mail as provided in Pa.R.A.P. 121(a)...." Pa.R.A.P. 1925(b)(1). Rule 121(a) provides, *inter alia*, "[p]apers required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing may be accomplished by mail addressed to the prothonotary...." *Id.*, 121(a). [1] Appellants, by timely filing their Rule 1925(b) statement with the trial court's prothonotary, complied with Rule 121(a).

***361** Service on the *judge*, per Rule 1925(b), is also to be done as provided in Rule 121(a)—in contrast, service on the *parties* shall be under Rule 121(c). Thus, by complying with Rule 121(a), Appellants did comply with the "Filing and Service" requirements in the manner specified by Rule 1925(b). [2] Rule 1925(b)(1) could have easily required judges be served pursuant to other rules, but it does not, and one cannot fault Appellants for following the Rule's choice of service method.

Finding no error in what Appellants did, I would not begin creating "equitable departures" from Rule 1925's requirements. Likewise, I see no need to opine on any errors in the trial judge's Rule 1925(a) order.

Thus, I concur with the Opinion Announcing the Judgment of the Court that Appellants' claims under Rule 1925 are not waived, but do so on distinct grounds.

Justice SAYLOR, concurring and dissenting.

Consistent with my previous expressions in the Rule 1925 arena, I join the substantial compliance rule fashioned by the lead Justices. I believe, moreover, that such a rule comports with the less rigid application of Rule 1925 reflected in the recent amendments.

However, I depart from the lead's acceptance of Appellants' factual averments contained in their Petition to Modify the Record, *see, e.g.*, Opinion Announcing the Judgment of the Court, *op.* at 1004–05 & n.5, particularly as it appears that at least some of these representations are inconsistent with the trial judge's understanding. Accordingly, to the degree it is necessary to address the facts, I would remand the case for a hearing to develop a factual record and appropriate findings.

Justice BAER, dissenting.

While I appreciate that the instant case presents a unique situation in that both a ****1015** party and a judge of the court of ***362** common pleas failed to adhere to our Rules of Appellate Procedure, I cannot agree with the lead Justices that, in such a circumstance, a judge's deficient order, and a party's "substantial compliance" with that order, trump a rule promulgated by this Court. *See* Opinion Announcing the Judgment of the Court (OAJC), Op. at 1008. Moreover, I would hold that Appellants Daniel and Sheryl **Berg** waived their ability to raise any issues on appeal because the failed to follow the service mandates of Pa. R.A.P. 1925(b)(1). [1] Accordingly, I must respectfully dissent.

As is now well known throughout the Commonwealth, Rule 1925 has recently undergone extensive revisions in an attempt to ease the rigidity of the procedures parties must go through in order to effectuate an appeal properly. Prior to July of 2007, Rule 1925 provided, in relevant part,

> (a) *General rule.* Upon receipt of the notice of appeal the judge who entered the order appealed from, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order, or for the rulings or other matters complained of, or shall specify in writing the place in the record where such reasons may be found.
>
> (b) *Direction to file statement of matters complained of.* The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.

***363** Pa. R.A.P. 1925(a)-(b) (rescinded May 10, 2007, effective Jul. 10, 2007).

In 1998, in response to inconsistencies in the trial and intermediate appellate courts concerning the application of the waiver clause in subsection (b) of the old Rule 1925, we clarified for the bench and bar that "in order to preserve their claims for appellate review, Appellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925. Any issues not raised in a 1925(b) statement will be deemed waived." *Commonwealth v. Lord,* 553 Pa. 415, 719 A.2d 306, 309 (1998). We reaffirmed the *Lord* bright-line waiver rule in *Commonwealth v. Butler,* 571 Pa. 441, 812 A.2d 631 (2002), further clarifying that a failure to include issues in a

Rule 1925(b) statement resulted in "automatic" waiver, which could be found *sua sponte* by courts. *Id.* at 634.

