
BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA CIVIL DIVISION
v.	:	
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 for Sanctions and any response thereto, the Motion is hereby GRANTED. Sanctions are hereby imposed on Respondent in the amount of \$9,601.11.

, J.

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

Attorney for Petitioner

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

MOTION FOR SANCTIONS

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

1. This matter is a statutory appeal filed by the Borough of a Final Determination Upon Reconsideration issued by the Pennsylvania Office of Open Records (“OOR”) in *Long v. Borough of Bath*, OOR Dkt. AP 2024-1598R (“*Long*”) on January 12, 2024 concerning whether certain identified attorney-client privileged records are partially subject to public access under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* in relation to a May 17, 2023 RTKL request filed by Respondent Micheal Long (“Respondent”).

2. The sole question raised in the Borough’s Petition for Review (and, accordingly, the sole issue before this Court) is whether the attorney-client privileged emails (and email attachments) identified on the Borough’s privilege log are wholly protected by attorney-client privilege. *See* February 9, 2024 Borough Petition for Review; *see also Long, supra*.

3. Notwithstanding the narrow legal issue before this Court, Respondent filed two wholly-irrelevant motions before this Court: a September 10, 2024 Motion for Protective Order, Sanctions, and Injunctive Relief (“Motion for Protective Order”) and a September 12, 2024 Motion for Appointment of Court Experts (“Motion for Experts”).

4. On September 24, 2024, the Borough hand-delivered two (2) written demands to Respondent to withdraw his Motion for Protective Order and Motion for Experts. True and correct copies of these written demands are attached hereto at Exhibit A.

5. On September 30, 2024, the Borough filed a response to Respondent’s Motion for Protective Order.

6. On October 3, 2024, the Borough filed a response to Respondent’s Motion for Experts.

7. On October 3, 2024, Respondent filed a document purporting to be a legal brief in support of his Motion for Protective Order.

8. On October 4, 2024, Respondent filed a document purporting to be a legal brief in support of his Motion for Experts.

9. On October 10, 2024, the Borough filed a legal brief in opposition to Respondent’s Motion for Protective Order.

10. On October 10, 2024, the Borough filed a legal brief in opposition to Respondent’s Motion for Experts.

11. On October 17, 2024, Respondent filed three (3) reply briefs, and Respondent’s Reply Brief in connection with his Motion for Protective Order falsely represents that both 65 P.S. § 67.1302(a) and *City of Philadelphia v. Schweiker*, 858 A.2d 75 (Pa. 2004) contain language that they do not. The Borough notes that Respondent’s reply briefs were not permitted under this

Court's local rules and has advised Respondent of the same. The Borough reserves the right to seek sanctions in connection with Respondent's reply briefs.

12. The RTKL does not provide the legal remedy of a protective order or the appointment of experts. *See generally* 65 P.S. §§ 67.101 *et seq.*

13. Respondent has admitted that his Motion for Protective Order has nothing to do with the instant matter. *See* Respondent's October 17, 2024 Reply Brief at 1-2 (noting that his Motion for Protective Order "relate[s] to matters occurring after the [OOR] Final Determination and the closing of the certified record..."); *see also* Respondent's October 3, 2024 Brief in Support of Motion for Protective Order at 7-10 (referencing the Borough's social media policy that is not at issue in this matter); *id.* at 10 (referencing his request for an alleged legal hold notice that was not requested under the RTKL); *id.* at 5-6 (claiming that additional records exist, even though that it not an issue in this matter); *id.* at 6-7 (claiming that the Borough is "harassing" and "intimidating" him).

14. Respondent's Motion for Experts equally has nothing to do with the instant matter, as it makes claims concerning alleged financial improprieties and other issues completely outside the limited scope of the Borough's RTKL appeal. *See* Respondent's Brief in Support of Motion for Experts at 2-5.

15. Notably, other than a passing general citation to the RTKL, neither of Respondent's Motions contain any citation to any legal support whatsoever for the relief requested.

16. Pa.R.Civ.P. 1023.1(c) provides that the signature of a *pro se* party constitutes a certification that, among other things, the written motion (1) is not being presented for any improper purpose and (2) the claims, defenses, and other legal contentions therein are warranted

by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.¹

17. The Judicial Code permits parties to obtain reasonable counsel fees “as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter.” 42 Pa.C.S. § 2503(6).

