

Arizona Judiciary

ARIZONA'S APPELLATE COURTS



Arizona Supreme Court

5 justices, 6-yr. terms

Handles appeals from lower courts, reviews all death penalty cases, and has original jurisdiction over suits against state officials and lawsuits between counties.

Arizona Court of Appeals

22 judges, 6-yr. terms
[Div. 1 (Phx) = 16 judges;
Div. 2 (Tuc) = 6 judges]

Handles appeals from superior court, the tax court, the Industrial Commission, and unemployment compensation cases.

TRIAL COURTS

Superior Court

174 judges assigned to separate county divisions, 4-yr. terms

Handles serious criminal cases (felonies) and major civil cases (e.g., private claims over \$10,000, divorces, probate, etc.) as well as appeals from JP and municipal courts.

Justice courts (JP)

87 judges elected in local county precincts, 4-yr. terms

Mostly handles traffic cases, minor criminal cases (misdemeanors and petty offenses), private claims under \$10,000, and conducts preliminary hearings in felony cases. Small claims division handles private cases of \$2,500 or less.

Municipal (city) courts

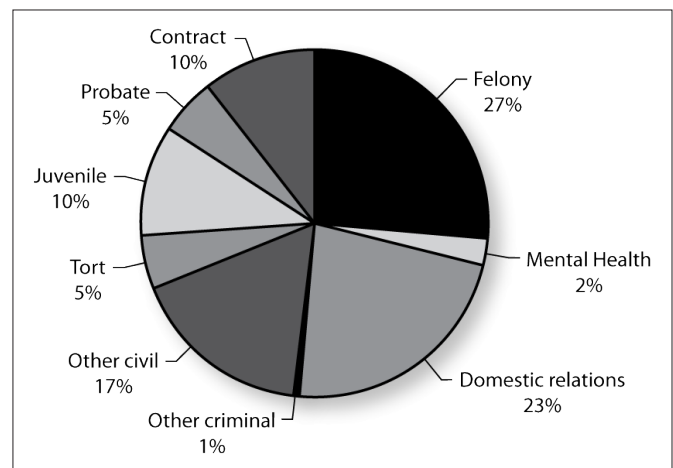
140 judges, varying terms

Mostly handles traffic cases, minor criminal cases (misdemeanors and petty offenses occurring within city limits) and violations of city ordinances.

Judicial Power: What Judges Do—Judicial power is more complex than the popular image of the judge as a trial referee. Judges also make law, known as the *common law*. They do this by establishing binding legal principles in cases where no statutes apply. These rulings then become precedents for future cases. Even in cases where judges are applying existing law they have considerable interpretative leeway. Statutes and constitutional provisions can be vague and susceptible of more than one meaning. Appellate court interpretations are as binding as the original text itself. State judges also possess the power of *judicial review*. This enables them to declare a challenged statute or government policy unconstitutional and therefore unenforceable. Finally the courts are sometimes asked to settle high profile disputes between government officials such as battles between the legislature and governor over budgets and vetoes. Although Arizona judges have not been as “activist” as their counterparts in other states (e.g., they declined to recognize a right of same sex marriage as many other state courts have done), they have had a major impact on the policies of the state. For example, judicial rulings established a right to die (1987), restricted the ability of employers to fire people (1985), forced the state to change its longstanding method of funding public schools (1994), prohibited the random drug testing of firefighters (2004), protected the rights of inmates to obtain abortions (2007), struck down a popular school voucher program (2009), and more.

The Arizona Court System: Arizona’s state courts fall into two main categories: trial courts and appellate courts. Most civil and criminal cases start in trial courts where the factual disputes between the parties are resolved. A single judge typically presides, witnesses testify under oath, and physical evidence is presented. Either a jury or the judge alone decides the outcome. Appellate courts receive the case after trial is over. Their job is to determine whether the lower court proceedings were fair and proper from a purely *legal* standpoint. Appellate courts do not conduct trials or consider new evidence. Instead, a panel of judges reviews written briefs submitted by the parties and listens to short legal arguments presented by the lawyers. After privately conferring, the judges vote and subsequently issue a formal written opinion setting forth the majority’s reasoning. The opinions are published and become binding precedents for lower courts.

There is a second way to classify Arizona courts: The two appellate courts plus the superior court are courts of “general jurisdiction,” signifying the wide range of cases that they handle. The stakes are also higher: felonies as opposed to misdemeanors, private disputes with more than \$10,000 at issue, domestic relations (divorce, parental rights) and more. The chart on the right depicts the current breakdown of cases in superior court, the state’s major trial court.



