptions, the superior courts deliver electronic versions of their records to the Court for cases that are on appeal. Electronic access to the record allows the Court's judges and employees 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. In 2017, in collaboration with Division Two, the Court expanded this

practice to receive electronic versions of records from the Arizona Industrial Commission for workers' compensation award challenges.

The Court has continually strived to increase the use of technology to better serve the public, including through more expedient delivery and saving postage. Beginning in 2009, the Court implemented, in stages, electronic communications regarding case decisions. By the end of 2013, most Court orders and notices were distributed electronically to parties that maintain email addresses with the Court. In 2017, this effort was expanded to include an electronic mandate process, which clearly transfers jurisdiction to the trial court when an appeal is resolved.

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

In 2017, the Court allowed interested individuals additional ways to receive new opinions and informational news items. Subscription for both new opinions and news items can be done by texting COA1INFO to 22828. Subscription for either new opinions or news items (or both) also can be done by going to the Court's website <http://www.azcourts.gov/coa1> and clicking on the "subscribe" tab.

The Court also now allows credit and debit card payments using a web-based application accessed through computers in the Clerk of the Court's Office. This alternative is intended to help self-represented litigants that file cases in paper at the counter, individuals paying for copies, and those who have Court approved payment plans.

Court Statistics

Cases Filed and Cases Resolved

The Court began calendar year 2017 with a total of 2,538 pending cases over all categories. During the year, 3,322 appeals and special actions were filed and 74 cases were reinstated or transferred to the Court. The Court resolved 3,625 cases and transferred 112 cases, leaving 2,197 cases pending at the end of 2017.

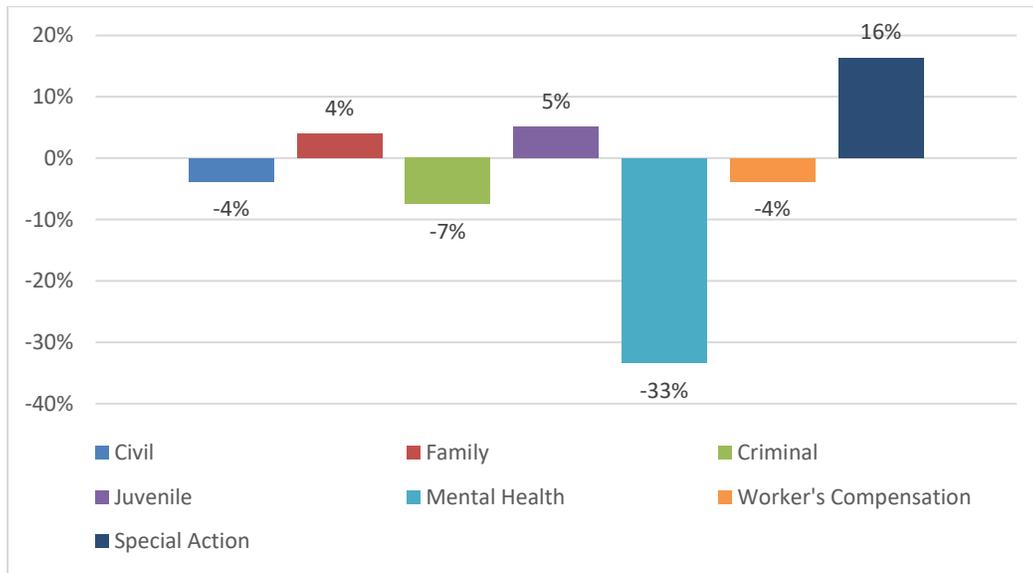
Here are the annual statistics for the Court's largest case categories:

Case Type	Cases Pending at Start of 2017	Cases Filed/ Reinstated During 2017	Cases Resolved/ Transferred During 2017	Cases Pending at End of 2017
Civil	582	526	612	496
Family	210	285	305	196
Criminal ¹	1,284	872	1,106	1,050
Juvenile	265	590	636	219
Mental Health	30	58	76	12
Workers' Comp	63	75	93	45
Special Actions	75	327	322	80
ADES Appeals Board	2	648	567	83

The percentages of change of new and reinstated filings between 2016 and 2017 in the various case types, with the exception of Arizona

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

Department of Economic Security (ADES) appeals board matters and rounded to the nearest whole number, is broken down as follows:²



New case filings (including reinstatements) over all case types increased by 650 cases to 3,396 in 2017, up from 2,746 in 2016, an increase of 23.7 percent. The number of new case filings in 2017 is larger than during any calendar year in recent history. For context, over the past 12 years (2006–2017), new filings over all case types ranged from a high of 3,396 (2017) to a low of 2,657 (2006). The increase in 2017 when compared to 2016 is largely attributed to: (1) the continuing increase of the number of juvenile appeals and (2) a one-time spike in the number of ADES appeals board matters transmitted to the Court.

