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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Petitioner Borough of Bath's Motion to Strike Answer, Preliminary Objections and Counterclaim and any response thereto, the Motion is hereby GRANTED.

\_\_\_\_\_  
, J.

J. Chadwick Schnee, Esquire (PA 306907)  
Schnee Legal Services, LLC  
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Lititz, PA 17543  
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FILED  
2024 FEB 21 A 10:59  
COURT OF COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY, PA  
Attorney for Petitioner

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

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**MOTION TO STRIKE “ANSWER, PRELIMINARY OBJECTIONS AND COUNTERCLAIM”**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Motion to Strike “Answer, Preliminary Objections and Counterclaim,” averring as follows:

1. This matter is a statutory appeal from a Final Determination issued by the Office of Open Records (“OOR”) concerning records under the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*

2. As a statutory appeal, neither the Rules of Civil Procedure nor the Rules of Appellate Procedure Apply. *See Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.), *aff’d*, 97 A.3d 1281 (Pa.Cmwlt. 2014); *Kurowski v. Office of Open Records*, No. 2289 C.D. 2012, 2013 WL 6858424, at \*2 n.7 (Pa.Cmwlt. 2013) (unreported) (“The Rules of Civil Procedure, however, do not apply to statutory appeals.”) (citing *In re Appeal of Churchill*, 575 A.2d 550, 553 (Pa. 1990)).

3. On or about January 10, 2024, Respondent Michael Long (“Respondent”) filed a document titled “Answer, Preliminary Objections, and Counterclaim” with this Court.

4. Although the Rules of Civil Procedure are inapplicable here, the Borough notes that Pa. R.Civ.P. 1017 contemplates the filing of individual documents, rather than one document containing various types of pleadings. *See generally* Pa. R.Civ.P. 1017 (referencing “an answer” and “a preliminary objection” and “a counterclaim”).

5. Preliminary objections are governed by Pa. R.Civ.P. 1028 and N.C.R. Civ.P. N1028(c).

6. As preliminary objections are governed by the Rules of Civil Procedure and the Rules of Civil Procedure do not apply to this statutory appeal, to the extent that Respondent intended to set forth preliminary objections in his January 10, 2024 filing, Respondent’s preliminary objections should be stricken for failure to conform to law.

7. Further, N.C.R. Civ.P. N1028(c)(2) requires preliminary objections to be “endorsed with a notice to plead because the objections involve issues that cannot be determined from facts of record....”

8. Here, among other assertions, Respondent alleges that he is raising an “Objection to Borough’s Assertions of Non-existence of Non-email Records.” *See* Paragraph 4 of “Preliminary Objections” portion of Respondent’s “Answer, Preliminary Objections, and Counterclaim.”

9. To the extent that Respondent could even file preliminary objections in this statutory appeal, Respondent’s filing does not contain a notice to plead as required by N.C.R. Civ.P. N1028(c)(2).

10. Additionally, Respondent has not filed a brief with his preliminary objections. *See* .C.R. Civ.P. N1028(c)(1)(a) (“If a brief is not filed in accordance with this rule, the preliminary objections shall be dismissed by the court...”).

11. Because preliminary objections are not proper in a statutory appeal and Respondent has not complied with local rules governing the process for disposing of preliminary objections, the Borough respectfully asks that Respondent’s January 10, 2024 filing be stricken.

12. Additionally, Respondent purports to raise various matters in a counterclaim.

13. Like preliminary objections, counterclaims are governed by the Rules of Civil Procedure.

14. Specifically, under Pa. R.Civ. P. 1031(a), a “defendant” may file a counterclaim “any cause of action cognizable in a civil action which the defendant has against the plaintiff...”

15. As this matter is a statutory appeal under a petition for review, however, Respondent is a “respondent,” as opposed to a “defendant.”

16. To the extent that the issues Respondent attempts to raise in its counterclaim involve the underlying final determination appealed by the Borough, Respondent could have filed a cross-petition for review “within 14 days of the date on which” the Borough’s “petition for review was served.” *See generally* Pa. R.A.P. 1512(a)(2).

17. Respondent, however, did not file a cross-petition for review of the underlying Final Determination under review.

18. Accordingly, to the extent that Respondent argues that the OOR erred,<sup>1</sup> Respondent has waived all objections to the underlying Final Determination by failing to timely appeal or cross-appeal.

