

IN THE FIFTH DISTRICT COURT OF APPEAL,
IN AND FOR VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY, Petitioners,	5DCA CASE NO: 24-0915
vs	CIRCUIT CASE NO: 2023-30711 CICI
CITY OF ORMOND BEACH, FLORIDA Respondents.	Lower Court CASE NOS: 22-112237 22-112246 22-112247

Henrys' Emergency Motion for Reconsideration OR Extension of Time

This motion is submitted by Petitioners, MICHAEL AND KATHERINE HENRY, in support of their urgent request of this court to Reconsider the Court's Order of 11/25/24 imposing a 20 day filing requirement, or for an Extension of Time in the alternative, pursuant to FRAP 9.300, 9.045(e), 9.100(g), and 9.040(d).

1. FRAP 9.300(c) states that "a party seeking emergency relief shall, if practicable, give reasonable notice to all parties."
2. Pursuant to FRAP 9.300, Henrys emailed Ormond Beach to seek agreement with this request. The court order implementing the new 20 day filing requirement was sent at 2:16pm today. Henrys emailed Ormond Beach at 4:15pm, immediately upon seeing the 2:16pm order. Further, this is a holiday week, and Katherine Henry has

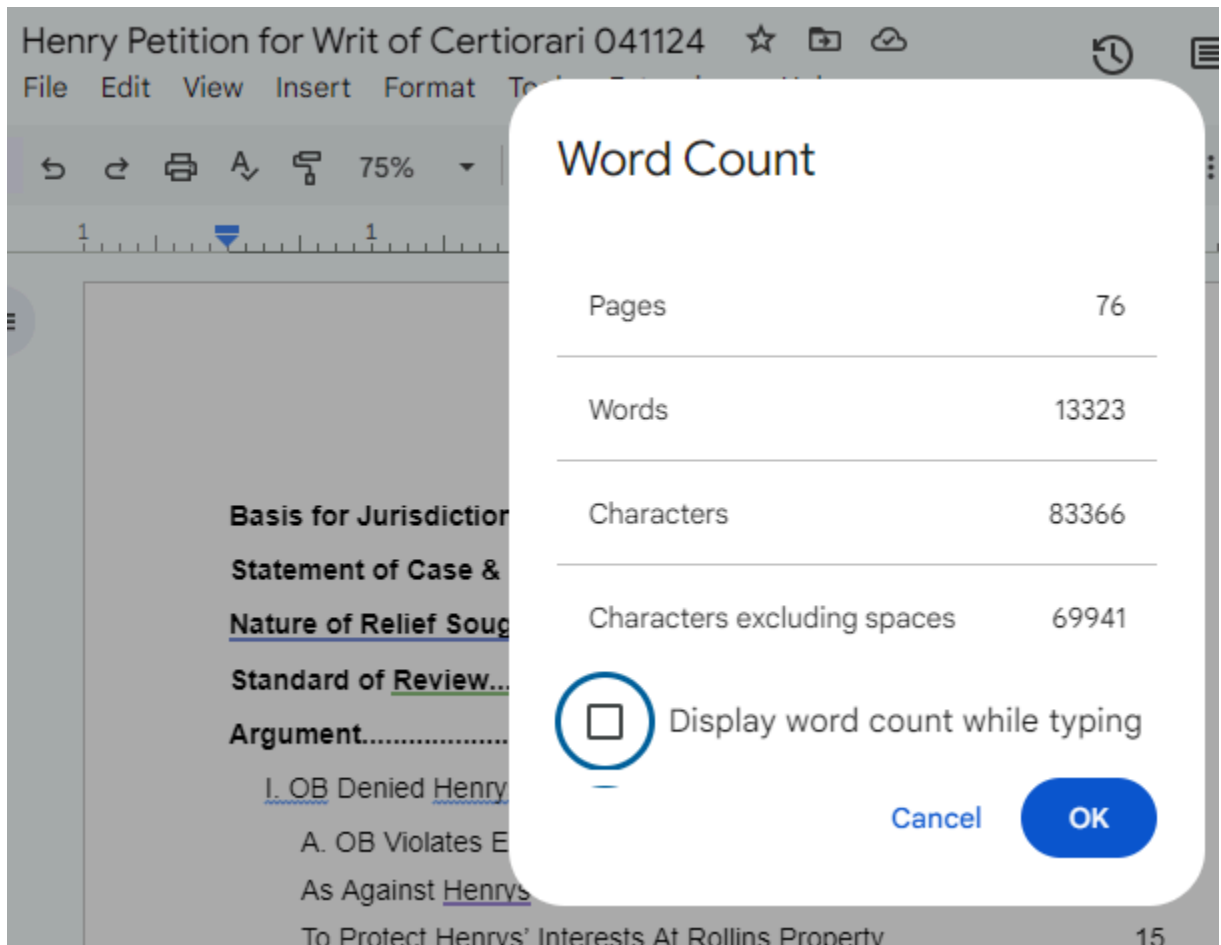
serious health issues impairing Henrys' ability to comply with a 20 day filing requirement (as discussed below), therefore Henrys must file this motion now, before Katherine heads back into treatment at the hospital tomorrow. And unfortunately, Ormond Beach was not able to provide Henrys a response by the time this motion needed to be filed.

