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

RESPONSE TO MOTION TO QUASH CROSS-APPEAL OF MICHAEL LONG

AND NOW COMES Respondent Michael Long, proceeding pro se, who hereby files this Response to Petitioner Borough of Bath's Motion to Quash Cross-Appeal of Michael Long. In support thereof, Respondent avers as follows:

I. Admitted or Denied Averments

1. **Admitted**
2. **Admitted in part and denied in part.** It is admitted that the RTKL allows appeals within 30 days of OOR orders per 65 P.S. § 67.1302(a). However,

this provision must be read in conjunction with the jurisdictional service requirements of Pa.R.A.P. 1514(a), which mandate that appeals be served via certified mail. The certified mail requirement is essential because it provides a reliable method of verifying that service was effectuated and establishes a clear date of receipt. Failure to adhere to this requirement deprives the court of subject matter jurisdiction, as it cannot proceed with a case until it is satisfied that all parties have been properly notified of the proceedings. *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010).

3. **Admitted**.
4. **DENIED**. The Borough claims to have mailed a copy of its appeal to me on February 12, 2024, and that it was received February 14, 2024. However, my USPS Informed Delivery record from February 14, 2024 (**Exhibit A**), which provides a digital preview of my incoming mail, does not show any delivery from the Borough on that date. USPS Informed Delivery is a reliable service that displays images of the exterior of letter-sized mail-pieces scheduled to arrive soon. The absence of any record of delivery from the Borough on February 14, 2024, casts significant doubt on the Borough's claimed service date. Moreover, the Borough's use of Priority Mail fails to satisfy the certified mail requirement for service under Pa.R.A.P. 1514(a), which is

necessary to confer jurisdiction upon the court. *Dep't of Transp. v. Moto Transp. Servs.*, 42 A.3d 1171, 1173 (Pa. Commw. Ct. 2012).

5. **Admitted**.
6. **DENIED** as stated. The assertion that I did not file an appeal by February 12, 2024, due to my own oversight is denied. As a pro se litigant, I faced significant procedural barriers and misinformation that impeded my ability to file a timely appeal. On February 12, 2024, I arrived at the courthouse with the intention of filing my appeal, as evidenced by my smartphone location data (**Exhibit B**). However, I was informed that I could only pay the filing fee with cash or a money order, which I did not have on hand. Despite my efforts to find alternative payment methods, I was unable to file my appeal due to the court's inflexible payment policies and the absence of court staff who could assist me. These challenges were compounded by the fact that, as a pro se litigant, I did not have the benefit of legal counsel to guide me through the complex procedural requirements. My computer's print history (**Exhibit C**) further demonstrates my diligent efforts to prepare my appeal documents in advance of the filing deadline.
7. **Admitted**.
8. **DENIED**. The specific 14-day period for cross-appeals provided in Pa.R.A.P. 1512(a)(2) does not override Petitioner's duty to properly serve

and verify service of the initiating appeal, as required by Pa.R.A.P. 1514(a) and established case law. The Commonwealth Court has consistently held that strict compliance with the certified mail requirement is necessary to perfect an appeal and confer jurisdiction upon the court. *Mitchell v. Pa. Convention Ctr. Auth.*, No. 252 C.D. 2023, 2023 WL 2305687, at *6 (Pa. Commw. Ct. Mar. 16, 2023).

9. **DENIED**. I dispute the applicability of the 14-day window given Petitioner's failure to effectuate proper certified mail service per Pa.R.A.P. 1514(a), a jurisdictional requirement that cannot be waived. The courts have repeatedly emphasized that jurisdiction is a fundamental prerequisite for any legal proceedings and that defects in service cannot be overlooked merely for the sake of convenience or expediency. *Mitchell*, 2023 WL 2305687, at *6.
10. **DENIED**. Quashing this cross-appeal due to timing discrepancies caused by Petitioner's service defects would improperly elevate form over the RTKL's substantive purpose of promoting government transparency. The RTKL is a remedial statute that must be construed liberally to effectuate its purpose of facilitating public access to government records and ensuring government accountability. Dismissing my cross-appeal on technical grounds, despite the Borough's own procedural missteps, would contradict the well-established precedent mandating a liberal construction of the RTKL in favor of

transparency. *Levy v. Senate of Pa.*, 65 A.3d 361, 381 (Pa. 2013); *Bowling v. Office of Open Records*, 75 A.3d 453, 466 (Pa. 2013).