18. Also, Pa.R.Civ.P. 1023.4(a)(2) permits the imposition of sanctions as a result of a violation of Pa.R.Civ.P. 1023.1.

19. The claims and legal contentions in Respondent’s Motions are not warranted by existing law and neither of Respondent’s Motions contain a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

20. By Judge Morganelli’s Opinion of the Court entered on October 23, 2024, this Honorable Court denied Respondent’s Motions because they are not supported by any law. A true and correct copy of Judge Morganelli’s Opinion of the Court entered on October 23, 2024, is attached hereto as Exhibit B.

21. Also, Respondent reveals that the sole purpose of his Motion for Protective Order and Motion for Experts is to retaliate against the Borough as a result of a purported “pattern of harassment and intimidation” of him, *see* Motion for Protective Order at p. 6, rather than for any legitimate reason.

¹ Because the Borough’s appeal is a statutory appeal under the RTKL, it is not a “civil action” per PA Rules of Civil Procedure 1001(a), *See also Borough of W. Easton v. Mezzacappa*, 74 A.3d 417, 420 (Pa. Commw. 2013). Thus, generally speaking, the Pennsylvania Rules of Civil Procedure do not apply to the Borough’s appeal. However, PA Rules of Civil Procedure 1023.1 and 1023.2 apply to Respondent’s Motions because Rule 1023.1(b) states Rule 1023.1 applies to “[e]very pleading, written motion, and other paper directed to the court ...”

22. As Respondent's Motion for Protective Order and/or Respondent's Motion for Experts violate Pa.R.Civ.P. 1023.1(c) and 42 Pa.C.S. § 2503(6) and (9) (as discussed below) and were presented for the purpose of Respondent's retaliation against the Borough and, therefore, presented for Respondent's purpose of needlessly increasing the cost of this litigation, sanctions are appropriate. *See* Pa.R.Civ.P. 1023.1(c)(1)-(2); *see also In re Doyle*, 304 A.3d 1091, 1116 (Pa. 2023) (stating that conduct is "dilatory" where the record demonstrates "a lack of diligence that delayed proceedings unnecessarily and caused additional legal work").

23. Additionally, 42 Pa.C.S. § 2503(9) permits parties to obtain counsel fees because "the conduct of another party in commencing the matter **or otherwise** was arbitrary, vexatious or in bad faith."

24. For purposes of sanctions, the word "arbitrary" has been defined as "based on random or convenient selection or choice rather than on reason or nature." *See Carroll Twp. Auth. v. Mun. Auth. of City of Monongahela*, 518 A.2d 337, 341 (Pa. Commw. 1986) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 110 (1966)).

25. As there is absolutely no legal or factual support for any of the relief sought in either motion, Respondent's Motions are not based on "reason or nature," and, as a result, each of Respondent's Motions is arbitrary.

26. Respondent's Motion for Protective Order and Motion for Experts are also vexatious in nature.

27. The question of whether a party acted vexatiously is a two-part inquiry looking to whether the conduct (1) was done "without sufficient grounds in either law or in fact" and (2) "[with] the sole purpose of causing annoyance." *Moyer v. Leone*, 260 A.3d 245, 255 (Pa. Super. 2021).

28. As set forth above, there are no grounds in either law or fact for either the Motion for Protective Order or Motion for Experts.

29. Again, Respondent reveals that the sole purpose of his Motion for Protective Order and Motion for Experts is to retaliate against the Borough as a result of a purported “pattern of harassment and intimidation” of him, *see* Motion for Protective Order at p. 6, rather than for any legitimate reason.

30. Accordingly, Respondent’s Motion for Protective Order and Motion for Experts are each vexatious for purposes of 42 Pa.C.S. § 2503(9).

31. As stated above, on September 24, 2024, the Borough hand-delivered two (2) written demands to Respondent to withdraw his Motion for Protective Order and Motion for Experts. True and correct copies of these written demands are attached hereto at Exhibit A.

32. Specifically, the written demands advised Respondent of the need to withdraw his Motion for Protective Order and Motion for Experts by October 22, 2024 or face a motion for sanctions.

