The California Supreme Court's average time from briefing to oral argument 2023–24

Overview

Attorneys preparing for oral argument before the California Supreme Court need to know how long it will take the court to order the case on calendar for argument. A previous SCOCAblog article showed that in general the court is taking longer to do so than in past years. To give attorneys the best estimate of the current pace, we evaluated the court's most recent performance by calculating the average time it took for argument to occur from September 2023 to June 2024.[1] For that period we found:

- Civil cases took about 12.5 months from party briefing completion until oral argument.
- Non-capital criminal cases took about nine months.

We also tracked the interval between the preliminary oral argument notification letter and the court ordering a case on calendar: on average in our study period civil cases took 58 days and non-capital criminal cases took 68 days. The court notified the parties of the oral argument date around 20 days in advance, in both civil and criminal cases.

Based on this study, our advice to attorneys is to begin their oral argument preparation once they receive the preliminary notification letter, to avoid a time crunch when the court announces the argument calendar. This article details our findings and explores the effect of certified questions and separate opinions on the timeline.

Methodology

We reviewed the public dockets of all civil and criminal cases argued from September 2023 to June 2024. To focus our results on the appeal categories that arise most often for practitioners, we excluded habeas, capital, juvenile, and dependency cases because they tend to be handled by a small group of specialized attorneys and involve different timing considerations. For the remaining cases (29 civil cases and 16 criminal cases), we focused on five steps in the timeline:

- Completion of merits briefing.
- Preliminary oral argument notification letter.
- Placement on calendar for a specific date, time, and location.
- Oral argument.
- When the court files the decision.

We started our timeline at briefing completion because the parties themselves typically determine how long the briefing takes based on the length of any extensions they request. After the parties complete their briefing, the court indicates on the docket that the case is fully briefed — even though amicus briefs are filed after that point and the court may (infrequently) order supplemental briefing. Essentially, after the parties complete merits briefing, the case is considered ready for the court's own review process.

For each case, we measured the average number of days between each of the five steps. We excluded the outlier results at the top and bottom of the dataset for each step and then calculated the average. Specifically, we excluded the two highest and lowest results at each step within the civil-case dataset (which had 29 cases) and the single highest and lowest result at each step within the criminal-case dataset (which had 16 cases). The outliers were notable, particularly in civil cases. For example, there were two civil cases that took over 900 days from briefing to the oral argument notice, but the next closest case took 593 days. As another example, one criminal case was placed on calendar 8 days after the oral argument notice, but the next closest case took 28 days.

Including those outliers skewed our results enough that we have better confidence in presenting averages that exclude them. We recognize that statisticians would use