Then, in 2005, this Court, in two companion opinions written by this author, extended the *Lord* rule beyond a party's failure to include issues within a Rule 1925(b) statement. In the lead opinion, *Commonwealth v. Castillo,* 585 Pa. 395, 888 A.2d 775 (2005), we considered whether a court could consider the merits of an appeal despite the Rule 1925(b) statement ****1016** being filed after the fourteen-day limit set forth in subsection (b). We first recognized that trial and intermediate appellate courts alike were still, in their discretion, addressing and deciding the merits of issues raised on appeal in untimely or procedurally flawed Rule 1925(b) statements, continuing the inconsistency that *Lord* and *Butler* had intended to eliminate:

> one trial court might file quickly and efficiently an opinion waiving all issues, while another might address the issues it believes the appellant will raise, and still another might delay filing an opinion until a statement is received. If the appellant in each hypothetical case eventually files an equally untimely statement, the appellate court in the first case would waive the issues that the trial court waived, while in the second two scenarios, [...] the appellate court could address the issues so long as the trial court addressed the same issues in its opinion.

***364** *Id.* at 779. In another attempt to establish uniformity throughout the courts of the Commonwealth, we reaffirmed the bright-line rule of *Lord* that complete compliance with Rule 1925(b) was mandatory, and, absent such compliance, litigants would be subject to the consequences of waiver. *Id.* at 780. In so doing, we placed the burden on litigants and their counsel to read and follow the requirements for perfecting an appeal properly under Rule 1925: "It is incumbent upon all lawyers to follow court rules without judicial oversight." *Id.* at 779 n. 5.

The companion case to *Castillo, Commonwealth v. Schofield,* 585 Pa. 389, 888 A.2d 771 (2005), is somewhat analogous to the case at bar. There, while the trial judge had been properly served with a Rule 1925(b) statement (and, indeed, issued a Rule 1925(a) opinion on the merits), the certified record was devoid of any indication that the statement had also been filed of record with the trial court, as required by the former Rule 1925(b) ("The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal...."). Applying the bright-line rule of *Lord/ Castillo*, we found all issues raised by the appellant waived, holding that the "failure to comply with the minimal requirements of Pa. R.A.P. 1925(b) will result in automatic waiver of the issues raised." *Id.* at 774. Thus, the appellant's failure to perfect the appeal by filing the Rule 1925(b) statement with the trial court was fatal to his ability to pursue his contentions of error in the appellate courts.

As noted above, in July 2007, this Court substantially revised Rule 1925. In particular, subsection (b) was greatly expanded to clarify the requirements of trial judges in ordering, and litigants in submitting, Rule 1925(b) statements. Specifically, the revisions change the time-period for filing and serving a Rule 1925(b) statement to twenty-one days, and permit trial judges to enlarge that period upon proper application by an appellant. Pa. R.A.P. 1925(b)(2). Moreover, the revised rule directs trial judges to include within the order directing submission of a Rule 1925(b) statement:

> ***365** (i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;
>
> (ii) that the Statement shall be filed of record;
>
> (iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);
>
> (iv) that any issue not properly included in the Statement timely filed and served ****1017** pursuant to subdivision (b) shall be deemed waived.

Pa. R.A.P. 1925(b)(3)(i)-(iv). Finally, subsection (4) outlines very detailed requirements for appellants in submitting the Rule 1925(b) statement, including a provision that failure to follow such mandates will result in waiver of issues raised for appeal. Pa. R.A.P. 1925(b)(4)(vii).[2] Notably, however, and not withstanding the substantial changes, subsection (1) of the new Rule 1925(b) continues the requirement from the old rule that an appellant "shall file of record the [s]tatement and concurrently shall serve the judge." Pa. R.A.P. 1925(b)

(1). Filing and service under the new rule may be completed either in person or by certified mail. *Id.*

Since the revision of Rule 1925, at least some uncertainty has arisen in the intermediate appellate courts concerning whether the revisions have supplanted the bright-line waiver rules of *Lord* and *Castillo*. For example, in *Commonwealth v. $766.00 in U.S. Currency,* 948 A.2d 912 (Pa.Cmwlth.2008), the Commonwealth Court applied the *Lord* bright-line rule, and thus dismissed an appeal, where the appellant served his Rule 1925(b) statement upon the Commonwealth Court, rather than the trial judge. Contrarily, in *Commonwealth v. Hopfer,* 965 A.2d 270 (Pa.Super.2009), a panel of the Superior Court, in faulting a trial judge for summarily denying an appellant's request for an extension in which to file a Rule 1925(b) ***366** statement, noted, "it is evident that the revised [Rule 1925] has relaxed the strict-waiver requirement of *Lord* and its progeny." *Id.* at 273.