33. Respondent did not withdraw either the Motion for Protective Order or the Motion for Experts by October 22, 2024.

34. Petitioner – a public entity funded through its taxpayers – has incurred costs as a result of Respondent’s Motion for Protective Order and Respondent’s Motion for Experts, as Petitioner has incurred (a) \$7,976.50 (37.1 hours of time at \$215/hour) and \$4.61 in costs (postage for three mailings to Respondent) billed by J. Chadwick Schnee, Esq. of Schnee Legal Services, LLC as a result of responding to Respondent’s Motions, responding to briefs accompanying Respondent’s Motions, conducting legal research for the same and various communications related to Respondent’s Motions and (b) \$1,620.00 (7.2 hours of time at \$225/hour) billed by James F.

Kratz, Esq., of Stevens & Lee as a result of aiding Attorney Schnee responding to Respondent's Motions and briefs accompanying Respondent's Motions, and various attorney-client privileged communications related to Respondent's Motions and aiding Attorney Schnee in his preparation of this Motion and the Borough's brief accompanying this Motion and attorney-client privileged communications related to same.

35. Borough taxpayers should not bear the costs incurred as a result of Respondent's frivolous, arbitrary and vexatious filings.

36. Petitioner respectfully asks that this Court issue an order issuing monetary sanctions against Respondent in the amount of \$9,601.11 (\$7,981.11 + \$1,620.00).

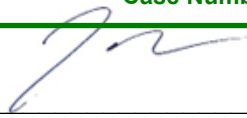
37. Counsel for Petitioner hereby certifies that Petitioner served written notice and demand to Respondent by letter dated September 24, 2024.

WHEREFORE, Petitioner Borough of Bath respectfully asks this Honorable Court to enter an order issuing sanctions against Respondent in an amount to be determined by this Court, in addition to 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

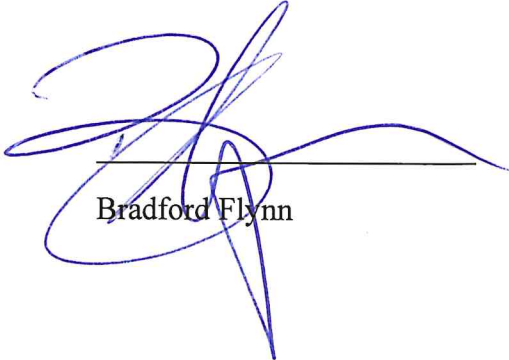
By:  _____

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
For Petitioner Borough of Bath

Dated: November 6, 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: November 6, 2024

EXHIBIT A



Schnee Legal Services, LLC
74 E Main Street #648
Lititz, PA 17543
(717) 400-5955
chadwick@schneelegal.com
<http://www.schneelegal.com>

September 24, 2024

Via hand delivery

Michael Long
220 Creek Road
Bath, PA 18014

RE: *Borough of Bath v. Michael Long*, No. C-48-CV-2024-01039 – Written demand

Dear Mr. Long,

I am in receipt of your Motion for Appointment of Court Experts (“Motion”), which was docketed on September 12, 2024. Please consider this correspondence as a written demand to withdraw this filing no later than October 22, 2024.

Under Pa.R.Civ.P. 1023.1(c), the signature of a *pro se* party constitutes a certification that, among other things, a filing (1) is not being presented for any improper purpose and (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law, and, in relevant par.

In the present case, your Motion has been presented in a statutory appeal concerning access to records under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, and the specific and sole issue in this appeal is whether the records at issue are protected from public access by the attorney-client privilege. As you know, the relief sought in your Motion (which largely appears to relate to different RTKL requests that are not at issue in this matter) is completely irrelevant to this limited issue and is, therefore, completely frivolous. Additionally, I am unaware of any court ever ordering the appointment of a digital forensics specialist or a forensic accountant in a RTKL matter. Based on the complete lack of any relevancy to your Motion to the instant matter, I can only assume that your Motion lacks any proper purpose. *See* Pa.R.Civ.P. 1023.1(c)(1).

Your Motion also completely lacks any legal basis. Tellingly, you offer absolutely no legal support for any of the relief sought in the Motion, nor does the RTKL itself permit any of the relief sought in your Motion. From my research, no case law exists with respect to the relief you seek in the context of a statutory appeal under the RTKL. As your Motion is devoid of any

legal authority for the claims within it, sanctions are appropriate if your Motion is not timely withdrawn. *See* Pa.R.Civ.P. 1023.1(c)(2).

