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	:	IN THE COURT OF COMMON PLEAS
BOROUGH OF BATH,		
Petitioner,	:	NORTHAMPTON COUNTY,
	:	
v.	:	PENNSYLVANIA
	:	
MICHAEL LONG,	:	CIVIL DIVISION
Respondent.	:	
	:	NO. <u>No. C-48-CV-2023-10559</u>
	:	

**RESPONDENT'S MOTION TO DISMISS PETITIONER'S
APPEAL AS MOOT AND FOR LACK OF JURISDICTION
DUE TO IMPROPER SERVICE**

AND NOW COMES Respondent Michael Long ("Respondent"), proceeding pro se, hereby moves this Honorable Court to dismiss the appeal filed by Petitioner Borough of Bath ("Borough") as moot and for lack of jurisdiction due to improper service under Pa.R.A.P. 403. Respondent further requests an award of costs and expenses incurred in responding to the Borough's vexatious and bad faith conduct

in pursuing a moot appeal and failing to comply with the rules of service. In

support of this motion, Respondent avers as follows:

- 1) On December 27, 2023, the Borough filed an appeal of the Office of Open Records' ("OOR") December 1, 2023, Order, which was docketed at Borough of Bath v. Michael Long, No. C-48-CV-2023-10559 (see **Exhibit A**, Certificate of Service).
- 2) The Borough's appeal challenges the OOR's December 1, 2023, Order, which was later superseded by the OOR's January 12, 2024, Final Determination upon Reconsideration.
- 3) An actual case or controversy must exist at all stages of the judicial or administrative process. *In re Gross*, 382 A.2d 116, 119 (Pa. 1978). If events occur that eliminate the case or controversy, the case becomes moot. *Mistich v. Pa. Bd. of Prob. & Parole*, 863 A.2d 116, 119 (Pa. Commw. Ct. 2004).
- 4) The Borough's appeal of the December 1, 2023, Order became moot when the OOR issued its January 12, 2024, Final Determination upon Reconsideration, eliminating the case or controversy surrounding the December 1, 2023 Order.
- 5) Additionally, the Borough attempted to serve its appeal on Respondent via email on December 28, 2023, and by first-class mail on December 29, 2023, as evidenced by the Certificate of Service attached to its appeal (**Exhibit A**).

- 6) Pennsylvania Rule of Appellate Procedure 403 requires service of original process by "any form of mail requiring a receipt signed by the defendant or his authorized agent."
- 7) The Borough's attempt to serve its appeal via email and first-class mail does not satisfy the requirements of Pa.R.A.P. 403, as neither method requires a signed receipt from the Respondent or his authorized agent.
- 8) Failure to comply with the original process requirements of Pa.R.A.P. 403 deprives the court of jurisdiction over the Borough's appeal. *Coppola v. Coppola*, 596 A.2d 431 (Pa. Commw. Ct. 1991).
- 9) Throughout the course of this litigation, the Borough and its counsel have engaged in vexatious and bad faith conduct by pursuing a moot appeal and failing to comply with the rules of service.
- 10) Respondent, as a pro se litigant, has incurred significant costs in terms of time and resources in responding to the Borough's improper and vexatious filings.
- 11) The Borough's conduct in commencing and continuing this litigation is arbitrary, vexatious, and in bad faith, warranting the imposition of costs and expenses under 42 Pa.C.S. § 2503(9).

WHEREFORE, Respondent Michael Long respectfully requests that this Honorable Court:

- a. **DISMISS** the Borough's appeal as moot;
- b. **DISMISS** the Borough's appeal for lack of jurisdiction due to improper service under Pa.R.A.P. 403;
- c. **AWARD** Respondent reasonable costs and expenses incurred in responding to the Borough's vexatious and bad faith conduct, pursuant to 42 Pa.C.S. § 2503(9); and
- d. **GRANT** such other and further relief as the Court deems just and proper.

Respectfully submitted,

Michael Long
Pro Se Respondent

Dated: April 10, 2024

VERIFICATION

I, Michael Long, hereby verify that the statements made in the foregoing Motion to Dismiss Petitioner's Appeal as Moot and for Lack of Jurisdiction Due to Improper Service are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Michael Long

Pro Se Respondent

Date: April 10, 2024

CERTIFICATE OF SERVICE

I certify that on April 10, 2024, I served the foregoing Opposition upon counsel for
Petitioner by way of email:

J. Chadwick Schnee, Esq.

Schnee Legal Services, LLC

74 E. Main St. #648

Lititz, PA 17543

Via email: chadwick@schneelegal.com

Michael Long

Pro Se Respondent

Date: April 10, 2024

EXHIBIT

A

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Petitioner,	:	NORTHAMPTON COUNTY,
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MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-10559

CERTIFICATE OF SERVICE

I, J. CHADWICK SCHNEE, ESQ., certify that I have served a true and correct copy of the Appeal of and Petition for Review of Final Order Dated December 1, 2023 Partially Granting and Partially Denying Reconsideration, Issued by Pennsylvania Office of Open Records at OOR Dkt. AP 2023-1598 to the following:

Via email on 12/28/23 and First Class Mail on 12/29/23:

Michael Long
220 Creek Road
Bath, PA 18014
michael.long479@gmail.com
Respondent, *pro se*

Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
oor-postfd@pa.gov

2024 JAN - 2 P 12: 29
FILED
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.