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<sup>1</sup> For example, Respondent argues that the OOR erred by not finding that the Borough acted in bad faith, and, by not appealing that issue, such issue has been waived.

19. Additionally, Respondent does not raise any causes of action against the Borough in the “Counterclaim” section of his January 10, 2024 filing.

20. Instead, Respondent appears to set forth a variety of arguments concerning why he believes the Final Determination is correct and seeks relief that is not available under the RTKL or any other statute. *See* Paragraphs 20-21 of “Counterclaim” portion of Respondent’s “Answer, Preliminary Objections, and Counterclaim” (asking for “tailored discovery and forensic scrutiny” and a “comprehensive investigation and forensic audit”).

21. While the Borough recognizes that Respondent is *pro se* in this matter, Respondent must still abide by applicable rules of pleading.

22. By combining an answer, preliminary objections and a counterclaim into one document in this statutory appeal, Respondent has utterly muddied the procedural waters and unduly required the Borough to sift through the procedural morass to determine what allegations, if any, are properly before this Court.

23. In the interest of clarity and complying with the applicable rules of pleading, the Borough respectfully asks this Honorable Court to strike Respondent’s January 10, 2024 filing, with permission to file an answer to the Petition for Review within 20 days of this Court’s order.

**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order striking Respondent’s January 10, 2024 “Answer, Preliminary Objections, and Counterclaim,” in addition to granting the Borough whatever additional relief this Court deems appropriate.

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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

By: 

J. Chadwick Schnee, Esquire  
PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: February 16, 2024

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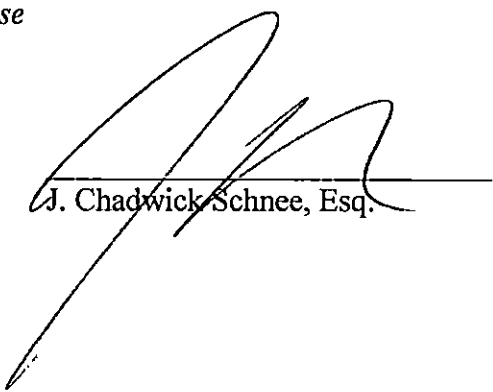
BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-10559

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 16<sup>th</sup> day of February, 2024, I have served a true and correct copy of the attached Motion to Strike Answer, Preliminary Objections and Counterclaim on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.

---

BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

---

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Petitioner Borough of Bath's Motion to Strike Praecipe to Strike Appeal and any response thereto, the Motion is hereby GRANTED.

\_\_\_\_\_  
, J.



FILED

2024 FEB 21 A 10:59

COURT OF COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY, PA

Attorney for Petitioner

J. Chadwick Schnee, Esquire (PA 306907)  
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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

---

**MOTION TO STRIKE PRAECIPE TO STRIKE APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Motion to Stike Praecipe to Strike Appeal, averring as follows:

1. On or about January 10, 2024, Respondent Michael Long (“Respondent”) filed a document titled “Praecipe to Strike Appeal” with this Court.
2. In his “Praecipe to Strike Appeal,” Respondent cites *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) as containing “codified rehearing procedures [that] ... automatically render[] the initial” Final Determination issued by the Office of Open Records “non-binding pending agency review.”
3. However, *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) does not in any way reference rehearings, reconsideration or 1 Pa. Code § 35.241, as it, instead, is an appeal from a child dependency matter.

4. Additionally, Respondent cites *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) for the proposition that “parallel premature appeals at interim stages splinter court focus delaying outcomes.”

5. However, *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) has nothing to do with “parallel premature appeals,” as it, instead, involves an appeal from a judgment of non pros and various equitable considerations.

6. Respondent cites no other caselaw in support of his Petition to Strike Appeal, and the caselaw cited in no way stand for the various propositions asserted.

7. Further, while this is a statutory appeal where neither the Rules of Civil Procedure nor the Rules of Appellate Procedure apply,<sup>1</sup> Respondent cites no authority permitting him to file a praecipe seeking to strike the Borough’s appeal, as opposed to a motion.

8. To the extent that Respondent intended to file a motion, Respondent has not complied with N.C.R. Civ.P. No. N208.3(a), §§ 1-3 by providing notice to the Borough and including the required materials.

9. Further, although counsel for the Borough has entered his appearance on behalf of the Borough, Respondent’s Certificate of Service states that it was, at some unidentified date, served on the Borough Manager, rather than counsel. *See* Pa. R.Civ. P. 440(a)(1)(i) (requiring service to be made “at the address of the party’s attorney of record).