Rule 1023.2 permits a party to obtain “the reasonable expenses and attorney’s fees incurred in presenting” a motion for sanctions. In the event that you do not withdraw your Motion for Protective Order by October 22, 2024, the Borough fully intends to seek appropriate sanctions against you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Schnee', with a stylized flourish at the end.

J. Chadwick Schnee, Esq.



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74 E Main Street #648
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September 24, 2024

Via hand delivery

Michael Long
220 Creek Road
Bath, PA 18014

RE: *Borough of Bath v. Michael Long*, No. C-48-CV-2024-01039 – Written demand

Dear Mr. Long,

I am in receipt of your Motion for Protective Order (“Motion”), which was docketed on September 10, 2024. Please consider this correspondence as a written demand to withdraw this filing no later than October 22, 2024.

Under Pa.R.Civ.P. 1023.1(c), the signature of a *pro se* party constitutes a certification that, among other things, a filing (1) is not being presented for any improper purpose and (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law, and, in relevant par.

In the present case, your Motion has been presented in a statutory appeal concerning access to records under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, and the specific and sole issue in this appeal is whether the records at issue are protected from public access by the attorney-client privilege. As you know, the relief sought in your Motion (which largely appears to relate to different RTKL requests that are not at issue in this matter) is completely irrelevant to this limited issue and is, therefore, completely frivolous. Additionally, I am unaware of any court ever ordering a protective order in a RTKL matter. Based on the complete lack of any relevancy to your Motion to the instant matter, I can only assume that your Motion lacks any proper purpose. *See* Pa.R.Civ.P. 1023.1(c)(1).

Your Motion also completely lacks any legal basis. Tellingly, you offer absolutely no legal support for any of the relief sought in the Motion, nor does the RTKL itself permit any of the relief sought in your Motion. From my research, no case law exists with respect to the relief you seek in the context of a statutory appeal under the RTKL. As your Motion is devoid of any legal authority for the claims within it, sanctions are appropriate if your Motion is not timely withdrawn. *See* Pa.R.Civ.P. 1023.1(c)(2).

I note that your Motion claims that the Borough is “exaggerating costs and falsely blaming” you for such costs. The instant Motion, however, serves as yet another example of a filing that completely lacks any legal basis but forces the Borough to expend funds in order to respond to it.

Rule 1023.2 permits a party to obtain “the reasonable expenses and attorney’s fees incurred in presenting” a motion for sanctions. In the event that you do not withdraw your Motion for Protective Order by October 22, 2024, the Borough fully intends to seek appropriate sanctions against you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Schnee', with a stylized flourish extending to the right.

J. Chadwick Schnee, Esq.

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

BOROUGH OF BATH, :
Petitioner, :
 : No. C-48-CV-2024-01039
v. :
 :
MICHAEL LONG, :
Respondent. :

FILED
2024 OCT 2 P 2:22
COUNTY OF NORTHAMPTON
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

OPINION OF THE COURT

This matter is before the Court on three (3) motions filed by Respondent: (i) Motion for Leave to File Appeal *Nunc Pro Tunc* Due to Court Error and to Dismiss Petitioner’s Appeal for Lack of Jurisdiction; (ii) Motion for Protective Order, Sanctions, and Injunctive Relief; and (iii) Motion for Appointment of Court Experts. The matter appeared on this Court’s Argument List on October 15, 2024 and was submitted to the Court for disposition on the briefs without oral argument.

RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from Respondent Michael Long’s (“Long”) May 17, 2023 request seeking records from the Borough of Bath (the “Borough”) pursuant to Pennsylvania’s Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101-67.3104, which was partially denied by the Borough. Long appealed that partial denial to the Office of Open Records (“OOR”). Proceedings before the OOR docketed at *Michael Long v. Bath Borough*, OOR Docket No. AP 2023-1598R, ultimately

resulted in a January 12, 2024 Final Determination Upon Reconsideration. On February 9, 2024, the Borough filed the instant appeal before this Court.

On March 1, 2024, Long filed 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.” On March 18, 2024, the Borough filed a “Motion to Quash Cross-Appeal of Michael Long” arguing that Respondent’s “Cross-Appeal” had been filed more than thirty (30) days from the issuance of the OOR’s final ruling, *see* 65 P.S. §§ 67.1302, and was therefore untimely. Long did not file any opposition and the Borough’s motion was ultimately granted. *See* August 28, 2024 Order of Court (J. Kassis) (“...it appearing that the cross-appeal by Requestor, Michael Long, is facially untimely, the Motion to Quash Cross-Appeal is GRANTED”).

