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RE: Case No. 23-0034

DATE: 6/09/2023

COA #: 01-22-00153-CV

TC#: 2017-67479

STYLE: PORTER v. KENNARD LAW PC

Today the Supreme Court of Texas denied the above referenced petition for review.

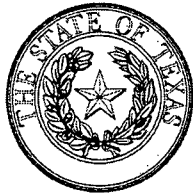
LINDA C. PORTER

*DELIVERED VIA E-MAIL *

RE: Case No. 23-0034 DATE: 3/17/2023
COA #: 01-22-00153-CV TC#: 2017-67479
STYLE: PORTER v. KENNARD LAW PC

Today the Supreme Court of Texas denied the
petition for review in the above-referenced case.

LINDA C. PORTER
*DELIVERED VIA E-MAIL *



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON
ORDER**

Appellate case name: Linda A. Porter v.
Kennard Law PC, doing business as Kennard
Richard PC, Peter Costea, Gregg M. Rosenberg,
Rosenberg & Sprovach

Appellate case number: 01-22-00153-CV

Trial court case number: 2017-67479

Trial court: 127th District Court of
Harris County

On November 14, 2022, appellant, Linda A. Porter,
filed a "Motion for Leave to File 1st Amended En
Banc Reconsideration." The motion is **denied**.

It is so ORDERED.

Judge's signature: /s/ April L. Farris

Acting for the Court

Panel consists of: Justices Goodman, Countiss, and
Farris.

Date: November 29, 2022



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON
ORDER ON MOTION FOR EN BANC
RECONSIDERATION**

Appellate case name: Linda A. Porter v.
Kennard Law PC, doing business as Kennard
Richard PC, Peter Costea, Gregg M. Rosenberg,
Rosenberg & Sprovach

Appellate case number: 01-22-00153-CV

Trial court case number: 2017-67479

Trial court: 127th District Court of
Harris County

Date motion filed: November 4, 2022

Party filing motion: Appellant

The en banc court has unanimously voted to deny
the motion for en banc reconsideration filed by
appellant, Linda A. Porter. It is ordered that the
motion is **denied**.

Judge's signature: /s/Julie Countiss

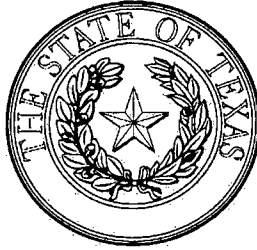
Acting for the En Banc Court*

*En banc court consists of Chief Justice Radack and
Justices Kelly, Goodman, Hightower, Countiss,
Rivas-Molloy, Guerra, and Farris.

Landau, J., not sitting.

Date: November 29, 2022

Opinion issued October 20, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00153-CV

LINDA A. PORTER, Appellant

V.

**KENNARD LAW PC D/B/A KENNARD RICHARD
PC, PETER COSTEA, GREGG M. ROSENBERG,
ROSENBERG & SPROVACH, Appellees**

On Appeal from the 127th District Court

Harris County, Texas

Trial Court Case No. 2017-67479

MEMORANDUM OPINION

Appellant, Linda A. Porter, proceeding pro se, challenges the trial court's order granting Porter's motion for nonsuit of Porter's suit against appellees, Kennard Law PC, doing business as Kennard Richard PC, Peter Costea, Gregg M. Rosenberg, and Rosenberg & Sprovach, for, among other things, negligence, legal malpractice, negligent misrepresentation, breach of fiduciary duty, breach of contract, fraud, fraudulent concealment, and theft.

We dismiss the appeal.

On July 25, 2022, Porter filed her appellant's brief with this Court. On July 27, 2022, Porter filed her "Amended Brief of Appellant Major Updates on Table of Contents (For Clarity), Added Missing Court Records, Minor Adjustments (For Clarity)." On August 2, 2022, this Court notified Porter that neither of her appellant's briefs complied with the Texas Rules of Appellate Procedure. *See, e.g.*, TEX. R. APP. P. 9.4(i), 38.1. The Court, therefore, struck Porter's July 25, 2022 appellant's brief and her July 27, 2022 amended appellant's brief and ordered Porter to file a corrected appellant's brief that complied with the Texas Rules of Appellate Procedure within thirty days of the date of this Court's order, i.e., on or before September 1, 2022. The Court informed Porter that if she did not file a corrected appellant's brief that complied with the Texas Rules of Appellate Procedure, we would strike her corrected brief, prohibit Porter from filing another, proceed as if Porter had failed to file an appellant's brief, and dismiss her appeal. *See* TEX. R. APP. P. 38.9(a)(1), 39.8(a), 42.3(b), 43.2(f); *see also Tucker v. Fort Worth & W. R.R. Co.*, No. 02-19-00221-CV, 2020 WL 3969586, at *1 (Tex. App.—Fort Worth June 18, 2020, pet. denied) (mem. op.) (striking amended brief and dismissing appeal for want of prosecution where appellant ordered to file amended brief but amended brief also failed to comply with Texas Rules of Appellate Procedure); *Tyurin v. Hirsch & Westheimer, P.C.*, No. 01-17-00014-CV, 2017 WL 4682191, at *1–2 (Tex. App.—Houston [1st Dist.] Oct. 19, 2017, no pet.) (mem. op.) (same).