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<sup>1</sup> *See Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.), *aff’d*, 97 A.3d 1281 (Pa.Cmwlth. 2014); *Kurowski v. Office of Open Records*, No. 2289 C.D. 2012, 2013 WL 6858424, at \*2 n.7 (Pa.Cmwlth 2013) (unreported) (“The Rules of Civil Procedure, however, do not apply to statutory appeals.”) (citing *In re Appeal of Churchill*, 575 A.2d 550, 553 (Pa. 1990)).

10. As Respondent's Praeipce to Strike fails to conform to law and contain misstatements of the law,<sup>2</sup> the Borough respectfully asks this Honorable Court to strike Respondent's Praeipce to Strike Appeal.

**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order striking Respondent's January 10, 2024 Praeipce to Strike Appeal.

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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

By: 

J. Chadwick Schnee, Esquire  
PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: February 16, 2024

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<sup>2</sup> The Borough reserves the right to seek counsel fees and reasonable costs under 42 P

7  
9

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-9734

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 16<sup>th</sup> day of February, 2024, I have served a true and correct copy of the attached Motion to Strike Praecipe to Strike Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.

---

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

---

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Respondent’s Motion to Quash Appeal and the Borough of Bath’s response thereto, the Motion is hereby DENIED and a SANCTION is hereby imposed against Respondent, per Section 2503(9) of the Judicial Code, by awarding Petitioner Borough its reasonable counsel fees and costs for Petitioner Borough’s instant answer and prosecution of same. Petitioner Borough is directed to prepare and file a Motion (together with Affidavit of Petitioner Borough’s counsel fees and costs) and submit a proposed Order for the Court to determine the amount of Petitioner Borough’s reasonable counsel fees the Court will order as a sanction against Respondent per Section 2503(9) of the Judicial Code.

\_\_\_\_\_  
, J.

JP

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2024 MAR 18 11:29  
FILED  
Attorney for Petitioner  
COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY, PA

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

---

**ANSWER TO MOTION TO QUASH APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Answer to Motion to Quash Appeal, averring as follows:

1. Admitted.
2. Denied. The Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, request filed by Respondent Michael Long is a writing that speaks for itself, and any characterization thereof is specifically denied.
3. Admitted in part and denied in part. It is admitted that, on November 3, 2023, the Office of Open Records (“OOR”) issued a Final Determination in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1598 (“*Long*”). The remaining averments are specifically denied, as *Long* is a writing that speaks for itself, and any characterization thereof is specifically denied.

4. Denied. Respondent did not seek a rehearing of *Long*. By way of further answer, Petitioner sought reconsideration of *Long*, and, on December 1, 2023, the OOR purported to “partially grant” Petitioner’s Petition for Reconsideration.

5. Admitted in part and denied in part. It is admitted that Petitioner, in accordance with 65 P.S. § 67.1302(a), filed a statutory appeal of *Long* on December 1, 2023, which is pending before this Court at *Borough of Bath v. Michael Long*, C-48-2023-09734. The remaining averments of this paragraph are conclusions of law to which no responsive pleading is required and are specifically denied.

6. Admitted in part and denied in part. It is admitted that Petitioner, in accordance with 65 P.S. § 67.1302(a), filed the instant statutory appeal of the OOR’s December 1, 2023 “partial grant” of Petitioner’s Petition for Reconsideration. The remaining averments of this paragraph are conclusions of law to which no responsive pleading is required and are specifically denied.

7. Denied. *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) does not in any way reference 1 Pa. Code § 35.241, nor does it opine in any way about whether “the original decision becomes inoperative for appeal purposes once reconsideration commences.” Instead, it is an appeal from a child dependency matter. “Section 2503(9) of the Judicial Code allows imposition of fees and costs for conduct that is ‘otherwise ... in bad faith.’” *Cnty. of Fulton v. Sec’y of Commonwealth*, 292 A.3d 974, 1062 (Pa.), cert. denied sub nom. *Fulton Cnty., Pennsylvania v. Sec’y of the Commonwealth of Pennsylvania*, 144 S. Ct. 283 (2023). The term “bad faith” means fraud, dishonestly or corruption. *Id.* Respondent citing *In re S.S.* is wholly inaccurate and dishonest.

8. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, the instant Petition for Review is properly before this Court where the OOR purported to “partially” grant reconsideration.

9. Denied. The exhibit referenced in this paragraph has been omitted from Respondent’s filing, and, accordingly, Petitioner lacks knowledge as to what information is being referenced in this paragraph. Accordingly, the averments of this paragraph are specifically denied.

10. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, the Petition for Review of *Long* was timely filed on December 1, 2023. Additionally, the instant Petition for Review of the OOR’s final order purportedly partially granting reconsideration was timely filed within 30 days of the OOR’s December 1, 2023 decision.

11. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, the Petition for Review of *Long* was timely filed on December 1, 2023. Additionally, the instant Petition for Review of the OOR’s final order purportedly partially granting reconsideration was timely filed within 30 days of the OOR’s December 1, 2023 decision.

12. Denied. *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) has nothing to do with “parallel court Appeals of non-final decisions risk confusion and erosion of orderly dispute resolution,” as it, instead, involves an appeal from a judgment of non pros and various equitable considerations. “Section 2503(9) of the Judicial Code allows imposition of fees and costs for conduct that is ‘otherwise ... in bad faith.’” *Cnty. of Fulton v. Sec’y of Commonwealth*, 292 A.3d 974, 1062 (Pa.), cert. denied sub nom. *Fulton Cnty., Pennsylvania v. Sec’y of the Commonwealth of Pennsylvania*, 144 S. Ct. 283 (2023). The term “bad faith” means fraud, dishonestly or corruption. *Id.* Respondent citing *Jacobs* is wholly inaccurate and dishonest.

13. Denied as a conclusion of law to which no responsive pleading is required.

14. Denied as a conclusion of law to which no responsive pleading is required.

15. Denied as a conclusion of law to which no responsive pleading is required.

16. Denied as a conclusion of law to which no responsive pleading is required.

17. It is admitted that Respondent seeks relief; however, it is specifically denied that Respondent is entitled to any of the relief sought. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

18. Although it is unclear as to what relief Respondent seeks, it is admitted that Respondent seeks relief; however, it is specifically denied that Respondent is entitled to any of the relief sought. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

19. Although it is unclear as to what relief Respondent seeks, it is admitted that Respondent seeks relief; however, it is specifically denied that Respondent is entitled to any of the relief sought. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

20. Although it is unclear as to what relief Respondent seeks, it is admitted that Respondent seeks relief; however, it is specifically denied that Respondent is entitled to any of the relief sought. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

21. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

22. Although it is unclear as to what relief Respondent seeks, it is admitted that Respondent seeks relief; however, it is specifically denied that Respondent is entitled to any of the

relief sought. By way of further answer, Respondent has not cited any applicable legal authority relative to the relief sought.

**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order denying Respondent's January 10, 2024 Motion to Quash Appeal and sanctioning Respondent, per Section 2503(9) of the Judicial Code, by awarding Petitioner Borough its reasonable counsel fees and costs for Petitioner Borough's instant answer and prosecution of same.

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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

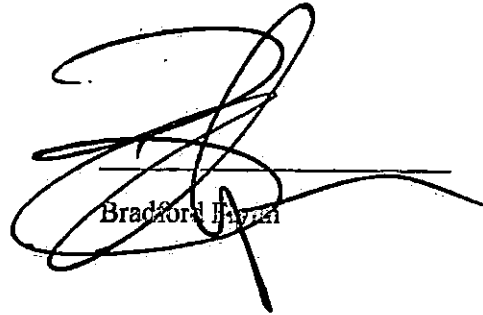
By: 

J. Chadwick Schnee, Esquire  
PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: March 15, 2024

**VERIFICATION**

I, Bradford Flynn, hereby verify that the statements made in the attached document 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.



Bradford Flynn

Date: March 15, 2024

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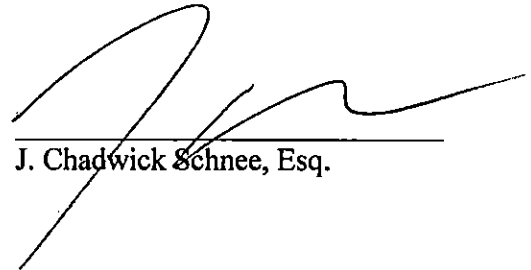
BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 15th day of February, 2024, I have served a true and correct copy of the attached Answer to Motion to Quash Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



---

J. Chadwick Schnee, Esq.

---

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

---

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Petitioner Borough of Bath’s Motion to Strike Respondent’s Motion to Quash Appeal and any response thereto, the Motion to Strike is hereby GRANTED. Petitioner Borough is directed to prepare and file a Motion (together with Affidavit of Petitioner Borough’s counsel fees and costs) and submit a proposed Order for the Court to determine the amount of Petitioner Borough’s reasonable counsel fees the Court will order as a sanction against Respondent per Section 2503(9) of the Judicial Code.