On May 13, 2024, Long filed the “Motion for Leave to File Appeal *Nunc Pro Tunc* Due to Court Error and to Dismiss Petitioner’s Appeal for Lack of Jurisdiction” now at issue. The Borough filed a response on May 17, 2024. On May 30, 2024, Long filed a Response to Petitioner’s Opposition to Respondent’s Motion. On September 9, 2024, Long filed a brief in support of the motion. On October 10, 2024, the Borough filed a brief in opposition.

On September 10, 2024, Long filed the “Motion for Protective Order, Sanctions, and Injunctive Relief” now at issue. The Borough filed a response on

September 30, 2024. On October 3, 2024, Long filed a brief in support of the motion. On October 10, 2024, the Borough filed a brief in opposition.

On September 12, 2024, Long filed the “Motion for Appointment of Court Experts” now at issue. The Borough filed a response on October 3, 2024. On October 4, 2024, Long filed a brief in support of the motion. On October 10, 2024, the Borough filed a brief in opposition.

Each of Respondent’s motions have been fully briefed and the matter is now ready for disposition.

DISCUSSION

I. Respondent’s Motion for Leave to File Appeal *Nunc Pro Tunc* Due to Court Error and to Dismiss Petitioner’s Appeal for Lack of Jurisdiction

Long’s first motion seeks leave to file an appeal *nunc pro tunc* and to dismiss the Borough’s appeal for lack of jurisdiction. With regard to the first issue, Long contends that the Borough filed a timely appeal on February 9, 2024 and that he arrived at the courthouse on February 12, 2024 – the final day of the thirty (30) day appeal period – seeking to file his appeal when he was “erroneously informed by court staff that a filing fee was required despite the fee being previously satisfied by Petitioner’s filing.” *See* Respondent’s Motion at ¶ 2. Long claims that this “misinformation, along with the inability to pay by cash or money order at the

late hour, prevented [him] from filing the appeal.” See Respondent’s Motion at ¶ 3. It is unclear from Long’s written submissions whether he seek *nunc pro tunc* relief to file a new appeal or if he desires to simply reinstate his “Cross-Appeal of and Petition for Review” filed on March 1, 2024 and later quashed as untimely.

In addition to his request for *nunc pro tunc* relief, Long also argues that the Borough’s appeal should be dismissed because it was served on him by regular mail rather than certified mail, allegedly in violation of Pa.R.A.P. No. 1514(c). Long argues that this “jurisdictional defect ... is irremediable and necessitates dismissal of the appeal.” See Respondent’s Motion at ¶¶ 9-10.

On the issue of *nunc pro tunc* relief, the Borough notes that “where the legislature has fixed a time period within which an appeal may be filed, that period is mandatory and may not be extended as a matter of grace or indulgence.” Olson v. Borough of Homestead, 443 A.2d 875, 878 (Pa. Cmwlth. 1982). “When a statute fixes the time within which an appeal may be taken, a court may not extend that time period or allow an appeal *nunc pro tunc* absent a showing that extraordinary circumstances involving fraud or its equivalent, duress, or coercion *caused the delay in filing an appeal.*” In re Borough of Riegelsville from Bucks Cnty. Bd. of Assessment & Revision of Taxes, 979 A.2d 399, 402 (Pa. Cmwlth. 2009) (quoting Hanoverian, Inc. v. Lehigh County Board of Assessment, 701 A.2d 288, 289 (Pa.

Cmwlth. 1997)). A *nunc pro tunc* appeal may be permitted when the appellant proves that:

- (1) the appellant's notice of appeal was filed late as a result of non-negligent circumstances, either as they relate to the appellant or the appellant's counsel;
- (2) the appellant filed the notice of appeal shortly after the expiration date; and
- (3) the appellee was not prejudiced by the delay.

Criss v. Wise, 781 A.2d 1156, 1159 (Pa. 2001). The Borough argues that Respondent has not established all of these facts, and in fact has not established any of them, and should not be permitted to file a late appeal.