² The ADES appeals board matters are not included, as the 2017 filings (648) exceeded so substantially the 2016 filings (43) -- a more than 1,500 percent increase -- that they would alter the scale of the chart such that it would be meaningless. The Court had too few appeals in 2017 in other case categories to register meaningful changes.

Juvenile appeals increased by 29 cases to 590, an increase of more than 5 percent from 2016. This increase continued a trend over the last several years, where the number of juvenile appeals has increased, at times substantially. Looking back to 2011, the number of juvenile appeals filed with the Court has increased each year as follows:

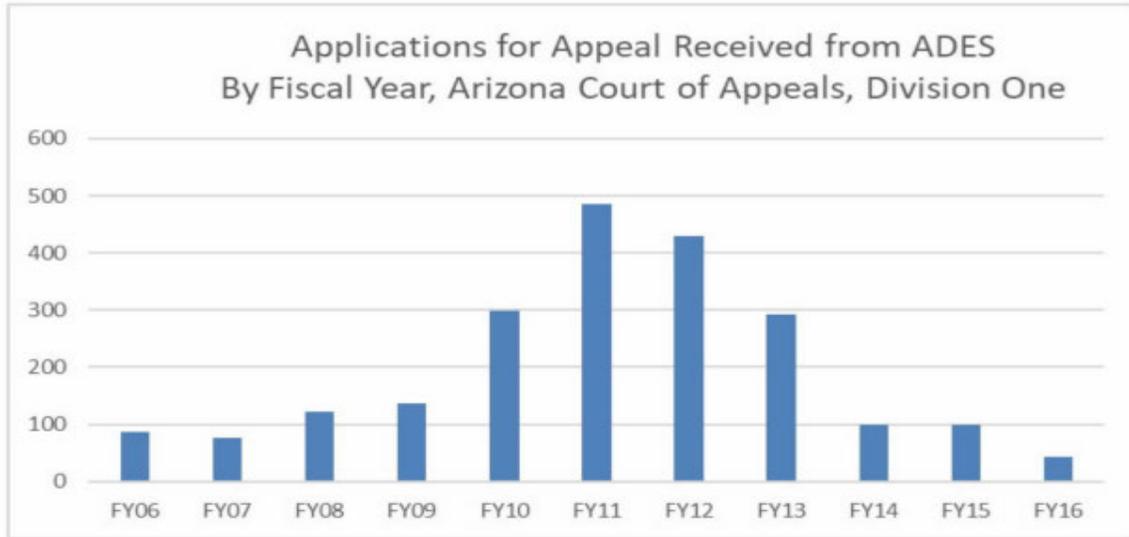
Year	Juvenile Appeals Filed	Percent Increase from Prior Year
2017	590	5.1%
2016	561	29.6%
2015	433	24.8%
2014	347	6.1%
2013	327	13.1%
2012	289	12.0%
2011	258	

Stated differently, in 2017, there were more than twice the number of juvenile appeals filed with the Court than in 2011. This substantial increase appears to be attributed, in large part, to a dependency surge experienced in superior court. Given this substantial increase, as well as the need for permanency and finality and the priority placed on resolving juvenile appeals, the Court has continued to take special measures to promptly resolve these appeals. These measures include assigning juvenile appeals to three-judge panels when the answering brief is filed (and before the reply brief is due) and creating additional three-judge panels, beyond those regularly scheduled, to ensure capacity to consider juvenile appeals when the answering brief is filed.

These additional three-judge panels are made up of volunteer judges already serving on the Court who resolve such appeals above and beyond their regular assignments. In addition, as of July 1, 2017, the Court added a staff attorney dedicated to juvenile appeals as well as additional Clerk of the Court resources to facilitate the prompt resolution of juvenile appeals.

