

APPELLATE

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## THE ROAD NOT TAKEN LEADS TO FORFEITURE OF AN APPEAL

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Earlier this week, the Superior Court of Pennsylvania issued a short, precedential opinion, reiterating that there are “no exceptions” to the deadline for filing a notice of appeal from a trial court’s final judgment.

In this recent case,<sup>1</sup> the appellant’s attorney claimed that he sent his notice of appeal to the trial court clerk’s office by Federal Express overnight delivery the day before the 30-day period for filing the notice expired. Yet, the notice of appeal was not docketed the next day and the attorney offered no evidence that it was actually received that day by the clerk. While some Pennsylvania appellate rules deem a filing (such as a brief) timely if sent via the United States Postal Service on the date they are due,<sup>2</sup> the default rule is that “filing shall not be timely unless the papers are received by the [clerk] within the time fixed for filing.”<sup>3</sup> The rules governing notices of appeal offer no exception to this default rule.<sup>4</sup>

Thus, the appeal was not timely and the Superior Court quashed the appeal. Interestingly, in a footnote, the court took judicial notice that the attorney’s office was only 37.7 miles from the courthouse where the notice of appeal had to be filed and that on the day the attorney purportedly sent the notice of appeal by Federal Express the weather was mild with no precipitation. In other words, the attorney presumably could have driven the notice of appeal to the courthouse that day, instead of risking that it would not arrive there via Federal Express.<sup>5</sup>

The obvious lessons from this case are that trial lawyers must be familiar with the frequently unforgiving rules that govern such important issues as the time for filing an appeal and should not unnecessarily place their case’s fate in another’s hands when they can control it (or at least prevent its premature death) themselves. ◆

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<sup>1</sup> *Cubano v. Sheehan*, No. 2055 MDA 2015 (Aug. 29, 2016).

<sup>2</sup> See, e.g., Pa. R. App. P. 2185(a)(1).

<sup>3</sup> Pa. R. App. P. 121(a).

<sup>4</sup> Pa. R. App. P. 903(a), 905(a)(1), (3).

<sup>5</sup> Like the Superior Court, we accept for the sake of this analysis the representation of appellant’s attorney that he sent the notice of appeal by Federal Express overnight mail the day before it was due, and do not mean to imply that the late filing was actually Federal Express’s fault.