The Borough also argues, in response to the argument that its appeal should be dismissed due to service by regular mail rather than certified mail, that service was proper. The Borough notes that, even assuming *arguendo* that the Rules of Appellate Procedure apply to a statutory appeal under the RTKL, Respondent's argument is based on Pa.R.A.P. 1514(c), which permits parties to be served "as described by Pa.R.A.P. 121(b)," and Rule 121 allows service by first class mail.

We do not find that Respondent has met his burden of establishing "extraordinary circumstances" justifying *nunc pro tunc* relief. Long's argument that his late filing was caused by misinformation about the necessity of a filing fee is actually contradicted by his own "Declaration of Michael Long" attached as

Exhibit D to the motion. Therein, he writes that “[u]pon attempting to file my appeal, I was informed by court staff that I was required to pay a filing fee and that payment could only be made by cash or money order. *I was not aware of this requirement and had intended to pay the filing fee by credit card.*” See Declaration of Michael Long at ¶ 5 (emphasis added). The Declaration goes on to aver that “due to the court staff’s insistence on payment by cash or money order, a requirement I was not previously aware of, and my lack of those specific forms of payment, I was prevented from filing my appeal on February 12, 2024.” See Declaration of Michael Long at ¶ 8. It appears from his own Declaration that Respondent understood the need to pay a filing fee and intended to do so with a credit card, but was not prepared to pay the fee in the form required by the Fee Schedule of the Office of the Prothonotary (i.e. cash, business checks, money orders, traveler checks, or certified checks).

If Respondent was truly without the means to pay the Prothonotary costs on February 12, 2024, he could have filled out a petition to file *in forma pauperis* and filed his timely appeal on that date without paying any filing fee. See Pa.R.C.P. No. 240(c) (“If the petition is filed simultaneously with the commencement of the action or proceeding or with the taking of the appeal, the prothonotary shall docket the matter and petition without the payment of any filing fee.”). Even assuming for the sake of argument that Respondent had no choice but to file an untimely appeal,

he could have demonstrated his diligence by returning to the courthouse on February 13, 2024 with the fee required by the Prothonotary and filing his appeal just one (1) day late. Instead, he waited eighteen (18) days, through the remainder of February and until March 1, 2024, to file a “Cross-Appeal” and then waited much longer – until May 13, 2024, over three months after the close of the thirty (30) day appeal period – to move for leave to file an appeal *nunc pro tunc*. Respondent has not alleged that he has onerous family or work obligations, difficulties with mobility or obtaining transportation, or any other reason why he was unable to file documents in a more timely manner. In sum, (i) Respondent’s late filing was the result of his own negligent failure to equip himself with a method of payment acceptable to the Office of the Prothonotary and (ii) Respondent then failed to file his untimely appeal for several weeks after the expiration date, without excuse or explanation. Accordingly, the motion for leave to file an appeal *nunc pro tunc* is denied.

We also deny Respondent’s motion to dismiss Petitioner’s appeal for lack of jurisdiction. Respondent has not established impropriety in the method of service utilized by Petitioner.

II. Respondent's Motion for Protective Order, Sanctions, and Injunctive Relief

Respondent next seeks a protective order, sanctions, and injunctive relief due to the Borough's "ongoing campaign of bad faith, harassment, and intimidation." *See* Respondent's Motion at p. 1. He alleges that he has been engaged in a "protracted dispute" with the Borough over access to public records during which the Borough has been "fabricating privilege claims and tampering with evidence," *see* Respondent's Motion at p. 2, and engaged in a "public smear campaign, media manipulation, and incitement to harassment," *see* Respondent's Motion at p. 3, which has created a risk of harm to Respondent and his 70-year-old mother, with whom he resides and fears for her safety. Respondent seeks sanctions against the Borough, a protective order pursuant to Pa.R.C.P. No. 4012 to shield him and his mother from further harassment, and an injunction barring the Borough from "making public statements or social media posts that disparage Respondent or misrepresent his action." *See* Respondent's Brief at pp. 16-17.

The Borough points out that "the Pennsylvania Rules of Civil Procedure do not apply to statutory appeals, such as an appeal under the RTKL," Borough of West Easton v. Mezzacappa, 74 A.3d 417, 410 (Pa. Cmwlth. 2013), and that even if Pa.R.C.P. No. 4012 were applicable here, Rule 4012 only pertains to persons "from whom discovery or deposition is sought," which is not the case here. *See*

Pa.R.C.P. No. 4012(a). Further, the Borough argues that this is an appeal of the OOR's ruling, limited only to the question of whether the records sought by Respondent's May 17, 2023 request constitute "public records" under the law, and that the relief now sought by Respondent is not provided for under the RTKL.