Thus, we are seemingly in danger of returning to where we started five years ago when *Castillo* and *Schofield* were decided: countenancing inconsistent application of Rule 1925's waiver provisions by the trial and intermediate appellate courts. The OAJC herein seemingly desires to save the **Bergs** in this unfortunate scenario by finding that they "substantially complied" with the terms of the order directing submission of a Rule 1925(b) statement. *See* OAJC Op. at 1008, 1010–11. While to some extent I share in the OAJC's empathy for the **Bergs'** plight, for the reasons that follow, I cannot yield to the temptation to join its rationale or holding.

First, the OAJC leads into its substantial compliance analysis by reasoning, "in determining whether an appellant has waived issues on appeal based on non-compliance with Pa. R.A.P. 1925, it is the trial court's order that triggers an appellant's obligation under that rule, and, therefore, we look first to the language of that order." *Id.* at 1008. With all due respect to the OAJC, I do not read our Rule 1925 jurisprudence, including the seminal *Lord, Butler, Castillo*, or *Schofield* decisions, as placing any emphasis whatsoever on the language of the Rule 1925 order. Rather, and despite "the equitable appeal of granting relief in [any] case," *Schofield,* 888 A.2d at 774,[3] our concentration ****1018** has recently been upon a litigant's compliance with the rule, and nothing else: "failure to comply with the minimal requirements of Pa. R.A.P. 1925(b) will result in automatic waiver of the issues raised." *Id.* Indeed, the new Rule 1925 reiterates that failure to comply with the provisions of Rule 1925(b) shall result in waiver of all appellate issues not properly raised. ***367** Pa. R.A.P. 1925(b)(3) (iv) & (4)(vii). Subsections (b)(3)(iv) and (b)(4)(vii) brook no exception for substantial compliance with a poorly worded order.

Thus, while I recognize the OAJC's cogent point that "it is the trial court's order which triggers Rule 1925 in the first instance," OAJC Op. at 1011, upon receipt of that order, it is incumbent upon the litigants, and no one else, to ensure proper perfection of an appeal, including filing and service, through the mandates of the rule. *Accord Schofield; see also Castillo,* 888 A.2d at 779 n. 5 ("It is incumbent upon all lawyers to follow court rules without judicial oversight."). The effect, however, of the OAJC appears to be an edict that when a trial judge's order is in arguable tension with a rule of procedure, the order should control. Specific to this case, the OAJC holds that, regardless of the mandates of Rule 1925(b)(1) that an "[a]ppellant shall file of record the [s]tatement and concurrently shall serve the judge," when the trial judge instantly instructed the **Bergs** to "file with the Court, and a copy with the trial judge," a Rule 1925(b) statement, OAJC Op. at 1008 (quoting Order of Jan. 3, 2008), the **Bergs'** substantial compliance with the order by filing the Rule 1925(b) statement with the Berks County Prothonotary was sufficient to perfect the appeal.

Were I to agree with the OAJC that the trial court's order trumps Rule 1925(b), I would be inclined to join this reasoning. In my view, however, where an order and rule are in tension, the careful practitioner either should comply with both, or if that is not clearly possible, comply with the rule and seek clarification from the issuing judge of the order. Absent such prudence, waiver should result, not because it is harsh on the litigant or counsel, but because it ensures uniform justice to the tens of thousands of litigants proceeding through Pennsylvania courts each year. On the other hand, should a litigant comply with the rules of court and take the relatively simplistic step of seeking clarification of the trial judge's order, and the judge for whatever reason refuses to issue clarification (thus causing prejudice to that litigant), I would characterize this as a breakdown in the administration of justice mandating equitable relief. *See Union Elec. Corp. v.* ***368** *Bd. of Prop. Assessment of Allegheny County,* 560 Pa. 481, 746 A.2d 581, 584 (2000) (finding a breakdown in court operations occurs, and thus *nunc pro tunc* relief is warranted, where a court officer or administrative body "is negligent, acts improperly, or unintentionally misleads a party."); *Bass v. Commonwealth,* 485 Pa. 256, 401 A.2d 1133, 1135 (1979) (equitable remedy of *nunc pro tunc* relief is granted where "fraud or a breakdown in the court's

operations through a default of its officers" occurs); *see also Radhames v. Tax Review Bd. of City of Philadelphia,* 994 A.2d 1170 (Pa.Cmwlth.2010). In my view, the bright-line waiver doctrine of *Lord* should continue with the revised Rule 1925, while equitable solutions to very limited cases remain available. [4]