Apart from juvenile appeals, applications for appeal from ADES appeals board decisions transferred by ADES to the Court spiked in 2017 when compared to 2016 (648 filings, up from 43 filings), a 1,507 percent increase. ADES administers Arizona's unemployment compensation, food stamp, and cash assistance programs and administratively addresses disputes that arise out of these programs. The last administrative step in resolving these disputes is an ADES appeals board decision. A party wishing to challenge an ADES appeals board decision may seek Court review by filing an application for appeal with the clerk of the ADES appeals board. By statute, the clerk of the ADES appeals board is then directed to transmit to the Court the application for appeal and related documents.

Because an application for appeal is filed with ADES, the Court is not aware of such a filing until ADES transmits the application for appeal to the Court. In the years leading up to 2017, the number of applications for appeal transmitted to the Court fluctuated significantly, ranging from a high of 486 to a low of 43 in fiscal years 2006 to 2016:



This downward trend of applications for appeal received by the Court in recent years appeared linked to the health of the economy. In fact, however, the downward trend was attributed to ADES' failure to timely transmit applications for appeal to the Court.

In January 2017, the Court began receiving from ADES a small number of applications for appeal that had been filed with ADES at least 18 months before they were transmitted to the Court. As a result, on February 13, 2017, the Court issued Administrative Order 2017-01, which directed ADES to transmit to the Court every application for appeal filed with ADES as of February 13, 2017 by no later than March 6, 2017. When ADES failed to do so, the Court set a show cause hearing to address ADES' failure to comply with the order, and whether ADES should be held in contempt of court, and held an evidentiary show cause hearing in April 2017.

As detailed in a subsequent memorandum decision by the Court, the evidentiary record from that hearing showed that concealment,

misdirection and misinformation by the clerk of the ADES appeals board from 2013 until her resignation on March 6, 2017, as well as lack of internal control, resulted in ADES failing to timely transfer many applications for appeal to the Court. The oldest of these applications for appeal was filed with ADES on February 5, 2013, where it remained for 1,527 days (more than four years) before ADES transmitted it to the Court.

Based on the evidentiary record, the Court held ADES in contempt for its failure to comply with Administrative Order 2017-01 and imposed consequences, including monthly reporting obligations, to ensure that ADES timely transmitted applications for appeal going forward. *See In the Matter of: Arizona Department of Economic Security's Compliance with Administrative Order 2017-01*, No. 1 CA-UB 17-0128-OSC, 2017 WL 4784584 (Oct. 24, 2017) (mem. dec.) (finding ADES in contempt and imposing consequences); *see also* Administrative Order 2017-03 (Nov. 8, 2017) (imposing on ADES, until further written Court order, monthly reporting obligations and continuing obligations under Administrative Order 2017-01).

In 2017, ADES transmitted to the Court 648 applications for appeal, some of which had been filed with ADES more than four years before they were first transmitted to the Court. Upon receipt of these applications for appeal from ADES, the Clerk of the Court processed the record, assigned the applications for appeal to three-judge panels and those panels considered and resolved the applications by either granting or denying them. Notwithstanding ADES' delay in

transmitting the applications for appeal to the Court, *each decision by these three-judge panels to either grant or deny an application for appeal was based on the assessment of the merits of the specific application, not on ADES' failure to timely transmit the application to the Court.*

On a going forward basis, it is anticipated that the measures taken by the Court, including holding ADES in contempt and imposing monthly reporting obligations, will prevent anything like this from happening again. Accordingly, it is anticipated that this spike in 2017 in the number of applications for appeal received by the Court from ADES will not occur in the future.

Along with the continuing increase in juvenile appeals, and the spike in applications for appeal from ADES appeal board decisions, in 2017, appeals in family court matters increased by 11 cases (a 4.0 percent increase) and special action filings increased by 46 cases (a 16.4 percent increase) when compared to 2016.

In 2017, appeals decreased in four general categories: civil appeals decreased by 21 cases (3.8 percent); criminal appeals decreased by 70 cases (7.4 percent); mental health appeals decreased by 29 cases (33.3 percent) and workers' compensation appeals decreased by 3 cases (3.8 percent).

Oral Arguments

Oral arguments are held when warranted, usually on request 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 other types of appeals, and generally grants argument in those cases when requested. The Court heard oral arguments in 163 cases in 2017. By comparison, it heard 156 oral arguments in 2016, 202 in 2015, and 178 in 2014.