In contrast, although JP and city courts handle vastly more cases (see sidebar on the reverse) these are mostly less serious traffic cases. JP courts, which are scattered throughout each county, also handle private disputes where the amount in controversy is \$10,000 or less. A special small claims divi-

sion is reserved for disputes under \$2500. The parties cannot use lawyers and the cases are presented to the hearing officer on an expedited, affordable basis. The trade-off is that there is no right to appeal from small claims court. Finally, JP courts also handle the preliminary hearings that determine whether a felony case can proceed in superior court. City courts primarily handle traffic cases within city limits and violations of city codes and ordinances.

Judicial selection and retention—Unlike most federal judges who enjoy life tenure, Arizona trial judges have four-year terms, appellate judges serve for six years. There are no term limits. Except for JPs, all judges must be lawyers. (JPs are a remnant of Arizona’s territorial past and have effectively blocked periodic efforts to professionalize this court.) The method for choosing and retaining judges varies by court as summarized below:

Arizona Supreme Court	Merit Selection
Arizona Court of Appeals	Merit Selection
Superior Court (all counties except Maricopa and Pima)	County-wide, non-partisan, contested elections
Superior Court (Maricopa and Pima)	Merit Selection
JP Court	Precinct-wide, partisan, contested elections
Municipal Court	Mostly appointed by the employing city

Until Merit Selection was adopted in 1974, all judges were elected in contested elections. Merit Selection was adopted in response to concerns that campaigns and fund raising would undermine judicial independence. It combines gubernatorial appointment with retention elections. More specifically, when there is a judicial vacancy interested candidates apply to an appointments commission made up of judges, lawyers, and citizens. The commission screens the candidates and then submits a minimum of three names to the governor, who appoints a judge from the short list. In making its recommendations, the commission is supposed to consider diversity along with merit, and the constitution prohibits the nominees from all coming from the same party. In actual practice, lawyers and other interested individuals heavily lobby the commission, and the governor almost always appoints a judge from his or her party. If a merit selection judge wants to remain on the bench, the judge must survive a retention election at the end of every term. In a retention election the judge’s name appears on the ballot and the voters are simply asked to vote “yes” or “no” as to whether the judge should be retained. If a majority vote no, a vacancy is created and the process begins anew with another appointment by the governor. Supporters of merit selection contend that it has increased the overall quality of judges, allowed younger, less affluent persons to serve, eliminated the corrupting influence of campaign contributions, and promoted judicial independence. The negative experience of other states with contested elections lends credence to this view. More problematic are Arizona’s retention elections: Despite efforts to provide voters with detailed judicial performance data, many voters indiscriminately vote “yes” or “no,” or opt out of this portion of the ballot altogether. In fact, only two judges have ever been voted out, and unqualified judges have been retained.

Checks on judicial power—Arizona’s constitution puts multiple checks on judicial power. For example, all judges serve for fixed terms and must survive a citizen’s vote to remain in office. There are three ways to remove judges: recall by the voters, impeachment by the legislature, and removal by the Arizona Supreme Court upon the recommendation of the Arizona Commission of Judicial Conduct. (Only the latter, which was added to the Constitution in 1970, has proved modestly effective.) Finally, Arizona’s Progressive drafters trusted ordinary citizens more than officials. Accordingly, the Constitution protects jurors from both judicial and legislative interference, and leaves key decisions in injury cases (including the amount of the award) entirely up to juror discretion.

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COURT FILINGS BY COURT (2008)

AZ Supreme Court	1,164
AZ Court of Appeals	3,510
Superior Court	224,827
JP Courts	923,915
Municipal courts	1,658,230
TOTAL	2,811,646

JURY TRIALS IN ARIZONA

The Arizona Constitution guarantees the right to trial by jury, but the number of jurors required and the degree of agreement needed to reach a verdict varies by court and case:

	#	Agreement needed
Superior Court (felonies punishable by death or 30+ yrs)	12	unanimous
Superior Court (other felonies)	8	unanimous
Superior Court (civil cases)	8	6
JP & municipal courts (criminal)	6	unanimous

BASIC LEGAL TERMS

Civil case: a noncriminal case.

Criminal case: A case brought by government prosecutors on behalf of the state, county or city to enforce a penal law against an accused wrongdoer.

Damages: A monetary award in a tort case to compensate a plaintiff for injuries or other losses.

Defendant: the party sued in a civil case or accused of a crime in a criminal case.

Felony: A serious crime punishable by imprisonment in state prison or by death.

Misdemeanor: A crime that is less serious than a felony and punishable by fines, probation, or imprisonment in jail for up to a year.

Plaintiff: The party that brings the case to court. In a criminal case the plaintiff is always the government.

Tort: A wrongful act other than breach of contract that causes injury to another and gives rise to a civil lawsuit for damages.