11. **DENIED**. Petitioner's assertion that I did not comply with Pa.R.A.P. 1513(d)(7) by failing to provide a copy of the decision in *Long* is acknowledged. I am taking immediate steps to provide the document to the court and the opposing party. However, this oversight should not be fatal to my cross-appeal, given the other procedural irregularities and my pro se status. The courts have recognized that pro se litigants should not be held to the same stringent standards as attorneys and that minor procedural defects should not preclude them from having their cases heard on the merits. *Smithley v. Unemployment Comp. Bd. of Rev.*, 8 A.3d 1027, 1029 n.6 (Pa. Commw. Ct. 2010).

12. **DENIED**. For the reasons set forth in this response, the cross-appeal should not be quashed, as Petitioner has failed to establish proper service of its initiating appeal, and any minor procedural defects on my part as a pro se litigant do not warrant the extreme sanction of quashal. The courts have consistently held that the dismissal of an appeal is a severe consequence that should be reserved for the most egregious cases of noncompliance and that the law favors deciding cases on their merits whenever possible. *Smithley*, 8 A.3d at 1029 n.6.

II. Argument

Petitioner's Defective Service and Lack of Jurisdiction

13. The Borough failed to effectuate proper service of its initiating appeal under Pa.R.A.P. 1514(a), as evidenced by the USPS Informed Delivery record (**Exhibit A**), depriving the Court of subject matter jurisdiction. Jurisdiction is a court's authority to hear and decide a case, and it is a fundamental prerequisite for any legal proceeding. Without proper service, the court cannot exercise its jurisdiction over the parties or the subject matter of the dispute. *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010); *McClintock v. Coatesville Area Sch. Dist.*, No. 1865 C.D. 2013, 2014 WL 10298865, at *6 (Pa. Commw. Ct. Oct. 8, 2014).

14. The Borough's defective service undermines the fairness of the proceedings and contravenes the RTKL's purpose of promoting government accountability. The RTKL is a remedial statute designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions. Dismissing my cross-appeal due to the Borough's own procedural missteps would frustrate these fundamental objectives and erode public confidence in the integrity of the legal system. *Levy v. Senate of Pa.*, 65

A.3d 361, 381 (Pa. 2013); *Bowling v. Office of Open Records*, 75 A.3d 453, 466 (Pa. 2013).

Resolving Ambiguities in Favor of Pro Se Litigants

15. Ambiguities in procedural issues should be resolved in favor of the recipient, particularly for pro se litigants. The courts have recognized that pro se litigants often lack the legal expertise and resources of represented parties and that they should not be held to the same stringent standards as attorneys. Where there is doubt or ambiguity regarding procedural matters, such as the sufficiency of service, the courts have held that these ambiguities should be resolved in favor of the pro se litigant to ensure that they have a fair opportunity to present their case. *Blount v. Phila. Parking Auth.*, 600 A.2d 528, 530 (Pa. 1992); *Smithley v. Unemployment Comp. Bd. of Rev.*, 8 A.3d 1027, 1029 n.6 (Pa. Commw. Ct. 2010).
16. The Borough's failure to effectuate proper service nullifies the 14-day window for cross-appeals, and my cross-appeal should be considered timely filed. The Commonwealth Court has held that where an agency's failure to comply with procedural rules prejudices a party's ability to respond, the court may decline to penalize the party for any resulting delay. In this case, the Borough's defective service fundamentally compromised my ability to

file a timely cross-appeal, as I was not properly notified of the proceedings. Under these circumstances, it would be unjust to strictly enforce the 14-day deadline against me. *Bury v. Pa. Dep't of Educ.*, No. 1746 C.D. 2016, 2017 WL 4542368, at *4 (Pa. Commw. Ct. Oct. 12, 2017) (unreported).

III. Respondent's Diligence and Procedural Challenges as a Pro Se Litigant

17. As a pro se litigant, I diligently attempted to file a timely appeal on February 12, 2024, but was hindered by significant procedural barriers and misinformation:

18. I arrived at the courthouse on February 12, 2024, as evidenced by my smartphone location data (**Exhibit B**), which pinpoints my presence at the courthouse on the date in question. However, upon arriving, I was informed that I could only pay the filing fee with cash or a money order, which I did not have on hand. This inflexible payment policy created an unexpected and substantial obstacle to my ability to file a timely appeal.