Decisions

Division One issued 1,638 decisions in 2017 by way of opinions or memorandum decisions, with other cases resolved by order. These decisions are available on the court's website, <http://www.azcourts.gov/coa1>. In 2017, the Court issued 419 more decisions than it did in any of the last five years, which ranged from a high of 1,219 in 2016 to a low of 1,171 in 2013.

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 2017 (96) decreased from the number published in 2016 (119), 2015 (108), 2014 (131), and 2013 (122). Pursuant to Arizona 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 Arizona 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 286 motions for reconsideration in 2017 (up from 227 in 2016, 205 in 2015, and 189 in 2014). The Court granted 15 motions for reconsideration in 2017 (down from 32 in 2016, 24 in 2015, and 20 in 2014).

Dispositions in the Arizona Supreme Court

In 2017, parties filed petitions for review in the Arizona Supreme Court concerning 462 decisions issued by the Court (up from 454 in

2016 but down from 473 in 2015). In 2017, the Arizona Supreme Court granted review in 27 cases issued by the Court, down from 39 in 2016 but up from 22 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 99 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 Arizona Supreme Court typically 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 2017, the Arizona Supreme Court depublished two opinions issued by the Court (up from none in 2016 but down from three in 2015).

Performance Measures

Adoption of Appellate Time Standards

Starting in 2009, the Court used performance standards called CourTools. A product of the National Center for State Courts,

CourTools set forth various court performance measures. As discussed in previous Division One Year in Review reports, these measures focus on: (1) time standards (including “filing to disposition,” “at-issue to disposition,” and “under advisement to disposition”); (2) “case clearance;” (3) “case aging;” and (4) biannual anonymous survey results.

Effective July 1, 2016, the Arizona Supreme Court replaced CourTools time standards with Appellate Time Standards. *See* Arizona Supreme Court Administrative Order Nos. 2016-66 (Aug. 3, 2016) and 2016-51 (June 29, 2016). Appellate Time Standards differ from CourTools time standards in several respects, including:

- Appellate Time Standards track “filing to disposition” (the time between when an appeal begins at the Court and when the Court issues its decision in the appeal), while CourTools also tracked intermediate stages of an appeal;
- Appellate Time Standards use different periods of time for resolution of appeals than in CourTools, including reducing substantially the time for resolution of juvenile appeals;
- Appellate Time Standards reflect priorities different than those in CourTools, including that civil appeals are expected to be resolved more promptly than criminal appeals; and
- Appellate Time Standards list reference periods when 75 percent and 95 percent of appeals in a specific category are to be decided, while CourTools listed reference points when all cases in a specific category were to be decided.

In tabular form, these differences are summarized as follows:

Appellate Time Standards		CourTools	
Case Type	Days from filing to disposition		Days from filing to disposition
	75% Goal	95% Goal	Standard
Civil	390 days	500 days	400 days
Family	345 days	425 days	No Standard
Criminal	450 days	600 days	375 days
Juvenile	190 days	220 days	275 days
Workers' Compensation	285 days	365 days	300 days
Special Actions	40 days	80 days	25 days

Information captured by CourTools for intermediate periods in an appeal from prior years is available in previous Year in Review reports on the Court's website. <http://www.azcourts.gov/coal/Annual-Report>. Starting with Fiscal Year 2017, which ended June 30, 2017, the Appellate Time Standards use filing to disposition. With this change in mind, the following sets forth the Court's performance measure information for FY 2017, focusing on (1) "filing to disposition;" (2) "case clearance;" (3) "case aging" and (4) anonymous survey results.

Filing to Disposition

The Appellate Time Standards measure the length of time it takes the Court to process various categories of cases focusing on

“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. The Appellate Time Standards list two different measures for various types of cases: (1) days from filing to disposition for 75 percent of cases of a specific type to be resolved and (2) days from filing to disposition for 95 percent of cases of as specific type to be resolve. For FY 2017, the Appellate Time Standards results for the Court are:

		75% Goal		95% Goal	
	Cases Resolved	Standard Days	Percent Decided	Standard Days	Percent Decided
Civil	628	390	63%	500	83%
Family	270	345	81%	425	91%
Criminal	554	450	81%	600	95%
Juvenile	592	190	81%	220	89%
Workers' Compensation	84	285	71%	365	96%
Special Actions	306	40	88%	80	96%

These results for the first year the Appellate Time Standards have been in place show the Court is meeting and exceeding most standards, including criminal and special actions; juvenile and family appeals at the 75 percent goal and workers' compensation appeals at the 95 percent goal. For areas where it is not, the 75 percent goal for workers' compensation appeals would have been met had three

additional appeals been resolved earlier. For the 95 percent goal for juvenile appeals, as noted elsewhere in this report, juvenile appeal filings in FY 2017 continued to grow and have more than doubled since 2011. In addition, the Court has taken special measures to promptly resolve juvenile appeals, including assigning juvenile appeals to three-judge panels when the answering brief is filed (and before the reply brief is due), creating additional three-judge panels to consider and resolve juvenile appeals and allocating additional staff attorney and Clerk of the Court resources to juvenile appeals effective July 1, 2017.

