



The Legal Intelligencer

ALM Properties, Inc.

Page printed from: [The Legal Intelligencer](#)

[Back to Article](#)

How Timely Are Rulings From Pennsylvania's Supreme Court?

When it comes to the Pennsylvania Supreme Court's ability to make timely rulings after hearing arguments, there is no consensus among the state's legal community regarding the high court's efficiency.

p.j. D'Annunzio

2013-10-14 12:00:10 AM

When it comes to the Pennsylvania Supreme Court's ability to make timely rulings after hearing arguments, there is no consensus among the state's legal community regarding the high court's efficiency.

Some attorneys view the court's performance as commendable given its workload and only recent addition of a seventh justice, while others are more critical, claiming the court takes too long to issue opinions and focuses on unnecessary activities.

Justice Correale F. Stevens, the newest addition to the court, said that the justices are already working on the cases heard in September's oral argument session in Philadelphia and that the high court's focus on broad legal issues is more time-consuming than the error-correcting duties of the lower courts it is compared to.

"One difference that I see between the Supreme Court and the Superior Court is that the Supreme Court makes broad policy, there has to be more introspective reflection; we have to really consider the policy that we're making," Stevens said. "On Superior Court we could make some kind of policy but mostly it was error-correcting."

Stevens said his new court is deciding cases at a steady pace.

"I can't speak for cases from before I was on the court, but I see cases moving, I see discussions in cases, even the ones we just argued in Philly," he said. "There's a lot to do, but I don't see any major delays for any reason of not addressing problems."

Robert L. Byer, a leader of Duane Morris' appellate practice, said that in his experience, the court has ruled on cases in a timely manner.

"I think the Supreme Court is doing a fine job. I've had cases that they've decided fairly quickly. When a fast decision is needed I think they recognize that and they do it," Byer said. "Justices do not have the luxury of working on just one case at a time. They are doing a lot of things. To me, I think they are doing a great job."

Pennsylvanians for Modern Courts Executive Director Lynn Marks noted that it is a difficult time to evaluate the Supreme Court's timeliness in issuing opinions because for more than a year it operated with only six justices.

Marks mentioned that there has been an increased workload for each justice and it is complicated by the increased possibility of split decisions.

"Apparently, the court has been struggling not to issue 3-3 opinions because they leave the state of the law unsettled and just affirm the opinion from the lower court," Marks said. "So it is unfair to use the last year as a barometer."

However, Marks said that it is good policy for the court to issue opinions within the term of the court in which a case was argued.

"That timeframe is the most fair for the litigants and the system. While it would be beneficial if most appeals could be decided within the term, it is not unreasonable for cases involving very important policy determinations to take longer so that the court can develop clear rulings that affect the jurisprudence of the commonwealth," Marks said. "There may not be a one-size-fits-all timeframe for all cases."

In June, *The Legal* published an opinion piece by appellate lawyer Howard J. Bashman urging that the court be bound by a deadline when ruling on cases. In the piece, Bashman compared the state Supreme Court to the California court system.

"The state constitution of California contains a provision that denies pay to judges who fail to issue decisions in matters that have been under advisement for longer than 90 days," Bashman said in the article. "California appellate courts have found a way around the harsh operation of the rule when necessary, by postponing oral argument until the courts have thoroughly analyzed each case and have reached a tentative decision on the outcome. Nevertheless, California state appellate courts are, by and large, deciding cases quite promptly."

Byer, who has handled cases in California's appellate courts, said the comparison wasn't accurate because oral argument in the California Supreme Court is not as meaningful as it is in Pennsylvania because the California justices form opinions on cases before they are heard.

"There's a draft opinion before the case even goes to argument," Byer said. "The court is required by the state constitution to decide everything in 90 days, but it might take over a year to get a case to oral argument; they put the delay on the front end."

In response to Bashman's piece, Chief Justice Ronald D. Castille wrote an article defending the court's work ethic, which *The Legal* ran in July.