\_\_\_\_\_  
, J.

(H)

J. Chadwick Schnee, Esquire (PA 306907)  
Schnee Legal Services, LLC  
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FILED  
2024 MAR 29  
COURT OF COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY  
Attorney for Petitioner

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

**MOTION TO STRIKE MOTION TO QUASH APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Motion to Stike Motion to Quash Appeal, averring as follows:

1. On or about January 10, 2024, Respondent Michael Long (“Respondent”) filed a Motion to Quash Appeal with this Court.
2. In his Motion, Respondent cites *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) for the proposition that it “pronounced based on underlying 1 Pa. Code § 35.241 provisions, the original decision becomes inoperative for appeal purposes once reconsideration commences....”
3. However, *In re S.S.* does not in any way reference 1 Pa. Code § 35.241, nor does it opine in any way about whether “the original decision becomes inoperative for appeal purposes once reconsideration commences.” Instead, it is an appeal from a child dependency matter.
4. Additionally, Respondent cites *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) for the proposition that “parallel court Appeals of non-final decisions risk confusion and erosion of orderly dispute resolution.”

5. However, *Jacobs* has nothing to do with “parallel court Appeals ...,” as it, instead, involves an appeal from a judgment of non pros and various equitable considerations.

6. “Section 2503(9) of the Judicial Code allows imposition of fees and costs for conduct that is ‘otherwise ... in bad faith.’” *Cnty. of Fulton v. Sec’y of Commonwealth*, 292 A.3d 974, 1062 (Pa.), *cert. denied sub nom. Fulton Cnty., Pennsylvania v. Sec’y of the Commonwealth of Pennsylvania*, 144 S. Ct. 283 (2023).

7. The term “bad faith” means fraud, dishonestly or corruption. *Id.*

8. Here, the Respondent cites cases (*In re S.S.* and *Jacobs*) and offers alleged summaries of such cases that are wholly inaccurate and dishonest.

9. As Respondent cites no other caselaw in support of his Motion to Quash Appeal and the caselaw cited in no way stands for the various propositions asserted, a sanction of Petitioner’s reasonable counsel fees and costs should be imposed against Respondent.

10. Additionally, Respondent has not complied with N.C.R. Civ.P. No. N208.3(a), §§ 1-3 by providing notice to the Borough and including the required materials.

11. Further, although counsel for the Borough has entered his appearance on behalf of the Borough, Respondent’s Certificate of Service states that it was, at some unidentified date, served on the Borough Manager, rather than counsel. *See* Pa. R.Civ. P. 440(a)(1)(i) (requiring service to be made “at the address of the party’s attorney of record).

12. As Respondent’s Motion to Quash fails to conform to law and contains wholly inaccurate, dishonest misstatements of the law, the Borough respectfully asks this Honorable Court to strike Respondent’s Motion to Quash Appeal and impose a sanction against Respondent of Petitioner Borough’s reasonable counsel fees and costs.

**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order striking Respondent's January 10, 2024 Motion to Quash Appeal and sanctioning Respondent, per Section 2503(9) of the Judicial Code, by awarding Petitioner Borough its reasonable counsel fees and costs for Petitioner Borough's instant motion and prosecution of same.

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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

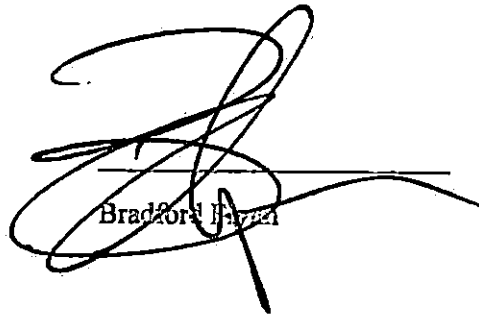
By: 

J. Chadwick Schnee, Esquire  
PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: March 15, 2024

**VERIFICATION**

I, Bradford Flynn, hereby verify that the statements made in the attached document 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.