1019 Nevertheless, and contrary to the OAJC and my fellow Justices concurring in the result, I would find that the **Bergs failed to comply with Rule 1925(b), and, thus, waived all issues for appeal. First, they simply did not serve the trial judge with the Rule 1925(b) statement as required by subsection (b)(1) of the rule. Second, when faced with an order of court and an instruction from a clerk in the prothonotary's office, which were both in tension with (if not completely contrary to) the explicit mandates of Rule 1925(b), the **Bergs** did not seek any clarification or assistance from the trial judge. Moreover, the equities of this case are not as draconian as the OAJC would make them out to be. The **Bergs** were not under any *369 filing deadline; they still had a full week to serve the trial judge with the Rule 1925(b) statement. As made perfectly clear by Rule 1925(b)(1), the **Bergs** could have left the Berks County Courthouse, gone to the local post office, and sent the statement via certified mail to the trial judge. Even without any order of clarification, such actions would have perfected service to the trial judge and been in full compliance with both Rule 1925(b) and the trial judge's deficient order. [5] As in *Schofield,* the **Bergs** simply did not follow the filing and service requirements of the new Rule 1925(b), and, accordingly, for the good of all should face the consequence of waiver.

All of this having been said, I feel compelled to comment upon the order issued by the trial judge. Like the OAJC, very respectfully, I find the trial judge's failure to follow the mandates of Rule 1925(b)(3) troublesome. Had the judge included within the order the components found in subsection (b)(3), this appeal would have been unnecessary. To avoid any confusion concerning Rule 1925(b) statements in the future, I suggest that the Appellate Rules Committee undertake the necessary steps to create and promulgate a simple form order for trial judges to use when ordering the submission of a Rule 1925(b) statement by an appellant. [6]

1020 *370 In conclusion, I would find that, despite the revisions recently made to Rule 1925, the bright-line waiver rule of *Lord* and its progeny remains valid and binding upon all litigants, without exception. [7] TO GUARANTEE THE Proper and uniform administration of justice throughout the Commonwealth, litigants should follow Rule 1925 to its letter, or be faced with waiver, and, if necessary, seek clarification of an imprecise order of court. Accordingly, because I would find the **Bergs' failure to serve the trial judge with their Rule 1925(b) statement fatal to their appeal under the mandates of Rule 1925(b)(1), I must respectfully dissent.

All Citations

607 Pa. 341, 6 A.3d 1002

Footnotes

1 Also before this Court are a number of supplemental motions, all of which were filed after this Court granted review in the matter, including: (1) an "Application to Supplement the Record" (treated as Application for Leave to File Post–Submission Communication) filed by **Nationwide** on December 2, 2009; and Appellants' "Response" thereto (treated as Answer to Application to Supplement the Record); (2) an "Amended Application to Supplement the Record" (treated as Leave to Amend Application of 12–02–09) filed by **Nationwide** on February 11, 2010; Appellants' "Reply" thereto (treated as Answer); Appellants' "Supplemental Reply" thereto (treated as an Application to Amend Answer to Amended Application); and **Nationwide's** "Answer" to Appellants' "Supplemental Reply" (treated as Answer); and (3) a "Second Amended Application to Supplement the Record" (treated as Leave to Amend Application of 12–02–09) filed by **Nationwide** on March 2, 2010, and Appellants' "Objection and Reply" thereto (treated as Answer). As the averments contained in these filings are not directly relevant to our disposition, all of the applications are hereby denied.

2 73 P.S. § 201–2(4)(xxi).

3 42 Pa.C.S.A. § 8371.

4 As we will discuss further below, this order failed to include certain language mandated by Rule 1925(b)(3).

5 All of Appellants' assertions regarding what occurred at the prothonotary's office on January 17, 2008 were contained, and sworn and attested to under penalty of perjury, in Appellants' Petition to Modify the Record, discussed *infra.* This Court has the utmost trust in and respect for the lawyers who appear before us, as they are officers of the court, and we accord them the benefit of accepting their factual representations unless such representations are contradicted by the record.

Moreover, although there is much dispute regarding the issue of whether and/or when Judge Stallone actually received a copy of Appellants' 1925(b) Statement, there have been no allegations that Appellants' counsel's representation of the events of January 17, 2008 is inaccurate.