In addition, on November 21, 2017, the Court issued Administrative Orders 2017-05 and 2017-04, setting forth policies concerning the timely filing of transcripts and briefs in juvenile appeals. These policies are based on similar, successful policies the Court previously put in place for criminal appeals. *See* Administrative Orders 2015-01 (Mar. 5, 2015) and 2014-05 (Dec. 31, 2014). The policies for juvenile appeals, which became effective January 1, 2018, are designed to provide clarity in requests for extension of time and to decrease the time necessary to resolve juvenile appeals and to provide permanency and finality. It is anticipated these measures will allow the Court to more promptly resolve juvenile appeals in the future.

Finally, for the 75 and 95 percent goals for civil appeals and the 95 percent goal for family appeals, as noted above, the Appellate Time Standards represent a substantial change in priority from CourTools. CourTools standards directed that criminal appeals be resolved more promptly than civil (including family) appeals (criminal within 375

days of initiation, while civil within 400 days). The Appellate Time Standards, by contrast, indicate civil and family appeals should be resolved more promptly than criminal appeals (at the 75 percent goal, for example, family within 345 days, civil within 390 days and criminal within 450 days). This is a significant change and the Court is using this first-year data to help guide responses to the change.

Among other things, the Court has implemented changes in how civil appeals are assigned to decrease the number of civil appeals that are fully briefed (referred to as “At Issue”) but not yet assigned to a three-judge panel. To date, this change has resulted in a significant reduction in the number of civil appeals “At Issue” but not yet assigned, resulting in the appeals being resolved more promptly. It is anticipated that these changes will allow the Court, in the future, to more expeditiously resolve civil and family appeals consistent with the Appellate Case Standards.

Case Clearance

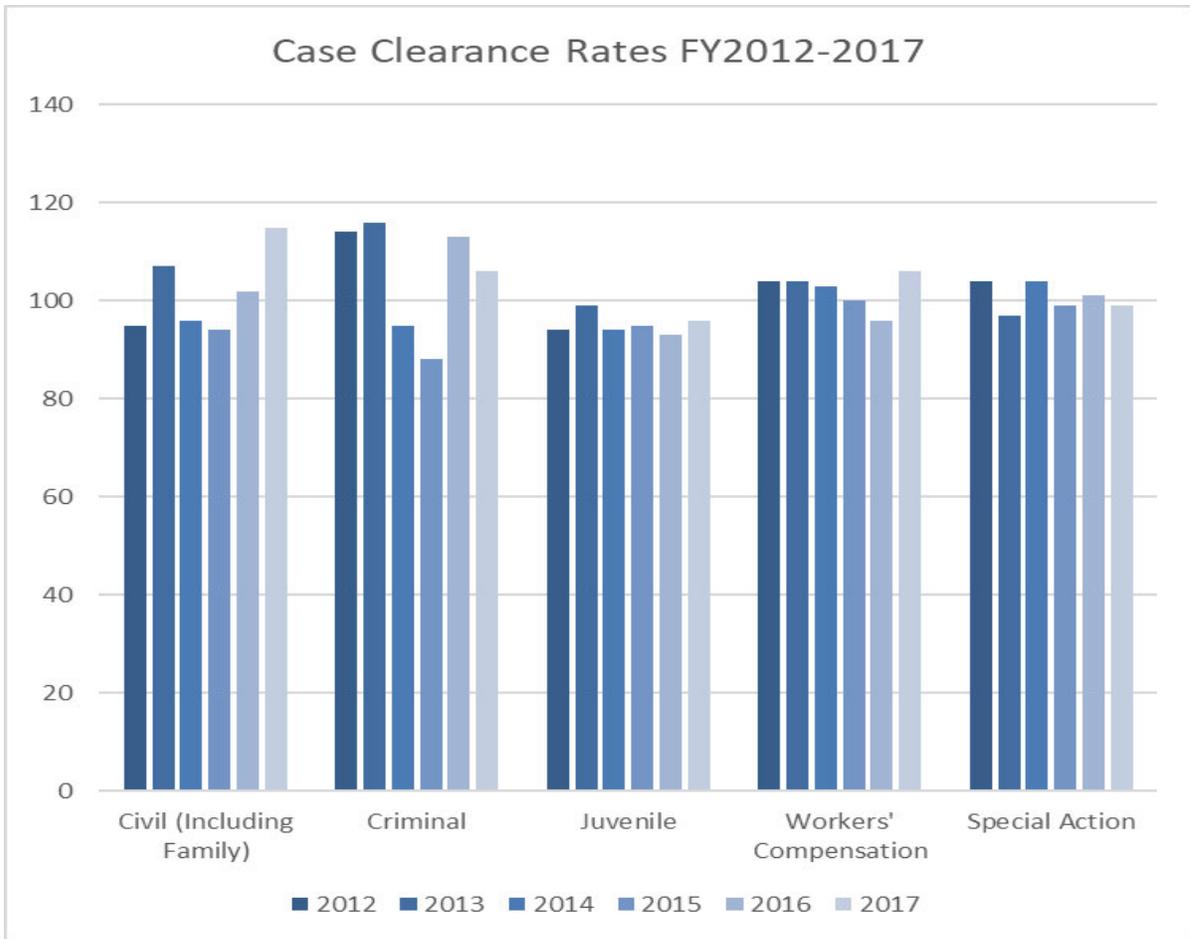
“Case clearance” measures the number of cases decided in a given period as a percentage of the number of new cases filed during that same period. This is a measure of whether the Court is maintaining pace with the incoming caseload. Any measure exceeding 100 percent reflects a decrease in pending cases; any measure less than 100 percent indicates an increasing number of pending cases. The case clearance percentage for all types of cases that the Court completed during FY 2017 is 105 percent.