Thereafter, on August 11, 2022, Porter filed an "Opposed Motion for Leave to File Non-Conforming

Briefs and Exceed Word Limits,”¹ and on August 16, 2022, Porter filed a “1st Amended Opposed Motion for Leave to File Non-Conforming Briefs and Exceed Word Limits With Attached Exhibits Showing that Costea’s Brief Provides False Information that Appellees were Served on August 11, 2022, and this Brief is Updated with Certificate of Service.” This Court denied Porter’s motions and again notified Porter that her deadline to file a corrected appellant’s brief that complied with the Texas Rules of Appellate Procedure was September 1, 2022. On August 25, 2022, Porter filed an “Opposed 1st Addendum to Motion for Leave to File Non-Conforming Briefs and Exceed Word Limits,” which the Court construed as a motion for extension of time to file her corrected appellant’s brief. The Court granted Porter’s motion for extension of time and ordered that Porter file a corrected appellant’s brief that complied with the Texas Rules of Appellate Procedure by October 3, 2022.

On September 22, 2022, Porter filed her corrected appellant’s brief, titled “Appellant’s Opening Brief.” On September 23, 2022, Porter filed an amended corrected appellant’s brief, titled “Appellant’s Amended Opening Brief.” On October 4, 2022, Porter filed a “retroactive” opposed motion for leave to file her September 23, 2022 “Appellant’s Amended Opening Brief.” Appellee, Costea, then filed a motion to strike Porter’s motion for leave and motion to strike Porter’s September 22, 2022 corrected appellant’s brief and September 23, 2022

¹ Porter’s motion did not indicate a certificate of service. See TEX. R. APP. P. 9.5(a), (d), (e).

amended corrected appellant's brief for failure to comply with the Texas Rules of Appellate Procedure.²

Further, on October 10, 2022, Porter filed an "Opposed Motion for Leave to File Appellant's 1st Appendix Addendum" as well as a "1st Appendix Addendum," which was 225 pages in length.³ In her October 10, 2022, motion for leave, Porter indicated that a "2nd Appendix Addendum [was] forthcoming," but had not yet been filed, and Porter requested that the Court "accept[]" her "1st and 2nd Appendix Addendums." On October 11, 2022, Porter filed a purported "Opposed Motion for Leave to File Appellant's 1st Amended 1st Appendix Addendum to Appellant's Opening and Amended Brief."⁴ Porter's

² Porter filed a response, an amended response, and a "1st Addendum" to her amended response to Costea's motions to strike.

³ There is no indication that Porter's "1st Appendix Addendum" was properly served, and it does not contain a certificate of service. *See* TEX. R. APP. P. 9.5(a) ("At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding."), (d) ("A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service."), (e) ("A certificate of service must be signed by the person who made the service and must state: (1) the date and manner of service; (2) the name and address of each person served; and (3) if the person served is a party's attorney, the name of the party represented by that attorney.").

⁴ Porter's filing appears to consist of her "1st Amended 1st Appendix Addendum," with a cover page including the title "Opposed Motion for Leave to File Appellant's 1st

“1st Amended 1st Appendix Addendum” is 121 pages in length. On October 13, 2022, appellee, Costea, filed a motion to strike Porter’s “1st Appendix Addendum” and “1st Amended 1st Appendix Addendum” for failure to comply with the Texas Rules of Appellate Procedure.⁵

On October 14, 2022, Porter filed a purported “Opposed Motion for Leave to File Appellant’s 2nd Appendix Addendum.” Porter’s “2nd Appendix Addendum” is 93 pages in length.⁶ Also, on October 14, 2022, Porter filed an “Errata for Appeal and Amended Opening Brief,” which she asserted contained “[a] list of the [c]ourt [r]ecords that should be applied to the blanks in [her] brief” and “a short list of corrections for [her] [a]ppeal [b]rief.”⁷

Amended 1st Appendix Addendum to Appellant’s Opening and Amended Brief.” To the extent that Porter has attempted to file a motion, there are no contents to the motion and no request for relief. *Cf.* TEX. R. APP. P. 10.1(a).