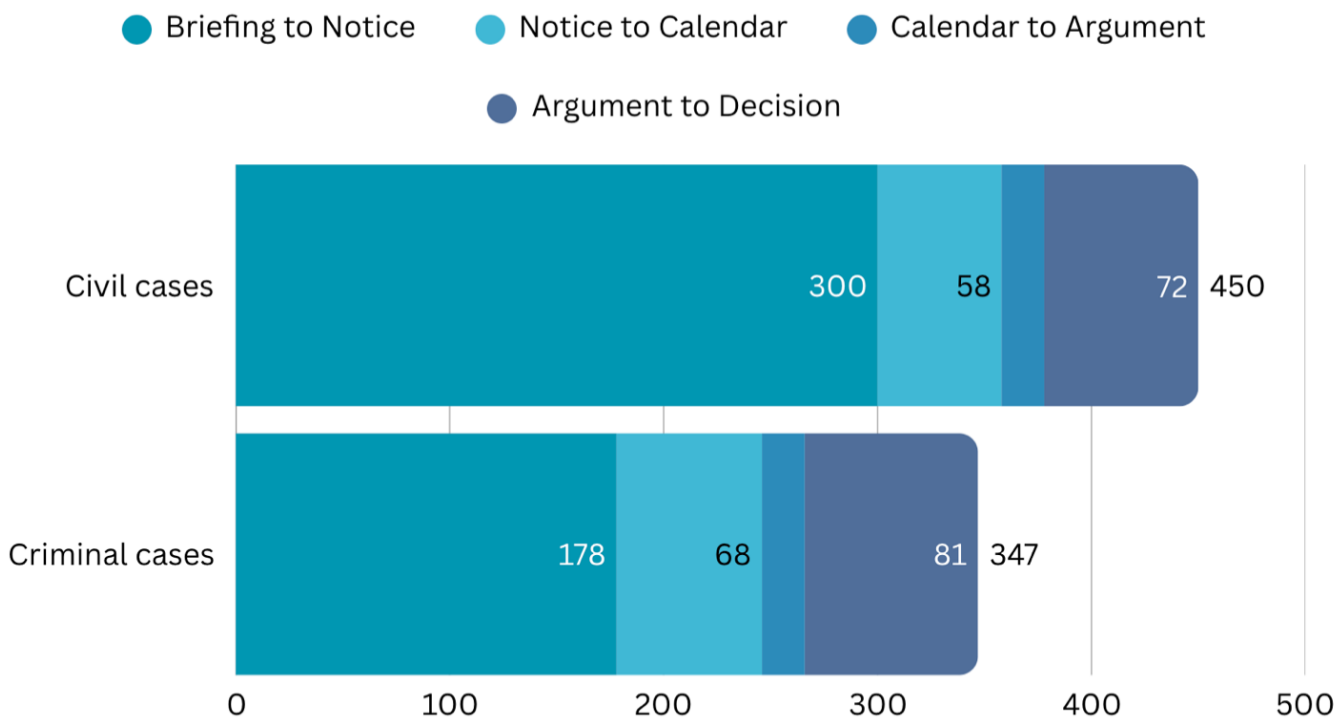
more rigorous formulas to account for outliers, but this method gives us a workable sense of how long each step in the process takes for the average case. Nor do we suggest that these averages will stay the same over time: this is a one-year point sample that gives us a snapshot of the court's current timing. Our modest intent with this article is to provide practitioners with a fair estimate of the average time it is *currently* taking at each step of the process, based on the court's most recent timing.

Because a snapshot's value for current-day predictions depends on its currentness, we plan to run the same analysis for September 2024 to June 2025 when those decisions have all issued.

Detailed findings

The table and figure below show our findings for the average timeline for civil and criminal cases for the study period, in days:

	Briefing to notice	Notice to calendar	Calendar to argument	Argument to decision	Total
Civil cases	300	58	20	72	450
Criminal cases	178	68	20	81	347



With this dataset as our guide, we offer the following guidance for practitioners, with the caveat that a snapshot like this has limited value for predicting future timing.

As expected, briefing is the largest value due to the 90-day rule.

As many California appellate practitioners know, the court frontloads its work before oral argument — because under California constitution article VI, section 19 the court must file its opinion within 90 days after argument. The 90-day rule prompts the court to draft its opinion before scheduling oral argument. As a result, the longest period for all cases is the first period: the time from briefing completion to the preliminary notice of oral argument. The average number of days for this period will change year to year, but expect it to remain the longest step as long as the 90-day rule applies.

Civil cases took longer overall, but not at every step.

Civil cases took longer than criminal cases from the end of briefing to the preliminary oral argument notice letter, but they moved faster than criminal cases after that point. From briefing completion to the preliminary notice, civil cases took 300 days on average and criminal cases took 178 days. But from the preliminary

notice to being placed on calendar, civil cases took 58 days on average and criminal cases took 68 days. In both types of cases, the court notified the parties of the calendar date only 20 to 21 days before the argument. From oral argument to decision, civil cases took 72 days on average and criminal cases took 81. In total, civil cases took an average of 450 days from briefing to decision, and criminal cases took 347 days. The upshot is that it took longer for the court to write a civil case calendar memo.

There's no obvious reason for the court to take around one-third longer to produce draft opinions in civil than criminal cases. By and large, the questions presented in criminal cases are not easier to resolve than those in civil cases. And the court tends to be more divided on criminal than civil issues. In the 16 criminal cases that we reviewed, seven had separate opinions (concurrences or dissents), while only two of the 29 civil cases had separate opinions. Producing separate opinions, and adjusting the majority opinion in response, might take more time than a unanimous majority, which would suggest that the criminal cases would have taken longer on average.[2] The difference might be attributable to more issues presented in civil cases or perhaps longer records in civil cases. Or it might be that the court prioritizes resolving criminal cases because of the liberties at stake, or because many have grant-and-hold cases that are dependent on the resolution in the lead case.[3]

In any event, the difference was notable in our study period: on average, civil cases took 3.5 months longer than criminal cases after briefing ended. We cannot predict whether this disparity will hold true for future terms, but by reviewing next year's data we can start to track this trend.