19. Despite my efforts to find alternative payment methods, such as offering to pay by credit card or to have the filing fee waived, I was unable to file my appeal due to the court's rigid policies and the absence of court staff who could assist me. As a pro se litigant, I did not have the benefit of legal

counsel to guide me through these procedural hurdles or to advocate on my behalf.

20. My computer's print history (**Exhibit C**) provides tangible evidence of my substantial efforts to prepare my appeal documents in advance of the February 12, 2024, deadline. The print history shows a significant volume of printing activity in the days leading up to the deadline, demonstrating my diligence and good faith in attempting to comply with the statutory requirements.

21. The courts have recognized that procedural defects caused by government agencies should not be used to prejudice appellants, particularly pro se litigants who are navigating the complex legal system without the assistance of counsel. *Kennedy v. Dep't of Corr.*, No. 1178 C.D. 2019, 2020 WL 611127, at *4 (Pa. Commw. Ct. Feb. 7, 2020) (unreported).

22. I promptly filed my cross-appeal upon discovering the Borough's appeal, despite the challenges I faced as a pro se litigant navigating the complex legal system. The courts have recognized that pro se litigants should be afforded some leeway in complying with procedural rules and that their pleadings should be construed liberally to ensure that they have a fair opportunity to present their case. *Means v. Hous. Auth. of City of Pittsburgh*, 747 A.2d 1286, 1289 (Pa. Commw. Ct. 2000).

23. The court has consistently recognized the need for flexibility in procedural matters for pro se litigants. The Supreme Court of Pennsylvania has held that pro se litigants are afforded a certain amount of latitude and that their pleadings should not be dismissed for minor procedural defects. Similarly, the Superior Court has held that pro se litigants should be granted leave to amend their pleadings to correct procedural errors where it is appropriate to do so. *Means*, 747 A.2d at 1289; *Rhoades v. Pryce*, 874 A.2d 148, 153 (Pa. Super. Ct. 2005).

IV. Addressing Potential Counterarguments

24. The Borough may argue that the 14-day window for cross-appeals under Pa.R.A.P. 1512(a)(2) is a strict jurisdictional deadline that cannot be extended. However, this argument fails to consider the fundamental importance of proper service in conferring jurisdiction upon the court. As established in *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010) and *McClintock v. Coatesville Area Sch. Dist.*, No. 1865 C.D. 2013, 2014 WL 10298865, at *6 (Pa. Commw. Ct. Oct. 8, 2014), defective service deprives the court of subject matter jurisdiction, rendering any subsequent deadlines inapplicable. The Borough cannot invoke the court's jurisdiction to enforce a filing deadline while simultaneously

disregarding its own obligation to effectuate proper service under the Rules of Appellate Procedure.

25. While I acknowledge my oversight in failing to provide a copy of the decision in *Long* with my cross-appeal, this minor procedural defect should not overshadow the Borough's more substantial failure to effectuate proper service. The courts have consistently held that procedural technicalities should not be used to deny pro se litigants their day in court and that the right to due process outweighs any countervailing interest in the rigid enforcement of procedural rules. *Madame v. Madame*, 238 A.3d 1263, 1268 (Pa. 2020).

26. The Borough may attempt to argue that its use of Priority Mail constitutes an acceptable alternative to certified mail for purposes of service. However, this argument is unavailing, as the Rules of Appellate Procedure specifically require service by certified mail. The courts have repeatedly held that strict compliance with the certified mail requirement is necessary to perfect an appeal and confer jurisdiction upon the court. *Dep't of Transp. v. Moto Transp. Servs.*, 42 A.3d 1171, 1173 (Pa. Commw. Ct. 2012). The Borough cannot unilaterally disregard this clear legal mandate in favor of its own preferred method of service.

27. The Borough may also contend that any procedural errors on its part are minor and do not warrant the dismissal of its motion to quash. However, this argument minimizes the fundamental importance of proper service in ensuring the fairness and integrity of legal proceedings. The courts have consistently held that defects in service are not mere technicalities, but rather jurisdictional defects that cannot be overlooked or excused. *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010). To hold otherwise would be to condone a lax attitude toward procedural rules and to invite abuse of the legal system.

28. Finally, the Borough may attempt to cite legal precedents that appear to favor its position. However, it is important to recognize that each case turns on its own unique facts and circumstances. The precedents relied upon by the Borough may be distinguishable from the present case in material respects, such as the nature of the procedural defects at issue or the specific legal standards applied. It is essential to carefully scrutinize any alleged legal authorities to ensure that they are truly analogous to the case at hand.