⁵ Porter filed a response to Costea’s motion to strike.

⁶ Porter’s filing appears to consist of her “2nd Appendix Addendum,” with a cover page including the title “Opposed Motion for Leave to File Appellant’s 2nd Appendix Addendum.” To the extent that Porter has attempted to file a motion, there are no contents to the motion and no request for relief. *Cf.* TEX. R. APP. P. 10.1(a). The date listed in Porter’s certificate of service appears to conflict with the date Porter’s document was filed in this Court. *See generally* TEX. R. APP. P. 9.5.

⁷ The date listed in Porter’s certificate of service for her “Errata for Appeal and Amended Opening Brief” appears to

“An appellate brief is meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case.” *Schied v. Merritt*, No. 01-15-00466-CV, 2016 WL 3751619, at *2 (Tex. App.—Houston [1st Dist.] July 12, 2016, no pet.) (mem. op.) (internal quotations omitted). The Texas Rules of Appellate Procedure control the required contents and organization of an appellant’s brief. *Id.*; see TEX. R. APP. P. 38.1. They contain “specific requirements for briefing that require, among other things, that an appellant provide . . . an argument that is clear and concise with appropriate citations to authorities and the record.” *Tyurin*, 2017 WL 4682191, at *1 (internal quotations omitted); *Lemons v. Garmond*, No. 01-15-00570-CV, 2016 WL 4701443, at *1 (Tex. App.—Houston [1st Dist.] Sept. 8, 2016, pet. denied) (mem. op.) (internal quotations omitted); see also TEX. R. APP. P. 38.1(i); *Irisson v. Lone Star Nat’l Bank*, No. 13-19-00239-CV, 2020 WL 6343336, at *3 (Tex. App.—Corpus Christi—Edinburg Oct. 29, 2020, no pet.) (mem. op.) (“When an appellant’s brief fails to contain clear and concise argument for the contentions made with appropriate citations to authorities, the appellate court is not responsible for doing the legal research that might support a party’s contentions.”).

The appellate rules also require the inclusion of a proper appendix with an appellant’s brief. See TEX. R. APP. P. 9.4(h) (specifying form of appendix); TEX. R. APP. P. 38.1(k) (appellant’s brief must include appendix containing “the trial court’s judgment or

conflict with the date Porter’s document was filed in this Court.
See generally *id.*

other appealable order from which relief is sought,” “the jury charge and verdict, if any, or the trial court’s findings of fact and conclusions of law, if any,” and “the text of any rule, regulation, ordinance statute, constitutional provision, or other law (excluding case law) on which the argument is based, and the text of any contract or other document that is central to the argument”); *see, e.g., Corbin v. Reiner*, No. 13-18-00177-CV, 2019 WL 471123, at *1–3 (Tex. App.—Corpus Christi–Edinburg Feb. 7, 2019, no pet.) (mem. op.) (dismissing appeal for want of prosecution where appellant’s amended brief failed to, among other things, include appendix in form that complied with Texas Rule of Appellate Procedure 9.4(h)); *Running v. City of Athens*, No. 12-18-00047-CV, 2018 WL 2326775, at *1 (Tex. App.—Tyler May 23, 2018, no pet.) (mem. op.) (dismissing appeal for want of prosecution where appellant’s brief failed to comply with Texas Rule of Appellate Procedure 38.1(k) and appellant failed to file a supplemental or corrected appellant’s brief); *Lipscomb v. City of Dallas Police*, No. 05-16-01090-CV, 2017 WL 1149674, at *1–2 (Tex. App.—Dallas Mar. 27, 2017, no pet.) (mem. op.) (dismissing appeal where appellant’s amended brief, among other things, omitted certain required items from appendix); *Shull v. Westover Crossing (San Antonio) Homeowners’ Ass’n, Inc.*, No. 04-15-00692-CV, 2016 WL 7119051, at *1–2 (Tex. App.—San Antonio Dec. 7, 2016, no pet.) (mem. op.) (striking appellant’s amended brief, prohibiting appellant to file another, and dismissing appeal for want of prosecution where appellant’s amended brief contained appendix that did not comply with Texas Rules of Appellate Procedure); *Ybarra v. Christus*

Spohn Hosp. Beeville, No. 13-10-00574-CV, 2011 WL 6318043, at *1 (Tex. App.—Corpus Christi–Edinburg Dec. 15, 2011, no pet.) (mem. op.) (striking appellant’s brief and dismissing for want of prosecution where appellant’s brief did not contain required appendix and appellant failed to respond to appellate court’s notice).