3. On 4/7/24, Henrys filed their first Petition for Writ of Certiorari, which was docketed on 4/8/24.
4. Because this case stemmed from an Administrative Appeal, FRAP 9.200 applied to the case at the Circuit Court level, and thus FRAP 9.200(d)(1)(C) and (d)(2) *required* the trial transcript to be filed as a separate PDF from the rest of the lower court pleadings and evidence. Henrys believed this separate PDF rule still applied, and thus filed their initial Petition for Writ with one Appendix and a separately paginated Trial Transcript PDF.
5. However, on 4/8/24, Henrys received an email from the reviewing clerk refusing to docket the Appendix and Trial Transcript, saying "Please include transcripts in your appendix." Accordingly, Henrys merged the Appendix and Trial Transcript into one consecutively paginated PDF. This affected the page number references

throughout the Petition for Writ, so after discussing the issue with the clerk's office on the phone, Henrys also updated the Petition for Writ to reflect the new Appendix page numbers (and only that change, as explained in Footnote 1 of the First Amended Petition).

6. That First Amended Petition was docketed, but the clerk subsequently struck that Petition and ordered me on 4/11/24 to file another amended petition, this time removing the graphics and photos from the brief, despite there being no court rule against including them in the petition, and, in fact, strong encouragement for counsel to use relevant illustrative material such as these within the body of petitions and briefs themselves (as explained in Footnote 1 of Second Amended Petition for Writ). I complied with that order, and updated and refiled the pleadings that same day, on 4/11/24.
7. FRAP 9.100(g) provides that Petitions for Writ must not exceed 13,000 words, excluding words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block. (See also, FRAP 9.045(e).) Per FRAP 9.045(e), “[t]he person preparing the certificate may rely on the word count of the word-processing system used to prepare the document.”

8. Each time Henrys prepared a Petition, they did so in Google Docs, their normal word processing system, and therefore used the Google Docs word count function. In the Second Amended Petition for Writ, the *total* word count *including the table of contents, certificate of compliance, certificate of service and signature block* is 13,323:



9. The *Table of Contents* contains 156 words:

Table of Contents

Basis for Jurisdiction
Statement of Case
Nature of Relief Sought
Standard of Review
Argument.....
 I. OB Denied Henry's
 A. OB Violates
 As Against Henry's

Word Count

Pages	1 of 76
Words	156 of 13323

10. The *Certificate of Compliance, Certificate of Service, and Signature Block* contain 183 words:

Henry's substantive rights.

Respectfully Submitted: April 11, 2024 /s/ Katherine & Michael Henry
Petitioners, Pro Se

I certify that the undersigned are:
C McKinnon (lynn@amckinnon@mckinnon.com)
(nmckinnon@mckinnon.com)
(phamrickjr@cfl.rr.com)
(kmccoy@circuit7.org)

Word Count

Pages	2 of 76
Words	183 of 13323

11. This means that Henry's Petition for Writ, *only excluding the table of contents, certificate of compliance, certificate of service and signature block* is $13,323 - 156 - 183 = 12,984$ words. (The caption,

cover page and table of citations were drafted in a separate Google Doc for easier formatting, and thus do *not* need to be subtracted from the initial word count total.) The Henrys are more than happy to share the original Google Drive file with the court, if that is helpful to corroborate Henrys' statements regarding word count.

