

No. 20-757

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IN THE

SUPREME COURT OF THE UNITED STATES

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TIMOTHY L. ASHFORD,

*Petitioner,*

v.

OFFICE FOR COUNSEL FOR DISCIPLINE,

*Respondents.*

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On Petition for Writ of Certiorari  
to the United States Court  
of Appeals for the Eighth Circuit

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PETITION FOR REHEARING

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## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2 Timothy L. Ashford PCLLO respectfully petitions for rehearing of the Court's decision issued on January 25, 2021 in Timothy L. Ashford PCLLO and moves this Court to grant this petition for rehearing and consider the merits and schedule briefing and oral argument. The grounds are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Pursuant to Supreme Court Rule 44.2 this petition for rehearing is filed within 25 days of this Court's decision in this case.

### REASONS FOR GRANTING THE REHEARING PETITION THE OFFICE FOR COUNSEL FOR DISCIPLINE HAS NEVER APPRISED THE PETITIONER OF THE DISCIPLINARY CHARGES AGAINST PETITIONER IN VIOLATION OF RUFFALO

The Petitioner has never received a written grievance letter from the Office for Counsel for Discipline for the preliminary inquiry on 10/3/16 which is fair notice of the charges in violation of Ruffalo. In the Matter of John Ruffalo, Jr., 391 U.S. 961 (1968). This clear error of law is the reason for granting certiorari.

The intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented is the Office for Counsel for Discipline recently wrote in the February 5, 2021 letter that they can not release the written letter of complaint. The Office for Counsel for Discipline state in the 2/5/21 letter they can not release the written letter of complaint because the Petitioner's files are confidential for the incident during the dates of September 28, 2016 until October 4, 2016. The Petitioner's request for the release of the written grievance

letter "...includes any and all documents of any written letters of complaint". On February 5, 2021, they refused Petitioner copies of any written letters of the 10/3/16 complaint in their February 5, 2021 response letter to a recent Freedom of Information Act request. After five years, the Petitioner can not have access to his own disciplinary file or a copy of any written letter of grievance which is the basis of the 10/3/16 complaint. A written letter of grievance does not exist and the Office for Counsel for Discipline has not apprised Petitioner of the disciplinary charges against Petitioner in violation of Ruffalo. In the Matter of John Ruffalo, Jr., 391 U.S. 961 (1968).

White attorneys are apprised of their charges in a disciplinary case. The written letter of grievance should have been sent to Petition on 10/3/16. The Office for Counsel for Discipline's response in the February 5, 2021 letter should have stated we sent you the written grievance letter on 10/4/16 so they implicitly admit they never sent Petitioner a written grievance letter.

The Office for Counsel for Discipline violated their own procedures, Ruffalo and the Petitioners due process rights because African American Petitioner has never received a copy of a written grievance letter on official judicial letterhead from the Respondent because the written grievance letter does not exist. The Office for Counsel for Discipline letter 2/5/21 states:

In the request you seek records of my office during the dates of September 28, 2016 until October 4, 2016 "which includes any and all documents of any written letters of complaint received by the Office for Counsel for Discipline...and which include written letters of complaint on official Douglas County judicial letterhead stationery received by the Office for Counsel for Discipline filed against Timothy L. Ashford..."

Pursuant to Neb. Ct. R. § 3-318 (A) such records are not public records. (A)...are confidential and shall not be made public...unless (1) the Respondent (Petitioner) has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or...

By filing this lawsuit, the Petitioner has waived confidentiality by public disclosure of information of Petitioner's bar complaint. The Respondent Office for Counsel for Discipline should have given the Petitioner a letter on official judicial letterhead stationery five years ago when they sent the October 4, 2016 disciplinary letter or they should have followed their procedures of refusing to investigate the case because the complaining witness did not file a written grievance letter in compliance with their procedures. Although the Nebraska Attorney General has argued for quasi-judicial immunity in every court based upon a judge filing the bar complaint as a judge; however, if the complaint was not on official judicial letterhead stationery the judge was not acting in the capacity of the judge.

The Office for Counsel for Discipline refuses to give Petitioner a written grievance letter or any documents and that state the nature of the charges upon which the 10/3/16 disciplinary charges are based. Petitioner had to sue to attempt to obtain the documents and the allegations to determine the nature of the charges from the Office for Counsel for Discipline for the 10/3/16 disciplinary complaint.

"A lawyer charged with misconduct in a disbarment proceeding is entitled to procedural due process, which includes fair notice of the charge." In the Matter of John Ruffalo, Jr., 391 U.S. 961 (1968). After five years, the Office for Counsel for Discipline states in the 2/5/21 letter that the written letter of grievance to start this

complaint against Petitioner on 10/3/16 will not be released to the Petitioner because the records “are confidential and shall not be made public” to the Petitioner. The written grievance letter does not exist. Their action is similar to a police officer giving you a traffic ticket and telling you the charges against you for your violation of the traffic laws are confidential.

In violation of the requirement of Ruffalo to apprise the attorney of the ethical violations, the Respondent the Office for Counsel for Discipline initiated a preliminary inquiry bar complaint by sending Petitioner a 9/29/16 Douglas County Probate Court Order in case PR 14 1483 and the Office for Counsel for Discipline letter dated October 4, 2016. In the Matter of John Ruffalo, Jr., 391 U.S. 961 (1968). No grievance letter was sent to Petitioner by anyone.