We agree with the Borough that Respondent is not entitled to a protective order under the law. Additionally, we note that injunctions are a form of relief authorized pursuant to Pa.R.C.P. No. 1531. As noted above, the Rules of Civil Procedure are inapplicable to an appeal under the RTKL. Finally, to any extent that an injunction may be otherwise available as an equitable remedy at the Court's discretion outside of the application of the Rules of Civil Procedure, we do not find that Respondent has alleged harm sufficient to justify an order curtailing the Borough's speech.¹

III. Respondent's Motion for Appointment of Court Experts

Respondent's third and final motion seeks the appointment of two (2) independent court-appointed experts: (1) a Digital Forensics Specialist to examine and analyze electronic documents produced by the Borough and (2) a Forensic

¹ To justify injunctive relief, the moving party must establish "(1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury will result from refusing an injunction than from granting it and, concomitantly, that issuance of an injunction will not substantially harm other interested parties; (3) a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) a clear right to relief; (5) the injunction is reasonably suited to abate the alleged harm; and (6) issuance of an injunction will not adversely affect the public interest." Wolk v. Sch. Dist. of Lower Merion, 228 A.3d 595, 610 (Pa. Cmwlth. 2020)

Accountant to review and assess the Borough's financial records. Respondent contends that there appear to be missing messages in a redacted email chain produced by the Borough and that discrepancies in the Borough's records "suggest the possibility of financial misconduct." *See* Respondent's Motion at pp. 2-3.

Respondent alleges that as a *pro se* litigant he "lacks the resources and expertise to independently conduct a thorough forensic examination of the Borough's electronic and financial records ... [and] needs the assistance of qualified experts to properly analyze the evidence, present his case effectively, and ensure the justice is served." *See* Respondent's Motion at pp. 3-4.

In short, there is no basis for the relief sought by Respondent. Although courts do possess the power to appoint expert witnesses, *see* Pa.R.E. 706, and to summon and question witnesses of its own accord, *see* Commonwealth v. DiPasquale, 230 A.2d 449, 450 (Pa. 1967), this matter is an appeal of the OOR's legal determinations based upon the factual record developed before it. The Borough's appeal of the OOR's ruling to this Court is a legal matter that does not require additional facts. It is not an opportunity for Respondent to use the Court's resources to conduct an investigation of additional issues that were not raised before the OOR. The motion is therefore denied.

CONCLUSION

Accordingly, we enter the attached Order:

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

BOROUGH OF BATH, :
Petitioner, :
v. :
MICHAEL LONG, :
Respondent. :

No. C-48-CV-2024-01039

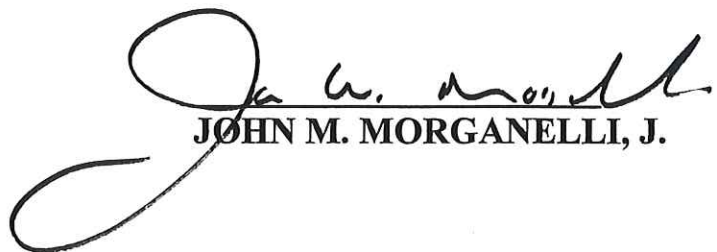
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COURT OF COMMON PLEAS
NORTHAMPTON COUNTY, PA

ORDER OF COURT

AND NOW, this 23rd day of October, 2024, **IT IS HEREBY ORDERED**
and **DECREED** as follows:

1. Respondent's Motion for Leave to File Appeal *Nunc Pro Tunc* Due to Court Error and to Dismiss Petitioner's Appeal for Lack of Jurisdiction is **DENIED**;
2. Respondent's Motion for Protective Order, Sanctions, and Injunctive Relief is **DENIED**; and
3. Respondent's Motion for Appointment of Court Experts is **DENIED**.

BY THE COURT:


JOHN M. MORGANELLI, J.

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

CERTIFICATE OF SERVICE

I, J. Chadwick Schnee, Esq., certify that, on this 6th day of November, 2024, I have served a true and correct copy of the attached Motion for Sanctions on the person listed below via First Class Mail:

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

J. Chadwick Schnee, Esq.