Bradford Flynn

Date: March 15, 2024

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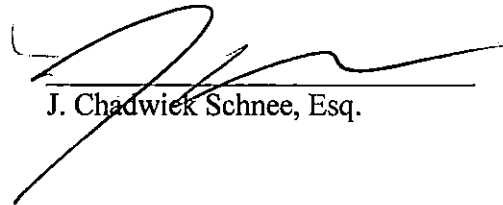
BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-10559

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 15th day of March, 2024, I have served a true and correct copy of the attached Motion to Strike Motion to Quash Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.

---

BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2024-01039

---

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Petitioner Borough of Bath’s Motion to Quash Cross-Appeal of Michael Long and any response thereto, the Motion is hereby GRANTED.

\_\_\_\_\_  
, J.

HP

J. Chadwick Schnee, Esquire (PA 306907)  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
(717) 400-5955  
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chadwick@schneelegal.com

2024 MAR 18 A 29  
COURT OF COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY, PA  
Attorney for Petitioner

BOROUGH OF BATH, : IN THE COURT OF COMMON PLEAS  
Petitioner, :  
 : NORTHAMPTON COUNTY,  
 : PENNSYLVANIA  
 v. : CIVIL DIVISION  
MICHAEL LONG, :  
Respondent. : NO. C-48-CV-2024-01039

**MOTION TO QUASH CROSS-APPEAL OF MICHAEL LONG**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Motion to Quash Cross-Appeal of Michael Long, averring as follows:

1. On January 12, 2024, the Pennsylvania Office of Open Records issued a final order in *Long v. Bath Borough*, OOR Dkt. AP 2023-1598R (“*Long*”).
2. The Pennsylvania Right-to-Know Law provides that parties may file appeals from final orders issued by the Office of Open Records within thirty days of issuance. *See* 65 P.S. § 67.1302(a).
3. On February 9, 2024, Petitioner filed a timely appeal of *Long*, which was docketed before this Court at *Borough of Bath v. Michael Long*, No. C-48-CV-2024-01039.
4. Petitioner served a copy of its appeal on Long on February 12, 2024.
5. The last day to have filed an appeal of *Long* was Monday, February 12, 2024.
6. Respondent Michael Long (“Respondent”) did not file an appeal by February 12, 2024.

7. Instead, Respondent waited until March 1, 2024 to file a “Cross-Appeal of and Petition for Review of Final Determination upon Reconsideration Dated January 12, 2024, Issued by Pennsylvania Office of Open Records at OOR Docket No. AP 2023-1598.”

8. To the extent that the Rules of Appellate Procedure apply in this statutory appeal, Pa.R.A.P. 1512(a)(2) provides that parties may file cross appeals “within 14 days of the date on which the first petition for review was served...”

9. As service occurred on February 14, 2024, Respondent had until February 28, 2024 to file a cross appeal.

10. As Respondent did not timely file a cross appeal of *Long*, his cross appeal should be quashed.

11. Additionally, to the extent that the Rules of Appellate Procedure apply in this statutory appeal, Respondent did not comply with Pa.R.A.P. 1513(d)(7) by providing a copy of decision in *Long*.

12. As the cross appeal is not timely and Respondent has not provided a copy of the decision in *Long*, Petitioner asks that the cross appeal be quashed.

**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order striking Respondent’s Cross-Appeal of and Petition for Review of Final Determination upon Reconsideration Dated January 12, 2024, Issued by Pennsylvania Office of Open Records at OOR Docket No. AP 2023-1598.”

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

By:   
J. Chadwick Schnee, Esquire

PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: March 15, 2024

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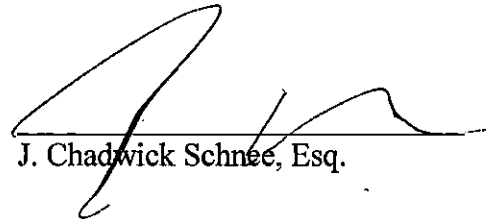
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v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2024-01039

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 15<sup>th</sup> day of March, 2024, I have served a true and correct copy of the attached Motion to Quash Cross-Appeal of Michael Long on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



J. Chadwick Schnee, Esq.

J. Chadwick Schnee, Esquire (PA 306907)  
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*Attorney for Petitioner*

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

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

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Response to Respondent’s Motion to Dismiss Petitioner’s Appeal as Moot and for Lack of Jurisdiction due to Improper Service, averring as follows:<sup>1</sup>

1. Admitted.
2. It is admitted that this appeal challenges a December 1, 2023 final determination issued by the Office of Open Records (“OOR”). The remaining averments are denied as conclusions of law to which no responsive pleading is required.
3. Admitted.
4. Denied as a conclusion of law to which no responsive pleading is required.