V. Conclusion

29. The Borough's failure to effectuate proper service of its initiating appeal deprives this Court of subject matter jurisdiction and undermines the

fundamental fairness of the proceedings. The principles of due process and the RTKL's overarching purpose of promoting government transparency and accountability compel the conclusion that any ambiguities or irregularities in service.

30. By denying the Borough's motion to quash and allowing my cross-appeal to proceed, this Court can reaffirm its commitment to fairness, due process, and government transparency. *Barnett v. Pa. Dep't of Pub. Welfare*, 71 A.3d 399, 403 (Pa. Commw. Ct. 2013); *Commonwealth v. Spuck*, 86 A.3d 870, 874 (Pa. Super. Ct. 2014).

31. **WHEREFORE**, for the foregoing reasons, I respectfully request that this Honorable Court:

32. **Deny Petitioner's Motion to Quash Cross-Appeal**, as Petitioner has failed to effectuate proper service of its initiating appeal in accordance with Pa.R.A.P. 1514(a), thereby depriving this Court of subject matter jurisdiction;

33. **Dismiss Petitioner's Appeal in its entirety**, due to Petitioner's failure to effectuate proper service and the resulting lack of subject matter jurisdiction;

34. **Acknowledge the timeliness of my Cross-Appeal**, as it was filed within the 14-day window prescribed by Pa.R.A.P. 1512(a)(2), and any delay in filing

was directly attributable to Petitioner's defective service and the procedural misinformation provided by court staff;

35. **Find that, under *Blount v. Phila. Parking Auth.*, any ambiguity in the Borough's service should be resolved in my favor**, allowing my cross-appeal to proceed in the interest of fairness and access to justice; and

36. **Award me reasonable legal fees incurred in responding to Petitioner's motion to quash**, pursuant to the Court's inherent authority to sanction parties for engaging in dilatory and vexatious litigation tactics, as recognized in *Thunberg v. Strause*, 682 A.2d 295, 299 (Pa. 1996).

Respectfully Submitted,



/s/ Michael Long

Michael Long

Pro Se Respondent

Dated: April 9, 2024

VERIFICATION

I, Michael Long, hereby verify that the statements made in the foregoing RESPONSE TO MOTION TO QUASH CROSS-APPEAL OF MICHAEL LONG 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 9, 2024

CERTIFICATE OF SERVICE

I certify that on April 9, 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 9, 2024

EXHIBIT

A

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USPS Informed Deliv... Feb 14 Unsubscribe

to me

From USPS Informed Delivery
USPSInformeddelivery@email.informeddelivery.usps.com

To michael.long479@gmail.com

Date Feb 14, 2024 at 7:23 AM

Standard encryption (TLS)
Learn more

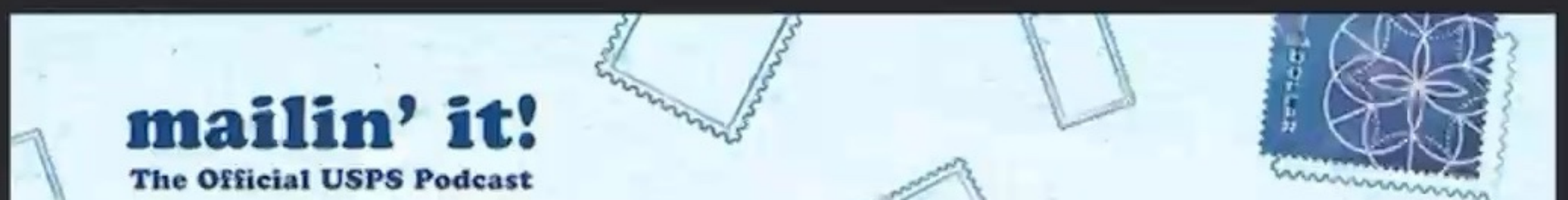
You have mail and packages arriving soon. 2/14/2024

COMING TO YOUR MAILBOX SOON.