Further, the appellate rules require an appellant’s brief to include a certificate of service that complies with Texas Rule of Appellate Procedure 9.5. *See* TEX. R. APP. P. 9.5(d) (“A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service.”), (e) (“A certificate of service must be signed by the person who made the service and must state: (1) the date and manner of service; (2) the name and address of each person served; and (3) if the person served is a party’s attorney, the name of the party represented by that attorney.”); *Perez v. Am. Home & Ins. Co.*, No. 13-17-00374-CV, 2018 WL 1959754, at *1 (Tex. App.—Corpus Christi–Edinburg Apr. 26, 2018, no pet.) (mem. op.) (“A certificate of service is required.”); *Longoria v. Lopez*, No. 13-17-00267-CV, 2017 WL 6047709, at *1–2 (Tex. App.—Corpus Christi–Edinburg Dec. 7, 2017, no pet.) (striking appellant’s brief and dismissing appeal for want of prosecution where appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1 and did not contain proper certificate of service). And Texas Rule of Appellate Procedure 9.4(i)(2) sets forth the maximum length of an appellant’s brief in a court of appeals. *See* TEX. R. APP. P. 9.4(i)(2)(B) (“A brief . . . in an appellate court . . . : 15,000 words if computer-

generated”); *In re Coleman*, No. 01-21-00726-CV, 2022 WL 97058, at *1 n.2 (Tex. App.—Houston [1st Dist.] Jan. 11, 2022, orig. proceeding) (mem. op.); *see also* TEX. R. APP. P. 9.4(i)(3) (“A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document.”); *Shull*, 2016 WL 7119051, at *1–2 (striking appellant’s amended brief, prohibiting appellant to file another, and dismissing appeal for want of prosecution where appellant’s amended brief exceeded word-limit).

Notably, the appellate briefing requirements are mandatory. *M&E Endeavors LLC v. Air Voice Wireless LLC*, Nos. 01-18-00852-CV, 01-19-00180-CV, 2020 WL 5047902, at *7 (Tex. App.—Houston [1st Dist.] Aug. 17, 2020, no pet.) (mem. op.). “Only when [the Court is] provided with proper briefing may [it] discharge [its] responsibility to review the appeal and make a decision that disposes of the appeal one way or the other.” *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.); *see also Roberts for Roberts v. City of Texas City*, No. 01-21-00064-CV, 2021 WL 5702464, at *2 (Tex. App.—Houston Dec. 2, 2021, no pet.) (mem. op.) (appellate court may not “abandon[] its role as judge and assum[e] the role of advocate for a party”).

In Texas, an individual who is a party to civil litigation has the right to represent herself at trial and on appeal. *See* TEX. R. CIV. P. 7; *Steele v. Humphreys*, No. 05-19-00988-CV, 2020 WL 6440499, at *2 (Tex. App.—Dallas Nov. 3, 2020, no pet.) (mem. op.); *Bolling*, 315 S.W.3d at 895; *see also Ex parte Shaffer*, 649 S.W.2d 300, 302 (Tex. 1983). The right

of self-representation carries with it the responsibility to adhere to the rules of evidence and procedure, including the Texas Appellate Rules of Procedure, if a party chooses to represent herself at the appellate level. *Steele*, 2020 WL 6440499, at *2; *Bolling*, 315 S.W.3d at 895; *see also Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184 (Tex. 1978) (“[N]o basis exists for differentiating between litigants represented by counsel and litigants not represented by counsel in determining whether the rules of procedure must be followed.”); *Yeldell v. Denton Cent. Appraisal Dist.*, No. 2-07-313-CV, 2008 WL 4053014, at *2 (Tex. App.—Fort Worth Aug. 29, 2008, pet. denied) (mem. op.) (“On appeal, as at trial, the pro se appellant must properly present her case.”). Thus, a pro se litigant is held to the same standard as a licensed attorney and must comply with the Texas Rules of Appellate Procedure. *See Garrett v. Lee*, No. 01-21-00498-CV, 2021 WL 5702177, at *2 (Tex. App.—Houston [1st Dist.] Dec. 2, 2021, pet. denied) (mem. op.); *Holz v. United States of Am. Corp.*, No. 05-13-01241-CV, 2014 WL 6555024, at *1–2 (Tex. App.—Dallas Oct. 23, 2014, no pet.) (mem. op.); *Yeldell*, 2008 WL 4053014, at *2 (“[A]ll parties appearing in the appellate courts of Texas must conform to the Texas Rules of Appellate Procedure.”).