12. Thus, since the court rule specifically allows Henrys to “rely on the word count of the word processing systems used to prepare the document,” *and* Henrys included a signed *certification* as to the “conformity with FRAP 9.045(e) with the use of word processing software” in their filed Petition, *and* the aforementioned and depicted screenshots show the exact word count numbers directly from the original Google Docs word processing file, it is unjust to order Henrys to revise their Petition for Writ yet again based on an “appearance” of exceeding the maximum word count.

13. Furthermore, as a practical matter, Henrys would have the *exact same* word processing tools to write the same legal arguments for a Third Amended Petition with the goal of meeting the same 13,000 word count limit. How can the Henrys be expected to have any different result?

14. Further, FRAP 9.040(d) states that “the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.” Ormond Beach never alleged that any word count issue affected their substantial rights, nor has the court. Although, Henrys assert that there was *no* word count error or defect anyway.
15. Given the aforementioned facts and court rules, Henrys ask this court to reconsider the order of 11/25/24 striking Henrys’ Second Amended Petition and requiring Henrys to file a Third Amended Petition, and allow the pleadings stricken by the 11/25/24 order to remain on the docket.
16. Should the court deny Henrys’ request for reconsideration, Henrys ask the court for an extension of time.
17. On 8/9/24, Katherine Henry had a lumpectomy, and was given a breast cancer diagnosis on 8/14/24. The lumpectomy had been unsuccessful in removing all the cancer, so a double mastectomy was recommended. The double mastectomy and reconstruction surgery was performed on 9/12/24. The tumor had been much more substantial in size than the surgeons anticipated, totaling 10 cm and leaving only 1 millimeter clear margins. Katherine experienced

significant wound care issues, having to undergo daily treatments to heal the skin and save the reconstruction. The daily treatments and continued wound care with the surgeon paid off, and Katherine was scheduled for a skin graft on 11/19/24 as the last stage in healing.

18. However, on 11/15/24, she developed an infection and on 11/17/24, the reconstruction became exposed through the wound, necessitating an emergency surgery to remove the reconstruction altogether on 11/18/24. That meant Katherine had to endure yet another large surgery under general anesthetic, and is now on pain medicine, anti-nausea medicine, and anti-anxiety medicine to assist her in enduring the daily wound care treatments. These medications not only affect her ability to drive, but also to fully represent her (and her family's) interests in court. Moreover, Katherine is in wound care at Advent Hospital from 10am to 1pm every day, Monday through Friday, and has continued weekly wound care with her surgeon, and twice weekly physical therapy, as well as follow-up oncology appointments. Katherine may also require another surgery next month (details yet to be confirmed with the surgeon).

19. Henrys have no way of knowing when Katherine will be "out-of-the-woods" medically-speaking. Thus, it is hard to ask for a

specific time extension. Henrys simply know that rewriting their Petition for Writ is not possible within the 20 days currently allotted by the court's 11/25/24 order. However, in an effort to be the most realistic considering Katherine's current health status, Henrys ask this court for 90 days to file the Third Amended Petition for Writ, instead of 20 days.

In conclusion, Henrys respectfully request this court to immediately reconsider the order of 11/25/24 and allow the stricken pleadings to remain on the docket. Should the court deny that request, Henrys respectfully request for an extension of time to account for Katherine Henry's extraordinary health needs right now, and allow for 90 days to file a Third Amended Petition for Writ.

Respectfully Submitted: /s/ Katherine Henry /s/ Michael Henry
November 25, 2024 Petitioners, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033 Michigan Bar No P71954

Certificate of Service

I certify that the foregoing document has been furnished to Abraham C McKinnon (lynn@mckinnonandmckinnonpa.com, amckinnon@mckinnonandmckinnonpa.com), Noah McKinnon (nmckinnon@mckinnonandmckinnonpa.com), via the electronic filing portal on November 25, 2024.

Respectfully Submitted:
November 25, 2024

/s/ Katherine Henry /s/ Michael Henry
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