---

<sup>1</sup> In the opening paragraph to Respondent’s Motion, Respondent cites “Pa.R.A.P. 403,” which is a rule that does not exist. It is assumed that Respondent may have intended to cite Pa.R.Civ.P. 403; however, as this is a statutory appeal, the Rules of Civil Procedure do not apply.

5. Admitted. By way of further answer, the Borough successfully served Respondent via e-mail and First Class Mail.

6. Denied. Pennsylvania Rule of Appellate Procedure 403 does not exist. Even if it did, neither the Rules of Appellate Procedure nor the Rules of Civil Procedure apply to the instant statutory appeal. Further, as an appeal, "original process" does not apply to this matter.

7. Denied. The averments of Paragraph 6 are incorporated herein by reference.

8. Denied as a conclusion of law to which no responsive pleading is required. The averments of Paragraph 6 are incorporated herein by reference.

9. Denied. The averments of Paragraph 6 are incorporated herein by reference.

10. Denied. Strict proof thereof is demanded at trial.

11. Denied as a conclusion of law to which no responsive pleading is required.

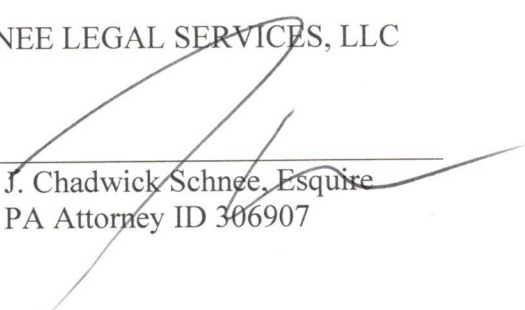
**WHEREFORE**, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order denying Respondent's Motion to Dismiss Petitioner's Appeal as Moot and for Lack of Jurisdiction due to Improper Service.

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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC

By:

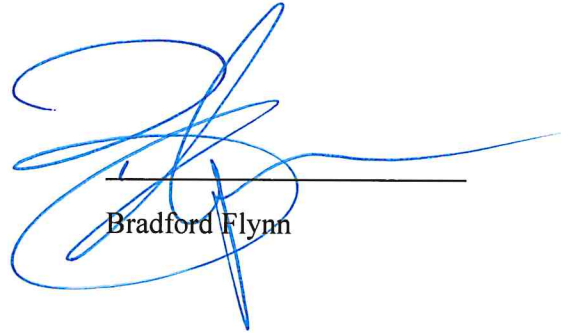
  
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Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: May 17, 2024

**VERIFICATION**

I, Bradford Flynn, hereby verify that the statements made in the attached document 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.



Bradford Flynn

Date: May 17, 2024

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

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 17<sup>th</sup> day of May, 2024, I have served a true and correct copy of the attached this Response to Respondent's Motion to Dismiss Petitioner's Appeal as Moot and for Lack of Jurisdiction due to Improper Service on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.

J. Chadwick Schnee, Esquire (PA 306907)  
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(717) 400-5955  
Fax: (717) 882-5271  
chadwick@schneelegal.com

*Attorney for Petitioner*

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2024-01039

**RESPONSE TO RESPONDENT’S MOTION TO FOR LEAVE TO FILE APPEAL NUNC  
PRO TUNC DUE TO COURT ERROR AND TO DISMISS PETITIONER’S APPEAL  
FOR LACK OF JURISDICTION**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Response to Respondent’s Motion To For Leave To File Appeal Nunc Pro Tunc Due To Court Error And To Dismiss Petitioner’s Appeal For Lack Of Jurisdiction, averring as follows:

1. Admitted in part and denied in part. It is admitted that the Borough timely filed an appeal and paid a filing fee. It is denied that “a copy of the court docket showing the Borough’s timely filing and payment of the fee” is attached to Respondent’s Motion at Exhibit A, as, instead, what appears to be a printout of a driving history from Google is attached at Exhibit A.