An appellate court must examine an appellant’s brief for compliance with the Texas Rules of Appellate Procedure. *Steele*, 2020 WL 6440499, at *2; *Lipscomb*, 2017 WL 1149674, at *1. If the court determines that the briefing rules have been flagrantly violated, it may require a brief to be amended, supplemented, or redrawn. *See TEX. R. APP. P.* 38.9(a); *Irison*, 2020 WL 6343336, at *3; *see*

also Fredonia State Bank v. Gen. Am. Life Ins. Co., 881 S.W.2d 279, 284 (Tex. 1994). When an appellant is allowed an opportunity to file a corrected appellant's brief, she is given a reasonable amount of time to do so. *See Irisson*, 2020 WL 6343336, at *3; *see also Craaybeek v. Craaybeek*, No. 02-20-00080-CV, 2021 WL 1803652, at *4–5 (Tex. App.—Fort Worth May 6, 2021, pet. denied) (mem. op.). If the appellant files another appellant's brief that does not comply with the Texas Rules of Appellate Procedure, an appellate court may strike the brief, prohibit appellant from filing another, and proceed as if the appellant had failed to file a brief. *See* TEX. R. APP. P. 38.9(a); *Tucker*, 2020 WL 3969586, at *1 (striking amended brief and dismissing appeal for want of prosecution where appellant ordered to file amended brief but amended brief still did not comply with Texas Rules of Appellate Procedure); *Tyurin*, 2017 WL 4682191, at *1–2 (same); *see also* TEX. R. APP. P. 38.8(a)(1) (where appellant has failed to file brief, appellate court may dismiss appeal for want of prosecution), 42.3(b), 43.2(f).

Although Porter was given an opportunity to file a corrected appellant's brief that complied with the Texas Rules of Appellate Procedure, she has failed to do so. *See Garrett*, 2021 WL 5702177, at *3 (appellant given opportunity to cure defects in his briefing, but he failed to do so); *Steele*, 2020 WL 6440499, at *1–3 (same). Porter's September 22, 2022 corrected appellant's brief, titled "Appellant's Opening Brief," does not contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and the record." *See* TEX. R. APP. P. 38.1(i); *In re Hammond*, No. 04-17-00371-CV,

2018 WL 843062, at *1–3 (Tex. App.—San Antonio Feb. 14, 2018, no pet.) (mem. op.) (appellant’s brief violated Texas Rules of Appellate Procedure where it did not “include a clear and concise argument for the contentions made”). Although Porter’s September 22, 2022 corrected appellant’s brief contains an “argument” section, Porter’s briefing is rambling, disjointed, and difficult to follow. In short, Porter’s corrected appellant’s brief does not contain succinct, clear, and accurate arguments addressing how her purported complaints have merit. *See, e.g., Golden v. Milstead Towing & Storage*, Nos. 09-21-00043-CV to 09-21-00045-CV, 2022 WL 1412303, at *2 (Tex. App.—Beaumont May 5, 2022, no pet.) (mem. op.) (appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1(i) where it was disjointed and difficult to follow and appellant’s arguments were confusing); *Amrhein v. Bollinger*, 593 S.W.3d 398, 402–03 (Tex. App.—Dallas 2019, no pet.) (appellant’s brief did not comply with Texas Rules of Appellate Procedure where it was rambling, incoherent, and did not provide “succinct, clear, and accurate arguments addressing how [appellant’s] complaints ha[d] merit”); *Serrano v. Francis Props. I, Ltd.*, 411 S.W.3d 661, 667 (Tex. App.—El Paso 2013, pet. dism’d w.o.j.) (appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1(i) where argument section was unclear and “sometimes non-sensical”); *Sterling v. Alexander*, 99 S.W.3d 793, 798– 99 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (to comply with Texas Rules of Appellate Procedure, appellant’s brief must “provide a cogent argument”).

