

Michael Long, Pro Se
220 Creek Road
Bath, PA 18014
(610)507-3721
Michael.Long479@gmail.com

	:	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-2023-9734</u>
	:	

**RESPONSE TO PETITIONER'S RESPONSE TO MOTION TO DISMISS
FOR LACK OF JURISDICTION**

NOW COMES the Respondent, Michael Long, pro se, and respectfully submits this Response to Petitioner Borough of Bath's Response to the Motion to Dismiss for Lack of Jurisdiction. In support thereof, the Respondent states as follows:

Jurisdiction and Final Determination

1. Respondent reasserts that appellate jurisdiction requires a final, operative order. The appeal of the November 3, 2023, determination is invalid as it was superseded by the January 12, 2024, final determination upon reconsideration, which

constitutes the final order for purposes of appeal under the Right-to-Know Law, 65 P.S. § 67.1301(a). According to *Pa.R.A.P. 341*, an appeal may be taken as of right from any final order of a government unit. **The January 12, 2024, Final Determination upon Reconsideration is the valid final order, not the inoperative November 3, 2023, Determination.** See 210 Pa. Code § 341.

Procedural Compliance

2. In addition to the jurisdictional defect of appealing from an inoperative order, the Borough failed to comply with *Pa.R.A.P. 1701(b)(3)* by not filing the required praecipe, rendering their appeal procedurally defective. *Pa.R.A.P. 1701(b)(3)* clearly states that "a timely order granting reconsideration...shall render inoperative any such notice of appeal or petition for review...theretofore or thereafter filed or docketed with respect to the prior order." Furthermore, the rule requires the petitioning party to file a praecipe with the prothonotary to note that the notice or petition has been stricken. **The Borough's failure to comply with this procedural requirement further supports the argument that the appeal is invalid.** See 210 Pa. Code § 1701(b)(3).

Distinguish from Chambersburg Case

3. The Chambersburg case is distinguishable from the present matter, as it pertains to procedural nuances in a different context and does not negate the fundamental requirement for a final operative order for appellate jurisdiction. In *Chambersburg*

Area Sch. Dist. v. Dorsey, the court noted that neither the Rules of Civil Procedure nor the Rules of Appellate Procedure apply to Right-to-Know Law appeals in the Court of Common Pleas. However, this case does not address the specific applicability of *Pa.R.A.P. 1701(b)(3)* to the current appeal, which involves the essential jurisdictional requirement for a final operative order, not merely a procedural technicality. *See Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281 (Pa. Commw. 2014).

4. While the Borough argues that, *Pa.R.A.P. 103* states the Rules of Appellate Procedure do not apply to county courts of common pleas, this argument fails to consider the specific applicability of *Pa.R.A.P. 1701(b)(3)* to the present case. **The rule's requirement for a final operative order is crucial for establishing appellate jurisdiction, as it goes to the heart of the court's authority to hear the appeal.** The Borough's appeal from an inoperative order is improper and fails to invoke the court's jurisdiction.

Burden of Proof

5. The burden is on the Borough to establish that the Commonwealth Court has jurisdiction over its appeal. In *In re Administrative Order No. 1-MD-2003*, the court emphasized that **the party seeking to invoke the court's jurisdiction bears the burden of establishing it.** Similarly, in *Wirth v. Commonwealth*, the court noted that **the burden of proving jurisdiction rests with the party asserting it.** The Borough has failed to meet this burden, as it has not demonstrated that its

appeal from an inoperative order is sufficient to establish appellate jurisdiction. *See In re Administrative Order No. 1-MD-2003, 936 A.2d 1 (Pa. 2007); Wirth v. Commonwealth, 95 A.3d 822 (Pa. 2014).*

Conclusion

6. In conclusion, the Borough has failed to meet its burden of establishing jurisdiction for its appeal. **The appeal is improper because it challenges an inoperative order, fails to comply with procedural requirements, and does not satisfy the fundamental prerequisite of a final operative order for appellate jurisdiction.** Accordingly, Respondent respectfully requests that this Honorable Court:

WHEREFORE, Respondent respectfully requests that this Honorable Court:

1. Dismiss the Borough of Bath's appeal for lack of jurisdiction;
2. Vacate the Borough's premature Praecipe for Pre-Trial Conference; and
3. Grant any other relief that this Honorable Court deems just and proper.

Respectfully submitted,



/s/ Michael Long

June 6, 2024
Michael Long
Pro Se Respondent
220 Creek Road
Bath, PA 18014
(610) 507-3721

Verification

I, Michael Long, verify that the statements made in this RESPONSE TO PETITIONER'S RESPONSE TO MOTION TO DISMISS FOR LACK OF JURISDICTION are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, consisting of a stylized 'M' and 'L' followed by a long horizontal stroke extending to the right.

/s/ Michael Long

June 6, 2024

Certificate of Service

I certify that on June 6, 2024, I served a true and correct copy of the foregoing Motion to Dismiss upon counsel for the Petitioner via email:

J. Chadwick Schnee, Esq.

Schnee Legal Services LLC

74 E. Main St. #648

Lititz, PA 17543

chadwick@schneelegal.com

A handwritten signature in black ink, appearing to be 'M Long', written over a horizontal line.

/s/ Michael Long

June 6, 2024