6 Also on December 2, 2009, **Nationwide** filed its first application to supplement the record, triggering an onslaught of filings and correspondence among the parties and the trial judge. *See supra* note 1.

7 The effective date of the 2007 amendments was July 25, 2007. Rule 1925 was amended again on January 13, 2009, but those amendments pertained only to children's fast track appeals, *see* Pa.R.A.P. 1925(a)(2), and the manner of filing and service by mail, *see* Pa.R.A.P. 1925(b)(1), and are not relevant to the instant case.

8 The Pennsylvania Bar Association and the Philadelphia Bar Association have filed a joint amicus brief in support of Appellants. Specifically, amici opine that the Superior Court's finding of waiver in the instant case is "inappropriately harsh," Amicus Brief at 2, where, *inter alia*, Appellants timely filed their 1925(b) statement in accordance with the trial court's order, and Appellants' failure to serve the trial judge personally, which resulted from the prothonotary's refusal to advise them of the trial judge's location, would not have impeded appellate review.

9 While we do not find it necessary to rely on Appellants' second argument as a basis for disposition, we are compelled to address the position espoused by Justice Eakin in his Concurring Opinion, namely, that Appellants *served* the trial judge by *filing* a copy of their Rule 1925(b) statement with the prothonotary. Concurring Opinion at 360, 6 A.3d at 1014. Although Rule 1925(b)(1) provides that "[f]iling of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a)," Rule 121(a) states that papers required to be *filed* in an appellate court shall be filed with the prothonotary; Rule 121(a) does not suggest that *personal service* upon a trial judge may be accomplished in the same manner. Rather, it is Rule 121(c) that addresses the manner of service. To the extent Justice Eakin suggests that, in leaving a copy of their Rule 1925(b) statement with the prothonotary, Appellants complied with Rule 121(c), we strongly question whether the prothonotary constitutes the equivalent of a "clerk or other responsible person at the office of the person [i.e., judge] served." Indeed, if Rule 1925(b) contemplated that service upon a trial judge could be achieved by filing a copy of a Rule 1925(b) statement with the prothonotary, its requirement that an appellant "file of record the Statement and concurrently ... serve the judge," Pa.R.A.P. 1925(b)(1), would be superfluous. Rather, Rule 1925(b) contemplates two distinct obligations: filing *and* service.

10 Given our resolution of this issue, we need not address **Nationwide's** contention that the efforts Appellants' counsel took to personally serve the trial judge with Appellants' Rule 1925(b) Statement evidenced Appellants' awareness of their obligation under Pa.R.A.P. 1925(b). *See supra* note 5 and accompanying text.

11 Indeed, absent an order by the trial court, an appellant has no obligation to file a Rule 1925(b) statement.

12 In his Dissenting Opinion, Justice Baer states that our decision in *Commonwealth v. Lord,* 553 Pa. 415, 719 A.2d 306 (1998), "placed the burden on litigants and their counsel to read and follow the requirements for perfecting an appeal properly under Rule 1925." Dissenting Opinion at 1016. According to the dissent, if we do not penalize an appellant for failing to strictly adhere to the requirements of amended Rule 1925(b), notwithstanding any failure by the trial court in adhering to the rule's requirements, we are "in danger of returning to where we started five years ago when *Castillo* and *Schofield* were decided: countenancing inconsistent application of Rule 1925's waiver provisions by the trial and intermediate appellate courts." *Id.* at 5. As the dissent itself recognizes, however, our decisions in *Lord, supra, Castillo, supra,* and *Commonwealth v. Schofield,* 585 Pa. 389, 888 A.2d 771 (2005), preceded the 2007 amendments to Rule 1925, which this Court "greatly expanded to clarify the requirements of trial judges in ordering, and litigants in submitting, Rule 1925(b) statements." Dissenting Opinion at 364, 6 A.3d at 1016. The amended rule requires that trial judges use specific language in a Rule 1925 order, in order to adequately advise an appellant of his obligations under the rule. To essentially ignore a trial court's failure to adhere to its obligations under Rule 1925, but sanction an appellant for his failure to follow the rule, is unjust and unreasonable, particularly where, as here, the trial court's misleading order led to the very noncompliance the dissent deems sanctionable.