Porter's September 22, 2022 corrected appellant's brief also does not contain an appendix.⁸

⁸ On October 10, 2022, Porter filed a "1st Appendix Addendum," which was 225 pages in length. In her October 10, 2022 "Opposed Motion for Leave to File Appellant's 1st Appendix Addendum," Porter requested that this Court "accept[]" her "1st Appendix Addendum." Nothing indicates that the "1st Appendix Addendum" was properly served, and it does not contain a certificate of service. *See* TEX. R. APP. P. 9.5(a) ("At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding."), (d) ("A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service."), (e) ("A certificate of service must be signed by the person who made the service and must state: (1) the date and manner of service; (2) the name and address of each person served; and (3) if the person served is a party's attorney, the name of the party represented by that attorney."). Further, it does not comply with the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 9.4(h) (specifying form of appendix), 38.1(k) (specifying contents of appendix); *see, e.g., Layton v. Lavaca Cnty.*, No. 13-20-00128-CV, 2021 WL 265374, at *1 (Tex. App.—Corpus Christi—Edinburg Jan. 21, 2021, no pet.) (mem. op.) (appellant does not comply with Texas Rules of Appellate Procedure where appendix filed as separate document); *Corbin v. Reiner*, No. 13-18-00177-CV, 2019 WL 471123, at *1–3 (Tex. App.—Corpus Christi—Edinburg Feb. 7, 2019, no pet.) (mem. op.) (dismissing appeal for want of prosecution where appellant's amended brief failed to, among other things, include appendix in form that complied with Texas Rule of Appellate Procedure 9.4(h)); *Lipscomb v. City of Dallas Police*, No. 05-16-01090-CV, 2017 WL 1149674, at *1–2 (Tex. App.—Dallas Mar. 27, 2017, no pet.) (mem. op.) (dismissing appeal where appellant's amended brief, among other things, omitted certain required items from appendix); *Shull v. Westover Crossing (San Antonio)*

See TEX. R. APP. P. 38.1(k); *see also* *Running*, 2018 WL 2326775, at *1 (dismissing appeal for want of prosecution where appellant's brief failed to comply with Texas Rule of Appellate Procedure 38.1(k) and appellant failed to file a supplemental or corrected appellant's brief); *Perez*, 2018 WL 1959754, at *1 (brief must contain appendix as required by Texas Rule of Appellate Procedure 38.1(k)); *Ybarra*, 2011 WL 631803, at *1 (striking appellant's brief and dismissing for want of prosecution where appellant's brief did not contain required appendix and appellant failed to respond to appellate court's notice). Further, Porter's September 22, 2022 corrected appellant's brief does not comply with Texas Rule of Appellate Procedure 9.4 because it is computer-generated and exceeds 15,000 words.⁹ *See* TEX. R. APP. P.

Homeowners' Ass'n, Inc., No. 04-15-00692-CV, 2016 WL 7119051, at *1-2 (Tex. App.—San Antonio Dec. 7, 2016, no pet.) (mem. op.) (striking appellant's amended brief, prohibiting appellant to file another, and dismissing appeal for want of prosecution where appellant's amended brief contained appendix that did not comply with Texas Rules of Appellate Procedure). On October 11, 2022, Porter filed her "1st Amended 1st Appendix Addendum," and on October 14, 2022, Porter filed her "2nd Appendix Addendum." Neither Porter's "1st Amended 1st Appendix Addendum" nor Porter's "2nd Appendix Addendum" complies with the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 9.4(h), 38.1(k); *see, e.g., Layton*, 2021 WL 265374, at *1; *Corbin*, 2019 WL 471123, at *1-3; *Lipscomb*, 2017 WL 1149674, at *1-2; *Shull*, 2016 WL 7119051, at *1-2.

⁹ Although Porter, in her September 22, 2022 corrected appellant's brief, included a certificate of compliance stating that her brief "comple[d] with the type-limitations of Tex. R. App. P. 9.4 because it contain[ed] 15[,]000 words, excluding the parts of

9.4(i)(2)(B); *see also Shull*, 2016 WL 7119051, at *1–2 (striking appellant’s amended brief, prohibiting appellant to file another, and dismissing appeal for want of prosecution where appellant’s amended brief exceeded word-limit). And Porter’s September 22, 2022 corrected appellant’s brief does not contain a certificate of service as required by Texas Rule of Appellate Procedure 9.5. *See* TEX. R. APP. P. 9.5(d) (“A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service.”), (e) (“A certificate of service must be signed by the person who made the service and must state: (1) the date and manner of service; (2) the name and address of each person served; and (3) if the person served is a party’s attorney, the name of the party represented by that attorney.”); *see also Perez*, 2018 WL 1959754, at *1 (“A certificate of service is required.”); *Longoria*, 2017 WL 6047709, at *1–2 (striking appellant’s brief and dismissing appeal for want of prosecution where appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1 and did not contain proper certificate of service). We cannot remedy the deficiencies in Porter’s September 22, 2022 corrected appellant’s brief for her. *See Yeldell*, 2008 WL 4053014, at *2; *Strange v. Cont’l Cas. Co.*, 126 S.W.3d 676, 678 (Tex. App.—Dallas 2004, pet. denied).

