

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2009-3127

KELLY S. JENNINGS,

Petitioner,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Petition for review of the Merit Systems Protection Board  
in CB7521070026-T-1.

ON MOTION

Before LOURIE, Circuit Judge.

## ORDER

The Social Security Administration (SSA) moves to strike the brief filed by Kelly S. Jennings or, in the alternative, for leave to exceed the permitted word limitation. Jennings opposes. SSA replies.

Jennings, who is an attorney and a former administrative law judge, filed a formal opening brief in this petition for review. Pursuant to Fed. R. App. P. 32(a)(7)(B), a formal opening brief may contain no more than 14,000 words. In the certificate of compliance regarding the length of the brief, Jennings states that the brief contains 13,999 words, excluding parts of the brief that are exempted by Fed. R. App. P. 32(a)(7)(B)(iii). SSA, upon realizing that a 13,999-word brief should not be 104 pages in length, took steps to determine the word count of Jennings' brief. SSA scanned the brief into an Adobe .pdf file and then converted that brief to a Microsoft Word file. Using a word-count function, the brief was determined to have 23,085 words, excluding the exempted parts.

We determine that SSA properly raised this concern by motion. Further, it does not appear that Jennings disputes that his brief was over the permitted length. Instead, Jennings merely states that the error was "unintentional and will be addressed in detail in petitioner's reply brief . . . ."

Jennings' disregard of the court's rule regarding brief length is not well-taken. We note that future noncompliance with Rule 32 may result in sanctions against Jennings. Jennings' opening brief is rejected for filing. If Jennings does not file a corrected opening brief that complies with Fed. R. App. P. 32(a)(7) within 21 days of the date of filing of this order, this petition will be dismissed for failure to prosecute.

Accordingly,

IT IS ORDERED THAT:

(1) SSA's motion to strike is granted. Jennings' opening brief is rejected for filing.

(2) Unless Jennings files a corrected opening brief that complies with Fed. R. App. P. 32(a)(7) within 21 days of the date of filing of this order, this petition will be dismissed for failure to prosecute. No further extensions will be granted to Jennings.

(3) SSA's motion for leave to exceed the permitted word limitation is denied as moot. SSA should calculate the due date for its brief from the date of service of Jennings' corrected brief.

FOR THE COURT

DEC 02 2009

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Kelly S. Jennings  
Austin M. Fulk, Esq.

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

DEC 02 2009

JAN HORBALY  
CLERK