In FY 2017, the Court achieved the following case clearance rates:

Case Type	Case Clearance Rate FY 2017
Civil (including Family)	117%
Criminal	106%
Juvenile	96%
Workers' Compensation	106%
Special Actions	99%
Overall	105%

The table and graph below show the Court's case clearance performance during FY 2017 compared with prior years:

Case Clearance Rates FY 2012 - 2017						
Fiscal Year	Civil (including Family)	Criminal	Juvenile	Workers' Compensation	Special Action	Overall
2012	95%	114%	94%	104%	104%	102%
2013	107%	116%	99%	104%	97%	106%
2014	96%	95%	94%	103%	104%	97%
2015	94%	88%	95%	100%	99%	94%
2016	102%	113%	93%	96%	101%	102%
2017	115%	106%	96%	106%	99%	105%



These data show that, when compared with FY 2016, the Court’s case clearance rate was up overall and in each case category, other than a decrease in criminal appeals (106 percent, down from 115 percent in 2016) and special actions (99 percent, down from 101 percent in 2016). These case clearance rates, both overall and individually, show that the Court made good progress in continuing to reduce the number of pending cases. Moreover, the Court did so in a year where the total number of case filings was substantially higher than in the previous years and when the Court had a significant number of judicial vacancies.

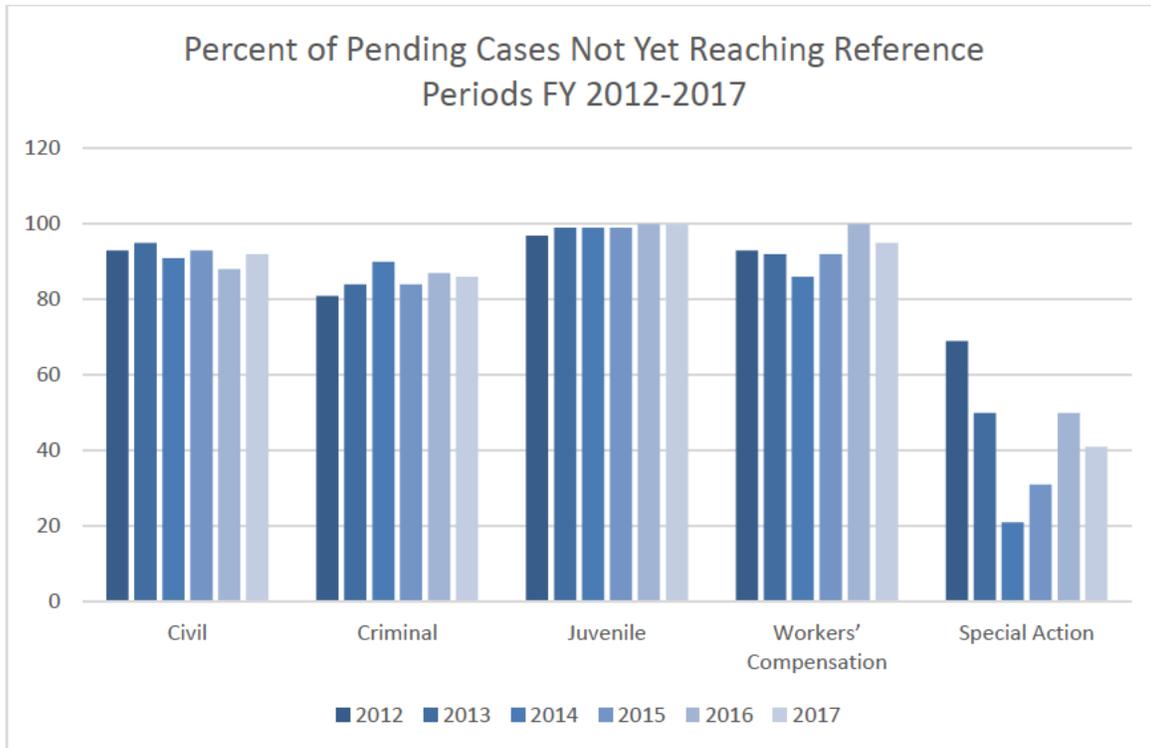
Age of Pending Caseload

The age of pending caseload measurement provides 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 point for the time to disposition measure described above.

The percentage of all cases pending at the end of FY 2017 that had not exceeded the time reference points was 90 percent. Broken down by case type, the data show:

Percent of Pending Cases Not Yet Reaching Reference Points FY 2012 - 2017						
	Overall ³	Civil	Criminal	Juvenile	Workers’ Compensation	Special Action
2012		93	81	97	93	69
2013		95	84	99	92	50
2014	90	91	90	99	86	21
2015	89	93	84	99	92	31
2016	90	88	87	100	100	50
2017	90	92	86	100	95	41

³ Data not available for overall numbers for FY 2012 and 2013.



These data show that, at the end of FY 2017, the Court’s pending cases were relatively new, as most had not yet reached their time reference points.