Porter’s September 23, 2022 amended corrected appellant’s brief, titled “Appellant’s Amended Opening Brief,” also does not contain “a

the [brief] exempted by Tex. R. App. P. 9.4(i),” this representation is not an accurate reflection of the number of words in her document. *See* TEX. R. APP. P. 9.4(i)(2)(B), (i)(3).

clear and concise argument for the contentions made, with appropriate citations to authorities and the record.” See TEX. R. APP. P. 38.1(i); *In re Hammond*, 2018 WL 843062, at *1–3 (appellant’s brief violated Texas Rules of Appellate Procedure where it did not “include a clear and concise argument for the contentions made”). Porter’s September 23, 2022 amended corrected appellant’s brief largely mirrors her September 22, 2022 corrected appellant’s brief. Thus, although Porter’s September 23, 2022 amended corrected appellant’s brief contains an “argument” section, the brief remains rambling, disjointed, and difficult to follow. It does not contain succinct, clear, and accurate arguments addressing how her purported complaints have merit. See, e.g., *Golden*, 2022 WL 1412303, at *2 (appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1(i) where it was disjointed and difficult to follow and appellant’s arguments were confusing); *Amrhein*, 593 S.W.3d at 402–03 (appellant’s brief did not comply with Texas Rules of Appellate Procedure where it was rambling, incoherent, and did not provide “succinct, clear, and accurate arguments addressing how [appellant’s] complaints ha[d] merit”); *Serrano*, 411 S.W.3d at 667 (appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1(i) where argument section was unclear and “sometimes nonsensical”); *Sterling*, 99 S.W.3d at 798–99 (to comply with Texas Rules of Appellate Procedure, appellant’s brief must “provide a cogent argument”).

Porter’s September 23, 2022 amended corrected appellant’s brief also does not contain an

appendix.¹⁰ See TEX. R. APP. P. 38.1(k); see also *Running*, 2018 WL 2326775, at *1 (dismissing appeal for want of prosecution where appellant's brief failed to comply with Texas Rule of Appellate Procedure 38.1(k) and appellant failed to file a supplemental or corrected appellant's brief); *Perez*, 2018 WL 1959754, at *1 (brief must contain appendix as required by

¹⁰ As noted previously, on October 10, 2022, Porter filed a "1st Appendix Addendum," which was 225 pages in length. Nothing indicates that the "1st Appendix Addendum" was properly served, and it does not contain a certificate of service. See TEX. R. APP. P. 9.5(a), (d), (e). It also does not comply with the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 9.4(h), 38.1(k); see, e.g., *Layton*, 2021 WL 265374, at *1 (appellant does not comply with Texas Rules of Appellate Procedure where appendix filed as separate document); *Corbin*, 2019 WL 471123, at *1–3 (dismissing appeal for want of prosecution where appellant's amended brief failed to, among other things, include appendix in form that complied with Texas Rule of Appellate Procedure 9.4(h)); *Lipscomb*, 2017 WL 1149674, at *1–2 (dismissing appeal where appellant's amended brief, among other things, omitted certain required items from appendix); *Shull*, 2016 WL 7119051, at *1–2 (striking appellant's amended brief, prohibiting appellant to file another, and dismissing appeal for want of prosecution where appellant's amended brief contained appendix that did not comply with Texas Rules of Appellate Procedure). On October 11, 2022, Porter filed her "1st Amended 1st Appendix Addendum," and on October 14, 2022, Porter filed her "2nd Appendix Addendum." Neither Porter's "1st Amended 1st Appendix Addendum" nor Porter's "2nd Appendix Addendum" complies with the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 9.4(h), 38.1(k); see, e.g., *Layton*, 2021 WL 265374, at *1; *Corbin*, 2019 WL 471123, at *1–3; *Lipscomb*, 2017 WL 1149674, at *1–2; *Shull*, 2016 WL 7119051, at *1–2.

