

Pa. Supreme Court Has Low Output So Far This Year, But Observers Say That's Not the Whole Story

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Those looking for major pronouncements from the Pennsylvania Supreme Court on a range legal topics may have been somewhat disappointed so far this year by what appears to be a comparatively low output of opinions.

According to a review of the court's output, with nearly the first half of the 2022 over, the high court has issued opinions in 10 cases. Often times the cases have dealt with esoteric areas of the law, such as zoning variances and the code of military justice, and only six of those cases have produced rulings with a clear majority. Contrast that with the first six months of 2021, when the justices had issued opinions in 44 cases, with only two of those being evenly divided.

The result so far has produce little new legal precedent so far under the court, which was newly configured starting this year with a chief justice retiring and a new associate justice coming on the bench.

But, according to observers, focusing on the output might bely an active new court gearing up to tackle a host of pressing issues.

The top reason court watchers point to for the low output so far is the redistricting fight, which the high court had to adjudicate at both the federal and state level. With the federal litigation resulting in numerous suits, voluminous

filings, a more than six-hour hearing, dozens of petitions and separate opinions from each justice, totaling nearly 115 pages of writing, observers say this litigation likely took up substantial court resources for much of the spring.

Another complicating factor, observers noted, is the changeover in personnel from this year to last.

At the end of 2021, longtime Justice Thomas Saylor retired from the court after reaching the mandatory retirement age of 75. Saylor, who had been on the court for 23 years and acted as chief justice since 2015, was seen as a stabilizing leader on the court, which had been rocked by scandals in 2013 and 2014.

In anticipation of Saylor's departure from the court, observers said the justices pushed out a flurry of decisions late last year, ruling on nearly all cases Saylor had presided over. This was done, observers said, likely so the new court could start fresh now that former Commonwealth Court Judge P. Kevin Brobson was elected to the high court last year.

A review of rulings bears that out. The court has yet to rule on seven of the 31 cases that were argued during the court's fall 2021 session. While observers say six months tends to be on the longer end of the typical time period it takes for the justices to decide a case, only two of those lingering decisions were argued prior to December. Two other cases argued earlier this year were also decided on June 22.

"It's impressive that the court has only seven opinions remaining from its fall sessions, especially given the volume and complexity of the redistricting matters the court addressed this spring," Chip Becker, an appellate attorney at Kline & Specter, said. "Those numbers confirm my sense that the Supreme Court is deciding cases quickly and efficiently."

During a symposium held earlier this year to commemorate the 300th anniversary of the Pennsylvania courts, former U.S. Supreme Court Justice Anthony Kennedy said that every time a new member joins an appellate court, it marks the beginning of an entirely new court.

Now that Brobson is firmly in his seat on the bench—having authored one the rulings issued June 22—some observers are expecting this new iteration of the court to be very active. One signal can be found by looking at the appeals the court has decided to take up so far this year.

As of June 22, the justices had granted allocatur in 36 cases, which is on par with the 37 appeals the court granted during the same period last year.

The court has also recently granted appeals in several high-profile cases, some of which had been waiting for nearly a year for a determination on whether their appeals would proceed. Among those long-lingering cases are *Sullivan v. Werner*, which is addressing a significant open question in product liability law, and *Barris v. Stroud Township*, which deals with a Second Amendment question. *Barris* had been pending since June 2021 and *Sullivan* had been pending since July.

“The court also continues to grant allocatur at an impressive clip,” Becker said. “They are taking on significant issues and issuing timely decisions.”