Biannual Survey Results

The Court conducts a biannual anonymous survey of attorney members of attorneys who appeared before the Court, the Appellate Practice Section of the State Bar of Arizona, 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 2017, when responses were received from 379 individuals, or 26 percent of those surveyed. Results of the

2017 survey are shown below, along with results of the same survey conducted in 2011, 2013 and 2015.

Survey Question	2011 Results	2013 Results	2015 Results	2017 Results
The Court resolves its cases expeditiously.	72%	76%	71%	68%
The Court renders decisions without any improper outside influences.	94%	94%	93%	90%
The Court considers each case based upon its facts and applicable law.	87%	88%	85%	85%
The Court's written decisions reflect thoughtful and fair evaluation of the parties' arguments.	84%	86%	81%	81%
The Court's written decisions clearly state the applicable legal principles that govern the decision.	87%	90%	87%	84%
The Court's written decisions clearly inform the trial courts and parties of what additional steps, if any, must be taken.	85%	89%	89%	89%
The Court's written decisions treat trial court judges with courtesy and respect.	97%	97%	97%	96%
The Court treats attorneys with courtesy and respect.	94%	94%	95%	93%

The Court effectively informs attorneys and trial judges of its procedures, operations, and activities.	92%	89%	89%	89%
The Court is procedurally and economically accessible to the public and attorneys.	91%	86%	84%	82%
The Court's website is a useful tool.	90%	90%	92%	91%
The Clerk of the Court's office responds well to inquiries.	95%	96%	96%	98%
It is useful to have memorandum decisions available for review on the Court's website and through Westlaw.	98%	96%	100%	98%

Of particular note, more than 90 percent of those who responded agreed or strongly agreed that Division One (1) renders its decisions without any improper outside influences; (2) treats trial judges with courtesy and respect; (3) treats 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.