Texas Rule of Appellate Procedure 38.1(k)); *Ybarra*, 2011 WL 631803, at *1 (striking appellant's brief and dismissing for want of prosecution where appellant's brief did not contain required appendix and appellant did not respond to appellate court's notice). And Porter's September 23, 2022 amended corrected appellant's brief does not comply with Texas Rule of Appellate Procedure 9.4(i)(3) because it does not contain an accurate certificate of compliance.¹¹ See TEX. R. APP. P. 9.4(i)(3) ("A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document."); see also *Styles v. Children's Med. Ctr.*, No. 05-21-00564-CV, 2022 WL 214097, at *1 (Tex. App.—Dallas Jan. 25, 2022, pet. denied) (mem. op.) (dismissing appeal where appellant's brief, among other things, did not contain "a proper certificate of compliance" and appellant failed to file corrected brief); *Sarabian v. Track*, No. 05-20-00613-CV, 2021 WL 5860921, at *1 n.1 (Tex. App.—Dallas Dec. 10, 2021, no pet.) (mem. op.) (appellant's brief deficient and failed to comply with Texas Rules of Appellate Procedure where it did not contain "a proper certificate of compliance"). Further, Porter's September 23, 2022 amended corrected appellant's

¹¹ Although Porter, in her September 23, 2022 amended corrected brief, included a certificate of compliance, stating that her brief "compli[ed] with the type-limitations of Tex. R. App. P. 9.4 because it contain[ed] 15[,]000 words, excluding the part of the [brief] exempted by Tex. R. App. P. 9.4(i)," this representation is not an accurate reflection of the number of words in her document. See TEX. R. APP. P. 9.4(i)(2)(B), (i)(3).

brief does not contain a certificate of service that complies with Texas Rule of Appellate Procedure 9.5. *See* TEX. R. APP. P. 9.5(e) (“A certificate of service must be signed by the person who made the service and must state: (1) the date and manner of service; (2) the name and address of each person served; and (3) if the person served is a party’s attorney, the name of the party represented by that attorney.”); *see also Perez*, 2018 WL 1959754, at *1 (“A certificate of service is required.”); *Longoria*, 2017 WL 6047709, at *1–2 (striking appellant’s brief and dismissing appeal for want of prosecution where appellant’s brief did not comply with Texas Rule of Appellate Procedure 38.1 and did not contain proper certificate of service). Again, we cannot remedy the deficiencies in Porter’s September 23, 2022 amended corrected appellant’s brief for her. *See Yeldell*, 2008 WL 4053014, at *2; *Strange*, 126 S.W.3d at 678.

When, as here, an appellant files an appellant’s brief that does not comply with the Texas Rules of Appellate Procedure and then files a corrected brief or amended brief that also does not comply, “the [appellate] court may strike the brief, prohibit the [appellant] from filing another, and proceed as if the [appellant] had failed to file a brief.” TEX. R. APP. P. 38.9(a); *see also Garrett*, 2021 WL 5702177, at *3; *Tyurin*, 2017 WL 4682191, at *2. When an appellant fails to file an appellant’s brief, we may dismiss her appeal for want of prosecution. TEX. R. APP. P. 38.8(a)(1); *Garrett*, 2021 WL 5702177, at *3; *Tyurin*, 2017 WL 4682191, at *2. Accordingly, we strike Porter’s September 22, 2022 corrected appellant’s brief, Porter’s September 23, 2022 amended corrected appellant’s brief, Porter’s “1st Appendix Addendum,”

Porter's "1st Amended 1st Appendix Addendum," and Porter's "2nd Appendix Addendum," and we dismiss the appeal. *See* TEX. R. APP. P. 38.9(a), 42.3(b), 43.2(f); *Garrett*, 2021 WL 5702177, at *3; *Tyurin*, 2017 WL 4682191, at *2. We dismiss any pending motions as moot.

Julie Countiss
Justice

Panel consists of Justices Goodman, Countiss, and Farris.

CAUSE NO. 2017-67479
LINDA PORTER
IN THE DISTRICT COURT
Vs.

127TH JUDICIAL DISTRICT
Kennard Law PC d/b/a Kennard Richard PC,
OF HARRIS COUNTY, TEXAS
DEFENDANTS

ORDER ON MOTION FOR NONSUIT

On _____, the Motion for Nonsuit filed in this cause came on for consideration by the Court. After consideration of the pleadings, evidence, and arguments of counsel, the Court finds that the Motion should be and hereby is:

_____ **DENIED**

 X **GRANTED.** The Court **ORDERS** that this case is dismissed without prejudice and costs of court are taxed against **party incurring the same.**

SIGNED ON _____. **Signed:** /s/R. Sandill
JUDGE PRESIDING 11/14/2021

APPROVED AS TO FORM AND SUBSTANCE

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