2. Denied. Exhibit B is a document with a heading of “Print and Payment History,” rather than “Google location data.” Exhibit C is a preview page from the Certificate of Service for the Borough’s timely appeal. The Borough is without knowledge as to whether Respondent “arrived at the courthouse on February 12, 2024” with the intent to “file an appeal” and therefore specifically denies the same. Strict proof thereof is demanded at trial.

3. Denied. The Borough is without knowledge as to whether Respondent attempted to file an appeal on February 12, 2024, whether he was “erroneously informed by court staff that a filing fee was required,” that he was “prevented” from filing an appeal due to an “inability to pay by cash or money order” or any information contained within Respondent’s self-serving declaration attached at Exhibit D to Respondent’s Motion and therefore specifically denies the same. By way of further answer, the Borough is of the belief that filing fees are required to be paid, both by appellants and those seeking to cross-appeal, and, accordingly, there was no error on the part of court staff.

4. Denied. The Borough is without knowledge as to “Respondent’s diligent efforts to file an appeal,” and therefore specifically denies the same. By way of further answer, Exhibit E appears to be a screenshot of two items filed by the Borough on February 9, 2024, rather than any documentation “showing the preparation of appeal documents” as alleged.

5. Denied. While *nunc pro tunc* relief is permitted in extraordinary circumstances, no “court error or misdirection by court personnel” occurred in this matter, as the unidentified court staff appear to have properly advised Respondent that a filing fee was required in order to file a cross-appeal. By way of further answer, *Bass v. Commonwealth*, 401 A.2d 1133 (Pa. 1979) (cited in this paragraph) involved the granting of *nunc pro tunc* relief due to a non-negligent circumstance involving the illness of a law firm’s secretary, rather than being “unintentionally misled by officials as to the proper procedure for filing an appeal” as alleged by Respondent.

6. Denied. By way of further answer, the Borough is of the belief that filing fees are required to be paid, both by appellants and those seeking to cross-appeal, and, accordingly, there was no error on the part of court staff. As the advice purportedly provided by unidentified court staff is accurate, no error occurred to justify *nunc pro tunc* relief.

5. Admitted. By way of further answer, the Borough successfully served Respondent via e-mail and First Class Mail.

6. Denied. Pennsylvania Rule of Appellate Procedure 403 does not exist. Even if it did, neither the Rules of Appellate Procedure nor the Rules of Civil Procedure apply to the instant statutory appeal. Further, as an appeal, "original process" does not apply to this matter.

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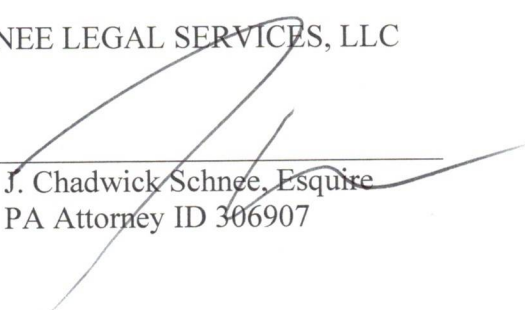
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SCHNEE LEGAL SERVICES, LLC

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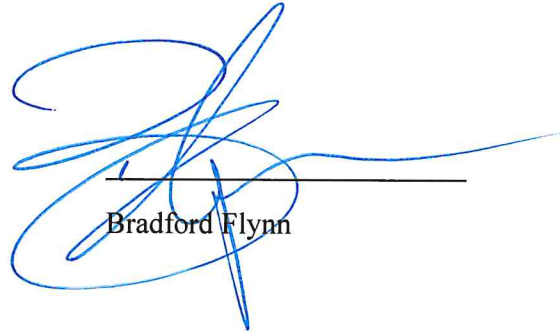
  
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[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)

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Bradford Flynn

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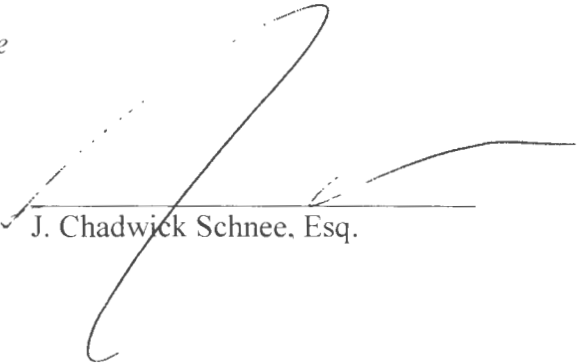
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