The 2017 survey also included questions not asked in prior years about Court resources. More than 95 percent of individuals who responded to those questions agreed or strongly agreed that Division One's electronic filing tips, including videos, on the Court's website are useful resources and that oral argument recordings on the Court's

website, and later posted to YouTube, are useful resources. In addition, 97 percent of those who responded agreed that Division One's Appellate Update Programs, providing annual legal education updates to audiences in counties served by the Court, are useful programs. More than 90 percent agreed that the Arizona Court of Appeals Pro Bono Representation Program is an important public service and that the Court's new file reviewing room is a useful resource. Nearly 85 percent agreed that Division One's Year in Review reports are useful resources.

Settlement and Pro Bono Attorney Programs

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 2017, 11 cases were assigned to the settlement program, six settlement conferences were held, and of those, five appeals were

resolved. This yields a settlement rate of 83 percent (where settlement conferences were held) and a settlement rate of 45 percent (for cases assigned to the program).

In late 2014, the Court created a Pro Bono Representation Program for 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 has identified and successfully placed 19 cases in the program. Volunteer counsel also was placed in one case by the Arizona Supreme Court and in cases pending before Division Two of the Arizona Court of Appeals. One such placement resulted in oral argument before the Arizona Supreme Court and then the United States Supreme Court. Given the overwhelming response by attorneys volunteering to participate in the program, attorneys who have volunteered through the Court's program also have been encouraged to provide pro bono services through other programs. The Court is grateful to the volunteers and strives, where appropriate, to set oral argument in cases in which it has appointed volunteer lawyers through the program. 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>.

Connecting with the Community

High School Oral Argument Program

Since 2002, Division One has scheduled 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 the Court's Connecting with the Community Committee. Most recently, the Court was pleased to hold oral arguments and associated educational programs at Lake Havasu High School in Lake Havasu City and Shadow Mountain High School in Phoenix. Over the years, Division One has held oral arguments and associated educational programs 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)	Lake Havasu H.S. (2017)
Perry H.S. (2009)	
Maryvale H.S. (2010)	

Appellate Update Program

Division One judges welcome opportunities to engage with attorneys and others outside the courtroom. During 2017, teams of judges from the Court presented continuing legal education programs to audiences in Coconino County, La Paz County, Maricopa County,

Mohave County, Yavapai County, and Yuma County about recent developments in civil, criminal, family and juvenile law, as well as updates on various rule changes, ethics issues and other aspects of appellate court practice.

Community Involvement

Along with their service on the Court, Division One judges and employees are involved in and speak at a variety of other law-related educational programs, including serving as adjunct law professors and writing law-related articles. They also are members of and serve in leadership roles in various law-related and other organizations nationwide, statewide and locally. These organizations include the American Law Institute, the American Bar Association, the American Bar Foundation, the Uniform Law Commission, the Council of Chief Judges of the State Courts of Appeal, the National Conference of Appellate Court Clerks, the Court Information Technology Officers Consortium, the Society for Human Resources Management, the National Association of Court Management, the Institute of Court Management, the Arizona Judicial Council, Arizona Supreme Court Committees, Commissions and Task Forces, the State Bar of Arizona, the Arizona Women Lawyer's Association, the Arizona Judges Association, Arizona's Forensic Science Advisory Committee, the Arizona Town Hall and Inns of Court as well as various civic and charitable organizations.

Division One is fortunate to have generous judges and employees who reach out to the community when not performing Court duties. Many judges and employees support local shelters and civic organizations with monetary and other donations. Judges and employees frequently visit with school groups during tours of the Court, and the Court has welcomed students from numerous schools 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 the Court team.

Throughout 2017, awards were bestowed on various deserving employees. Additionally, in the spring, the Committee (without public funds) hosted the eighth annual "Employee Appreciation Lunch." The Committee also selected the Court's Employees of the Year for 2017, 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 2017

are Cindy Coates (Staff Attorney Section), Andrew Angulo (Clerk of the Court's Office) and Heather Marking (Judicial Chambers).

Other employees who were recognized for their contributions to the Court include: Rock Solid Award—Melina Brill, Diane DeDea, Loren Johnsen and Ray Betancourt; Quality Customer Service Award—Jason U. Brenner and Patsy Lestikow; Value Award—Meryl Thomas; Journey Award—Jami Taylor and Kelley Ruda; and Above and Beyond Award—Jennifer Londono.

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