Certified questions generally did not take longer than civil cases.

The court decided six certified questions in our study period — all from the Ninth Circuit, and all civil — and those cases took just about the same amount of time as civil appeals arising from the California court system. From briefing completion to the court's decision, certified question cases averaged 476 days, while California civil cases averaged 450 days. Based on those results, attorneys in certified question cases should expect the same general timeline outlined above for other civil cases, although as with everything else here this timeframe may vary going forward.

Split decisions did not take longer than unanimous majorities.

Although parties have no way of knowing ahead of time whether a case will result in a vote split, we evaluated whether that factor affected the timeline. Some argue that decisions with separate opinions take longer to produce.[4] We found that, to the contrary, the overall post-briefing timeline for separate-opinion cases was slightly shorter than unanimous-opinion cases. But our preliminary review of the current year cases suggests that split decisions are taking significantly longer. That suggests caution in drawing conclusions from last year's results.

The preliminary notice signals that attorneys should start preparing for argument.

Once the court is ready to schedule argument, the process takes a few months on average. The court issues the preliminary oral argument notification letter informing the parties that the case will be placed on calendar within the next few months and asking counsel to notify the court of any good cause to avoid placing the case on a particular calendar. At that point, parties should inform the court of any unavoidable conflicts with the upcoming calendar weeks that are published on the court's website.[5] This part of the process helps the court determine which of the prepared cases will slot into each calendar. The court publicly announces the cases on calendar only 20 to 21 days before oral argument. Thus, as noted above, attorneys are wise to map out their preparation once they receive the preliminary notification letter.

Conclusion

Our main takeaway for attorneys awaiting oral argument is to begin their preparation within a few weeks of receiving the preliminary notification letter. This practice is especially apt for cases that have been fully briefed for many months and are not fresh in the attorney's mind. Once the case is placed on calendar, attorneys will have only three weeks or so to get ready, so we suggest starting early. Of course, a few cases will be outliers. In our dataset, the longest wait between the preliminary notification letter and calendaring was 115 days in a civil case and 176 days in a criminal case; the shortest wait was 23 days in a civil case and 8 days in a

criminal case. But these outliers were scarce. Accordingly, the preliminary notification letter is still the best indication that it is time to start preparing.

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1. Strictly speaking the California Supreme Court does not observe a term schedule, nor does the court itself refer to its calendar as such. The court works year-round, and the only change in its annual operations is that it does not hear argument in July and August: "The Supreme Court hears oral arguments during one week of each month, from September through June, in its courtrooms in San Francisco, Los Angeles, and Sacramento (and occasionally at additional locations). Throughout the year, the court remains open and engaged in its other work, which includes researching and drafting calendar memoranda and opinions and conducting weekly petition conferences." The Supreme Court of California (Seventh ed., 2019) at 22. The court does issue its own year-in-review report based on a September-to-August year, but the Judicial Council's annual Court Statistics Report follows a fiscal year schedule, and this publication's year in review tracks calendar year results. ↑

2. There is a debate about which takes longer to produce, a unanimous majority or a fractured opinion. See California Constitution Center, *SCOCA year in review 2023*, SCOCAblog (Jan. 8, 2024). ↑

3. For more information on the increased use of the grant-and-hold process in criminal cases, see David Ettinger, *New justices seen in court's subtle changes* (July 9, 2015) At the Lectern. ↑

4. For the debate about which takes longer to produce, see California Constitution Center, *SCOCA year in review 2023*, SCOCAblog (Jan. 8, 2024). ↑

5. The typical oral argument schedule is a single week per month in this rotation: San Francisco in January, March, May, September, November; Los Angeles in April, June, December; Sacramento in February; and a special outreach session in October (location TBD). ↑