13 Both *Forest Highlands* and *Egan* were decided under the prior version of Rule 1925, which then provided, in relevant part:

> (a) General rule. Upon receipt of the notice of appeal the judge who entered the order appealed from, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order, or for the rulings or other matters complained of, or shall specify in writing the place in the record where such reasons may be found.
>
> (b) Direction to file statement of matters complained of. The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.

Pa.R.A.P. 1925 (1988).

14 In its Supplemental Statement in Lieu of Memorandum Opinion, the trial court cited *Schaefer v. Aames Capital Corp.*, 805 A.2d 534 (Pa.Super.2002), as additional authority for his determination that Appellants' issues were waived as a result of their failure to personally serve him with their 1925(b) Statement. Supplemental Statement in Lieu of Memorandum Opinion, 4/11/08, at 5 n.3. The trial court's order in *Schaefer* directed the appellant to file within 14 days a 1925(b) statement, "and *to serve* a copy upon this Court pursuant to Rule 1925(b) of the Rules of Appellate Procedure." *Id.* at 534 (emphasis added). *Schaefer* is distinguishable from the instant case on the same grounds that we have distinguished *Forest Highlands* and *Egan.*

15 To the extent the Superior Court characterizes Judge Stallone's order as directing Appellants to *serve* a copy of their Rule 1925(b) Statement on the trial judge, *see* ***Berg*** *v.* ***Nationwide*** *Mutual Ins. Co., Inc.*, 12 MDA 2008, at 3, 965 A.2d 285 (Pa. Super filed Nov. 12, 2008) ("in effort to comply with the trial judge's January 3, 2008 Rule 1925(b) Order directing the filing *and service* of a concise statement" (emphasis added)), such characterization is erroneous.

16 We do not mean to suggest, as Justice Baer contends in his dissent, that the trial court's order "trumps Rule 1925(b)." *See* Dissenting Opinion at 367, 6 A.3d at 1018. We simply recognize the unique position in which Appellants were placed as a result of the trial court's failure to adhere to the specific requirements of Rule 1925(b), the same rule under which the dissent concludes Appellants' issues are waived. Moreover, with regard to the dissent's suggestion that, where a rule and order are in tension, "the careful practitioner either should comply with both" or "comply with the rule and seek clarification from the issuing judge of the order," *id.*, the dissent fails to acknowledge that, under the unchallenged description of the events at the prothonotary's office, Appellants attempted to ascertain the location of the senior trial judge's chambers so that they could personally serve him with their Rule 1925(b) statement in full compliance with the rule. Appellants' efforts, however, were thwarted by the prothonotary's office, which refused to provide Appellants with a location for the trial judge, but assured Appellants that their Rule 1925(b) statement would be hand-delivered to the trial judge within ten minutes. Moreover, while the dissent suggests that Appellants, following their encounter with the prothonotary, still had a week within which they could have served the trial judge by mail, *see* Dissenting Opinion at 367-68, 6 A.3d at 1018–19, in light of the prothonotary's assurances, there would have been no reason for Appellants to suspect that the added step of service by mail was necessary. Finally, based on the strained relationship between the parties and the trial judge in the instant case, as evidenced by the correspondence to which we previously referred, helpful "clarification," *id.*, from the trial judge was not likely to be forthcoming.

17 We note that the Superior Court neither addressed nor acknowledged the deficiencies of the trial court's order under Rule 1925(b)(3). Likewise, the Superior Court did not address, in any meaningful way, Appellants' assertion in their petition to modify the record before the trial court that Appellants' counsel attempted to obtain a location for Judge Stallone so that he could personally serve him with Appellants' 1925(b) Statement, but was not provided with such a location.

18 **Nationwide** argues that Appellants cannot allege prejudice as a result of the absence of an instruction in the trial court's order that their 1925(b) Statement must be served on the trial judge, since Appellants assert that their counsel did, in fact, attempt to personally serve the trial judge with their 1925(b) Statement. Our decision is based, in part, however, on Appellants' substantial compliance with the express terms of the trial judge's order.

19 As noted, although the trial court's order failed to meet the requirements of Rule 1925(b)(3)(iii) and (iv), it is the trial court's failure to comply with subsection (b)(3)(iii) that we find directly implicated in the instant case. Therefore, we save for another day the effect of a trial court's failure to comply with subsection (b)(3)(iv), namely, the failure to specify in its Rule 1925(a) order that any issue not included in an appellant's Rule 1925(b) statement shall be deemed waived.