MAIL

View all mail on dashboard

From USPS







Do more with your mail

Learn More

Set a Reminder

Share via:

Email

Text

Facebook

Twitter



Do more with your mail

Set a Reminder

SEDGWICK
2670 EXECUTIVE DR STE A
INDIANAPOLIS, IN 46241

N77101024D7037-128504

FIRST CLASS MAIL
U.S. POSTAGE
PAID
DENVER, CO
PERMIT NO. 631

IMPORTANT PRODUCT RECALL - 3RD NOTICE

[redacted]
DEAR CUSTOMER
220 CRK RD.
BATH, PA 18014
US

1BO14$1127 C003

Do more with your mail

Set a Reminder

SEDGWICK
2670 EXECUTIVE DR STE A
INDIANAPOLIS, IN 46241

N77101024D7037-128504

FIRST CLASS MAIL
U.S. POSTAGE
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DENVER, CO
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[redacted]
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INDIANAPOLIS, IN 46241

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FIRST CLASS MAIL
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DENVER, CO
PERMIT NO. 631

IMPORTANT PRODUCT RECALL - 3RD NOTICE

[redacted]
DEAR CUSTOMER
220 CRK RD.
BATH, PA 18014
US

18014$1127 C003

Do more with your mail

Set a Reminder

ENMV-941 (3-19)

pennsylvania
DEPARTMENT OF TRANSPORTATION

Bureau of Motor Vehicles
Harrisburg PA 17104-2516
www.dmv.pa.gov

IMPORTANT MATERIALS ENCLOSED from PENNDOT

PRESORTED FIRST CLASS MAIL US POSTAGE PAID PENNDOT

[redacted]
220 CREEK RD
BATH PA 18014

8 LMGBNP1 18014

Do more with your mail

Set a Reminder

Arriving This Week

No mail available to display.

PACKAGES

View and manage all packages on dashboard

Arriving Today

Wednesday, Feb 14

No packages available to display.

Arriving Soon

No packages available to display.

Outbound

SHIPPED WITH PIRATESHIP.COM

9400136105536345075834

Estimated Delivery on: Friday, Feb 16

EXHIBIT

B

Timeline

TODAY

2024 February 12



Was at 220 Creek Rd and 123 S Walnut St

Monday, February 12, 2024

27.0 mi
1h 5m

220 Creek Rd 3:33 PM

220 Creek Rd, Bath, PA 18014

Driving - 13.9 mi

25 min

Northampton County Courthouse

3:58 PM - 4:51 PM

669 Washington St, Easton, PA 18042

Driving - 12.4 mi

34 min

220 Creek Rd

5:26 PM - 6:00 PM

220 Creek Rd, Bath, PA 18014

123 S Walnut St

6:01 PM - 8:47 PM

123 S Walnut St, Bath, PA 18014

Driving - 0.7 mi

5 min

Add a place

EXHIBIT

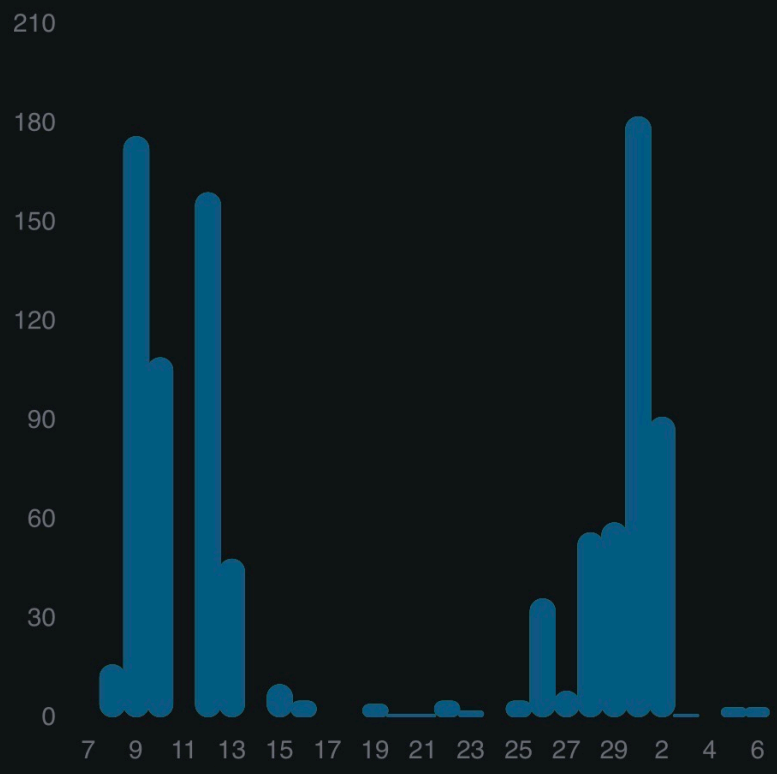
C

Billing Cycle Period

How is billing calculated?

Billing Cycle Period
Feb 07, 2024 - Mar 06, 2024

980 total pages printed
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