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## Appellate Law

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# Examining the Workload of Pennsylvania's Highest Court

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Howard Bashman

Recently, a journalist working at one of Pennsylvania's major newspapers called me in the hope that I would be willing to speak on the record about the declining number of opinions that the Supreme Court of Pennsylvania issued in 2010.

Each year, the Administrative Office of Pennsylvania Courts publishes a report titled "Caseload Statistics of the Unified Judicial System of Pennsylvania." According to the report issued earlier this year for the calendar year 2010, the Supreme Court of Pennsylvania issued 71 full opinions in cases on the appeal docket, 12 full opinions in cases on the death penalty docket, and two full opinions in cases on the so-called miscellaneous docket.

By contrast, during the calendar year 2009, Pennsylvania's highest court issued 125 full opinions in cases on the appeal docket, 33 full opinions in cases on the death penalty docket and six full opinions in cases on the miscellaneous docket.

Based on those statistics, the Supreme Court of Pennsylvania in 2010 issued 79 fewer opinions than the court issued in 2009. Although those numbers appear to represent a significant drop-off in opinion production, other factors may be at work. To begin with, at the end

of 2009, a temporarily appointed justice left the court and was replaced by a justice newly elected to the court. As a result, toward the end of 2009 the state Supreme Court issued an unusually large number of opinions to clear out the backlog that apparently existed at that time.

In addition, in 2010, the state Supreme Court was forced to devote significant attention to the Northeast Pennsylvania juvenile justice scandal, to address and remedy the repercussions of the scandal and to ensure that nothing similar could ever happen again in Pennsylvania. Moreover, because the court had issued so many opinions in late 2009, it is quite possible that fewer than the usual number of cases remained to be decided in the early part of 2010. And finally, in 2009 the state Supreme Court granted allowance of appeal in only 86 cases, by far the smallest number of cases granted review in any of the past five years. As a consequence, there were fewer new cases to decide in 2010.

Taking a look at the rate of opinion production from the state Supreme Court over the past five years is much more informative than simply evaluating a snapshot focused on only the past two years. In 2008, the court issued a total of 93 opinions, consisting of 55 on the appeal docket, 32 on the death penalty docket and six on the miscellaneous docket. In 2007, the court issued a whopping 196 opinions. And in 2006 the court issued 129 opinions. Thus, the number of opinions that the court issues on an annual basis is subject to wide swings, and the drop-off from 2007 to

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2008 — a decrease of over 100 opinions — was even greater than the drop-off from 2009 to 2010.

Of course, issuing opinions is only one of the important tasks that Pennsylvania's highest court performs. Another equally important task involves reviewing and deciding whether or not to grant petitions for allowance of appeal seeking discretionary review. In deciding whether to grant review in a case, the court must examine not only whether the case purports to raise issues of great importance that qualify for the court's discretionary review, but also whether the case presents an appropriate vehicle for deciding those issues.

To be sure, there are instances when the Supreme Court of Pennsylvania takes what might seem to many to be an inordinately long time after oral argument to decide an appeal. But appellate courts traditionally do not have any deadline by which they must issue a decision. Some notable exceptions, however, do exist. The U.S. Supreme Court usually decides all argued cases each term before heading off to summer recess in late June or early July. And the Supreme Court of California has adopted a policy that requires the court to issue an opinion deciding each case within 90 days from the date of oral argument.

I am not familiar with the history or origin of the Supreme Court of California's rule requiring that an opinion issue in each case within 90 days of oral argument, but I think that it is unrealistic to expect that such a policy would be adopted here in Pennsylvania. Moreover, often the most criticized U.S. Supreme Court opinions are those that issue in important cases that were argued in late April, leaving the court only approximately two months in which to write the opinions. Although the phrase "justice delayed is justice denied" is a popular refrain, sometimes justice unnecessarily expedited may have its own untoward consequences.

To summarize, the drop-off in the Supreme Court of Pennsylvania's opinion production from 2009 to 2010 can easily be explained as stemming from any number of innocuous factors. First, a new justice joined the court at the start of 2010. Second, the court had disposed of a large backlog of opinions before the end of 2009. Third, in 2009 the court granted review in an unusually small number of cases. And fourth, the court understandably may have had to devote an unanticipated and unusually large amount of its attention and resources toward addressing the Northeast Pennsylvania juvenile justice scandal during 2010.

One final observation is in order. The number of opinions that a court issues does not necessarily indicate how hard the members of the court are working. One very difficult opinion may take much more work to prepare and finalize than five very easy opinions. Indeed, even as the U.S. Supreme Court has reduced the number of full opinions that it is issuing each year from around 150 to fewer than 80, the justices serving on that court continue to report that they are working harder than ever to produce their opinions in that reduced number of cases.

The number of opinions that the Supreme Court of Pennsylvania is issuing each year might rise and fall, but a reduction in the number of opinions does not necessarily demonstrate that the court is not working hard or efficiently to decide the cases pending before it.

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