1 At first glance, Rule 121(a) appears inapplicable to filing Rule 1925(b) statements, which must be filed with the trial court, not the appellate court. However, Rule 1925(b)(1) explicitly requires filing of record *and service* on the trial judge to be pursuant to Rule 121(a)—this is what Appellants were required to comply with. The lead opinion contends filing and service are distinct obligations and this construction would render the service requirement superfluous. Opinion Announcing the Judgment of the Court, *slip op.* at 10–11 n.9. However, we cannot disregard the method of service designated by Rule 1925's plain language merely because such method is named "filing" or may render service superfluous. Furthermore, following Rule 1925's plain language will provide the bench and bar clarity in the proper means of serving a trial judge with a Rule 1925 statement.

2 Even if service were controlled by Rule 121(c), service "includes delivery of the copy to a clerk ... at the office of the person served," Pa.R.A.P. 121(c)(1), which in the case of a judge would seem to include the prothonotary of the court.

1 Pa. R.A.P. 1925(b)(1) provides,

> Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa. R.A.P. 121(a) and shall be complete on mailing if appellant obtains

a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa. R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa. R.A.P. 121(c).

2 Moreover, subsection (c) of the new rule permits appellate courts to remand a matter back to the trial court "for a determination as to whether a [s]tatement has been filed and/or served or timely filed and/or served," and also gives appellate courts the authority to grant *nunc pro tunc* relief to appellants wishing to amend or supplement an already timely filed and served Rule 1925(b) statement. Pa. R.A.P. 1925(c)(1)-(2).

3 Like the OAJC, I am disheartened by the hostilities that have seemingly arisen between the parties, and, most unfortunately, the trial judge. Moreover, I also join the OAJC in crediting the account of the events that occurred in the Berks County Prothonotary's Office January 17, 2008. However, under the mantra of "bad facts make bad law," I cannot ascribe to an decision, which has the potential to reinsert inconsistent results into Pennsylvania's Rule 1925 jurisprudence.

4 Indeed, I agree with the OAJC that clarification from the trial judge may not have been forthcoming in this case, due to the acrimonious relationship between the parties and the judge. *See* OAJC Op. at 1010–11 n.16. Under our jurisprudence, however, such failure by the trial judge to issue clarification would constitute a breakdown in the administration of justice, such that *nunc pro tunc* relief from an appellate court would be warranted.

I also note that, generally, Pennsylvania appellate courts have not permitted trial courts to dismiss cases for violating orders of court. *See generally Calderaio v. Ross,* 395 Pa. 196, 150 A.2d 110 (1959) (noting that dismissal is an extreme sanction); *McCarthy v. Southeastern Pennsylvania Transportation Auth.*, 772 A.2d 987 (Pa.Super.2001) (finding dismissal is the most severe of sanctions, requiring willful misconduct causing prejudice, in order to be justified); *see also Commonwealth v. Revtai,* 516 Pa. 53, 532 A.2d 1 (1987) (holding that, in the criminal context, dismissal of prosecutions based on technical violations are highly disfavored).

5 In light of the assurances by the prothonotary's clerk that the trial judge would be given the Rule 1925(b) statement within ten minutes of counsel leaving the courthouse, the OAJC takes to task my suggestion that the **Bergs** should have assured service by mailing the statement upon leaving the prothonotary's office. *See* OAJC Op. at 1010–11 n.16. Consistent with the OAJC's own analysis concerning service, however, *see* OAJC Op. at 1007 n.9, such delivery of the statement by the clerk to the trial judge would not have sufficed as service under the Pa. R.A.P. 121(a).

6 The OAJC places emphasis on the "unique position in which Appellants were placed as a result of the trial [judge's] failure to adhere to the specific requirements of Rule 1925(b)." OAJC Op. at 1010–11 n.16. Again, I am sympathetic to the potential equities of this case. In my view, however, the strict-waiver rule of *Lord* and its progeny remains crucial to the uniform administration of justice in Pennsylvania, and I cannot ascribe to a decision, which dilutes such an important facet of our jurisprudence. Contrarily, the Appellate Rules Committee can undertake the simplistic task of creating a form order for trial judges, thus insuring that this situation never arises again.

7 To that end, I would disapprove of any trial or intermediate appellate court decision to the contrary, such as *Hopfer, supra* p.5.

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