"The court appreciates the need to decide appeals quickly. But, the court also appreciates its duty to provide clear explications of law that will govern the entire commonwealth, not just the parties before the court. Principled compromise to achieve consensus is a necessity, and that process can take the form of multiple drafts of opinions, reconsideration and accommodation — all to achieve a clear majority disposition," Castille said in the article. "The court has continued working hard in difficult circumstances arising from the long-term absence of a seventh justice. The court is by no means a perfect institution, it is constantly looking for ways to improve, and it is receptive to suggestions for improvement."

In an interview with *The Legal*, Bashman said he was willing to accept Castille's assertions that the court is working hard, but he questioned whether it was working hard enough.

Bashman — who writes a column for *The Legal* — also said the opinions issued by the court were "entirely formulaic" in nature.

"Regardless of who the authoring justice is, most of the space taken up in an opinion by the Supreme Court of Pennsylvania is devoted to describing in exacting detail the arguments that each of the parties is making back and forth with maybe four or five pages at the end describing what the court is deciding and why. ... My conclusion is that the court is not necessarily prioritizing their workload in the right way."

Bruce Ledewitz, a professor at Duquesne University School of Law, said he believes that the court has been inefficient for the past 30 years, and that any lack of speed has more to do with the court's structure than any individual justices.

Ledewitz, like Bashman, also advocated the institution of a deadline system in deciding cases.

"I think things would be simpler if they adopted a presumption, which they could do tomorrow, that cases would be decided in six months of oral argument," Ledewitz said. "I think if they adopted such a presumption, then they would probably live up to it."

Ledewitz said that based on his field of state constitutional law, he felt that the court is not deciding many "path-breaking" legal issues, which, in part, is a good thing.

"Unlike the U.S. Supreme Court, you don't have these 127-page opinions, mostly. They really write in a modest way. ... They say what they have to say and they're really good about voting, unlike some other courts," Ledewitz said. "But since it is the case that they don't go on and on, it should make it easier to get cases decided."

Additionally, Ledewitz said, "The court has much too much nonjudicial work. They were all tied up in the fiasco about judicial discipline, but in general, their role in discipline has been reduced by constitutional amendment, and they should stay out of it."

In an interview with *The Legal*, Castille said that in terms of judicial discipline, the court would be issuing an opinion shortly based on oral arguments heard on that very issue in September.

"We are the Supreme Court of Pennsylvania, and even judicial discipline has to be appealed to us," Castille said. "We can't divorce ourselves from it."

Castille also said that criticisms about the court being able to limit its workflow were "off the wall."

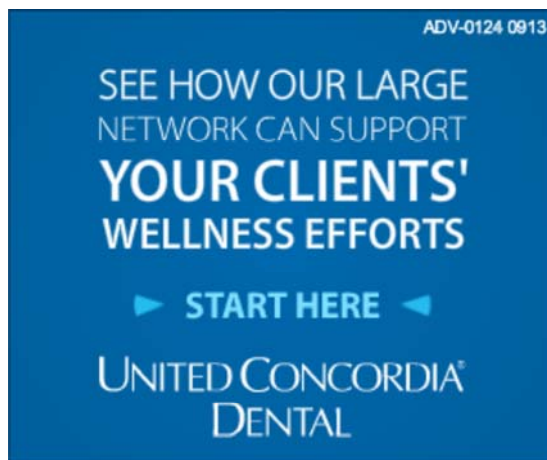
"We take the cases that come to us, we don't go seeking them. So whatever is appealed to us we'll either take it or not. Some of them we have to take, like death-penalty post-conviction hearings and all the election appeals, the right to hold public office," Castille said. "We decide major issues, too, like reapportionment. We had that opinion out in two weeks. We also deal with voter ID and juvenile life imprisonment."

Castille mentioned that in addition to the volume of cases the court comes into contact with, opinion writing is also a time-consuming process.

"If you get a civil case, Restatement of Third or Second Torts, those are pretty complicated," Castille said. "I wrote a 30-page opinion on the parts per million of mercury emissions from a smokestack on a coal fire plant. That's not something you can crank out in a minute or two."

Castille also noted that the court recently revised its internal operating procedures to include timetables for the appeals process.

P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com. Follow him on Twitter [@PJDAnnunzioTLI](https://twitter.com/PJDAnnunzioTLI).



Copyright 2013. ALM Media Properties, LLC. All rights reserved.