

**[J-82-2002]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 123 MAP 2001
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered June 19, 2000 at No. 943
	:	MDA 1999, affirming the Judgment of
	:	Sentence entered January 7, 1999 in the
v.	:	Court of Common Pleas of Columbia
	:	County, Criminal Division, at No. 433 of
	:	1997
JODY LEE HESS,	:	
	:	
Appellant	:	SUBMITTED: May 15, 2002

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**Decided: November 25, 2002**

I respectfully disagree with the majority's conclusion that the date that the trial court's Rule 1925 order was purportedly furnished to the parties cannot be discerned from the relevant docket entry and, therefore, that the starting date for the fourteen-day period to file a statement of matters complained of on appeal under Rule 1925(b) cannot be identified. Under the rule, the compliance period runs from the date the order is entered, which is defined under Appellate Rule 108(a) as "the day the clerk of the court . . . mails or delivers copies of the order to the parties." In this case, the docket contains the following entry:

6/17/1999	ORDER OF COURT, FILED [14-DAY NOTICE] ORDER DATED: 06-09-99, IN ACCORDANCE WITH PA.R.A.P. 19265[B] (sic), THE APPELLANT OR HIS COUNSEL IS DIRECTED, WITHIN FOUR-
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TEEN [14] DAYS OF THIS ORDER, TO SERVE  
ON THE UNDERSIGNED A CONCISE STATEMENT  
OF THE MATTERS COMPLAINED OF ON APPEAL  
BY THE COURT: /S/ SCOTT W. NAUS, JUDGE  
COPIES OF ORDER ISSUED TO: D.A. AND  
ATTY. MORA.

Contrary to the majority, I view such entry as indicating a distribution date for the court's order, namely, that which is noted in the left-hand margin corresponding to the docket entry (June 17, 1999). While this point may seem a technical one, I believe that we can take judicial notice that the date-in-margin method of docketing is commonly used; indeed, the contrary approach would seem to have wider and troubling implications concerning the effectiveness of court docketing.

I nevertheless agree with the majority that the docket notation suffers from the failure to note the manner of service; in addition, Rule 114 requires a specific notation as to the time of service. See Pa.R.Crim.P. 114 (providing that the clerk of courts immediately docket an order, record the date it was made, furnish copies to the parties or their attorneys, and record the time and manner thereof). Such requirements serve as internal checks upon the clerk of courts, thereby providing greater assurance that all steps necessary to effectuate delivery have actually been undertaken.<sup>1</sup>

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<sup>1</sup> Notably, Rule 114 is similar to its civil counterpart, Rule 236, which requires, inter alia, that the prothonotary "note in the docket the giving of the notice." Pa.R.C.P. No. 236(b). Although strict enforcement of non-compliance with the recording requirements in the criminal arena would appear consonant with the interpretation the Court has applied in the civil context, see, e.g., Frazier v. City of Philadelphia, 557 Pa. 618, 735 A.2d 113 (1999), such an equation is not warranted under the terms of the Appellate Rules. In this regard, Appellate Rule 108(b) specifically differentiates civil orders in its date of entry definition, providing:

**Civil orders.** The date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the day on which the clerk makes the notation in the docket that notice of entry of the order has been given as required by Pa.R.Civ.P. 236(b).

(continued...)

I also agree with the majority that an exception to the waiver rule enunciated in Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 306 (1998), should apply where a copy of the Rule 1925(b) order has not been received. Further, I have little difficulty treating the docket deficiencies and the Commonwealth's attestation to not having received the order as circumstantial evidence tending to support Appellant's allegation that the Rule 1925 order was not properly delivered. Although I recognize the Court has moved in the direction of strict treatment of waiver principles, since these have their roots in prudential considerations, see generally Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1344 (Fed. Cir. 2001) (citing Singleton v. Wulff, 428 U.S. 106, 121, 96 S. Ct. 2868, 2877 (1976)), I find the present record sufficient to justify reversal of the Superior Court's Order and the remand for merits review.

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(...continued)

Pa.R.A.P. 108(b). No similar provision exists in the criminal arena conditioning the date of entry of an order on specific aspects of the docket entry concerning notice; therefore, in the criminal context, technical deficiencies in a docket entry pertaining to notice do not per se undermine the date designation for purposes of identifying the relevant compliance period.