

**STATE OF NEW HAMPSHIRE
SUPREME COURT**

IN THE MATTER OF
DANA ALBRECHT AND KATHERINE ALBRECHT

2022-0517

RESPONDENT’S MEMORANDUM IN LIEU OF BRIEF

NOW COMES Katherine Albrecht, by and through her attorneys Welts, White & Fontaine, PC, submits the following Memorandum in Lieu of Brief pursuant to Supreme Court Rule 16(4)(b):

I. Petitioner’s Brief was Untimely Filed and the Appeal Should be Dismissed

1. Pursuant to the Court’s Order dated March 9, 2023, Petitioner’s brief was due on or before March 15, 2023.¹
2. Petitioner’s brief was untimely filed on March 16, 2023.
3. Supreme Court Rule 16(7) requires that briefs be filed “within the times specified in the applicable scheduling order.”

¹ Of note, Petitioner’s brief was originally due on February 13, 2023 and he received two extensions of time from this Court.

4. Furthermore, Rule 16(12) states that: “Failure of the appealing party to file a brief shall constitute a waiver of the appeal and the case shall be dismissed.”

5. Petitioner did not timely file a brief. As such, this appeal should be dismissed. SUP. CT. R. 16(12).

II. Petitioner’s Brief Exceeds the Court Word Limit and Should be Stricken and the Appeal Dismissed

6. Petitioner’s brief contains the following “Certificate of Word Count”: “I, Dana Albrecht, hereby certify that the main text of this brief, from the ‘Statement of Facts’ through the ‘Conclusion,’ excluding footnotes and quotations, contains fewer than 9,500 words, as determined by the word count of the computer program used to prepare this brief.” BR. at 53 (emphasis added).

7. Supreme Court Rule 16(11) provides that no “brief shall exceed 9,500 words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.”

8. The Rule does not exclude the text of footnotes and quotations from the word limit. *See Vermillion v. Corizon Health, Inc.*, 906 F.3d 696, 696-97 (7th Cir. 2018) (Easterbrook, J., in chambers) (striking *pro se* appellant’s brief despite his claim that footnotes and

citations did not count towards word limit; court noted that “[f]ootnotes count toward the word limit,” as does any other text not specifically excluded by court rule).

9. Counsel’s review of Petitioner’s brief suggests that it contains approximately 12,200 words, including 53 footnotes.

10. Supreme Court Rule 26(7) provides that all briefs must “contain a statement of compliance with the word limitation and a certification identifying the number of words in the document.”

11. The Court can take judicial notice that Mr. Albrecht previously exceeded the word limit in his brief filed in his concurrently-pending appeal, *Albrecht v. Albrecht*, No. 2022-0284.

12. In that appeal, the Court granted Katherine Albrecht’s motion to strike Mr. Albrecht’s non-conforming brief (the Court did, however, allow Mr. Albrecht the opportunity to file a brief that conformed to the word limit). *See* ORDER of Dec. 20, 2022 (No. 2022-0284).

13. In other words, the Court can take judicial notice of the fact that Mr. Albrecht is aware of the requirements of Rules 16(11) and 26(7) and has deliberately attempted to evade those requirements in this appeal.

14. Mr. Albrecht’s brief does not comply with the Court’s rules and should be stricken. His appeal should therefore be

dismissed. *Mahmoud v. Irving Oil Corp.*, 155 N.H. 405, 406-07 (2007); SUP. CT. R. 16(12). Additionally, Mr. Albrecht should be assessed attorney's fees or some other sanction.

CONCLUSION

For the reasons stated above, Respondent respectfully requests that this Court:

- A. Strike the Petitioner's brief and dismiss this Appeal;
- B. Affirm the order of the trial court;
- C. Assess reasonable attorney's fees or some other sanction against the Petitioner; and,
- D. Grant such other and further relief as is just and equitable.

Respectfully submitted,

KATHERINE ALBRECHT

By her Attorneys,
WELTS, WHITE & FONTAINE, P.C.

Dated: April 25, 2023

 /s/ Israel Piedra

Israel F. Piedra, Esq. (#267568)
Michael J. Fontaine, Esq. (#832)
29 Factory Street
Nashua, NH 03061
(603) 883-0797
ipiedra@lawyersnh.com
mfontaine@lawyersnh.com

STATEMENT OF COMPLIANCE

This document complies with the word limitation set out in Supreme Court Rule 16(11), as it contains approximately 716 words.

DELIVERY CERTIFICATION

I certify that on this date the foregoing pleading will be served on Dana Albrecht, *pro se*, via the Court e-file system.

Dated: April 25, 2023

 /s/ Israel Piedra
Israel F. Piedra, Esq.