The Petitioner argues a white female judge anonymously mailed only the 9/29/16 order. Nine days after a white female Douglas County Court judge abused her discretion in jailing African American championship boxer Terrence “Bud” Crawford for 90 days and ordering him to pay a fine, the white female judge mailed an anonymous bar complaint to the Office for Counsel for Discipline against Petitioner in the Omaha, Douglas County, Nebraska Probate case PR 14 1483 .

Petitioner was falsely accused of overbilling in an anonymous bar complaint filed by a white female judge without a written grievance letter on official judicial letterhead stationery. The white female judge did not write a letter on official Douglas County Court judicial letterhead stationery stating the known misconduct of Petitioner in violation of Ruffalo. After approving fees in the amount of \$8,641.57

in six different orders without an objection from the family in the probate case PR 14 1483, the white female judge signed a seventh order for Petitioner to reimburse the attorney fees in the amount of \$8,265 and the judge anonymously mailed only the seventh order to file the bar complaint. She did not mail a detailed grievance letter on official judicial letterhead stationery to the Office for Counsel for Discipline on 9/30/16 for the 10/3/16 complaint. Like searching for a needle in a haystack, after approximately two years, Petitioner concluded that based upon a two day mail delivery rule in the Omaha and Lincoln area the 9/29/16 order was mailed on Friday 9/30/16 by the judge and was delivered to all parties on Monday 10/3/16. The family did not object to the payment of fees in PR 14 1483. The family did not have time to send an anonymous complaint and the court mailed the documents only to the parties listed in the case.

The case requires briefing and oral argument because the Respondent violated the constitution and their own procedures which state "...you may file a grievance by sending us a letter that fully explains your problem." The reason that the letter on official letterhead stationery is important is because Respondent did not receive a letter on official judicial letterhead stationery from anyone or any of the defendants regarding the October 3, 2016 bar complaint.

Now, circumstantial evidence is that all judges use official judicial letterhead court stationery to transmit official court business. For example, in response to Petitioner's March 7, 2014 Omaha Star Article "Is the Douglas County Court System Racist?" Petitioner received the Nebraska Supreme Court Letter on official

judicial letterhead stationery from Justice Michael Heavican from the Nebraska Supreme Court dated March 12, 2014 and Petitioner received the Douglas County Court Letter on official judicial letterhead stationery from the Douglas County Court Presiding Judge Craig McDermott dated March 11, 2014.

The Office for Counsel for Discipline violated their own rules to investigate an ethical violation unless a written complaint letter is filed. Also, the staff attorney who investigated the preliminary inquiry can not be both the prosecutor and the judge to determine if the charges should go to the committee.

Now, a judge can not violate the Nebraska Revised Code of Judicial Conduct § 5-301.2 and the mail statutes by mailing only one order out of seven orders to the Office for Counsel for Discipline. The judge as the complainant has an ethical duty to provide honest services which means mailing all seven orders, and send a complete honest file to the Office for Counsel for Discipline investigators or they are in violation of their ethical rules and the mail fraud statute, 18 U.S.C. § 1341 which prohibits the use of the mails to execute “any scheme or artifice to defraud...” U.S. v. David Kofoed 2009 WL 2601235).

When the judge deceptively mailed only one out of seven orders she was participating in general activities, which anyone can do such as the clerk, which are not related to a concrete judicial case or controversy and she is not entitled to judicial immunity. Mitchell v. Fishbein, 377 F.3d 157 (2004); Timothy L. Ashford v. John Does in the Eighth Circuit Court of Appeals Case number (16-3366).

As part of the Court's retaliation for Petitioner's activism, Petitioner is the only attorney in the history of this nation to have an anonymous bar complaint filed by a white female judge for charging a fee in a probate case PR 14 1483 for receiving \$13,865.00 over a 19 month period, which is lower than a general fee charged by two white attorneys, for the same attorney services for three months of service in which two white attorneys received \$11,643 in attorney fees in a reported case. In *Re Guardianship and Conservatorship of James D. Forster*, 22 Neb. App. 478 (2014).

The Nebraska Revised Code of Judicial Conduct § 5-301.2 A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The judge in PR 14 1483 has refused to recuse herself although she was sued by Petitioner for racial discrimination. (CI 19 9615).

The bad faith is the Respondent violated their own rules of a requirement of a written letter from a complaining witness or they would not investigate the complaint. The respondent accepted an anonymous disciplinary complaint filed by the judge which was not accompanied by a written grievance letter on official judicial letterhead stationery detailing the alleged known misconduct of the petitioner so the federal court should not abstain.

THE UNITED STATES IS THE ONLY NATION  
WHICH DOES NOT APPRISE BLACK ATTORNEYS OF  
THE ETHICAL CHARGES

"Where is the beef?" is a popular statement from the 1980s Wendy

commercial and where is the letter on official judicial letterhead stationery for the October 3, 2016 bar complaint filed by the Douglas County Court judge against Petitioner to start the bar complaint for which the Respondent argues grants the Respondents Office for Counsel for Discipline judicial immunity? The reason the letter written by the judge on official judicial letterhead is important is because the due process rights of the Petitioner are based upon the Office for Counsel for Discipline following their own procedures to require a written letter from a judge on official judicial letterhead stationery in her judicial capacity to start an investigation. The Office for Counsel for Discipline refuses to give copies of the attorney's bar complaint file charging the attorney with unethical behavior five years after the Office for Counsel for Discipline has initiated a complaint against the Petitioner.

The U.S. has spoken out against the allegedly false charges of imprisoned Russian dissident Alexei Navalny for only speaking out against Russian President Vladimir Putin and the U.S. has spoken out against the treatment of Hong Kong by China. The U.S. and specifically the Nebraska Court system has falsely charged Petitioner to attempt to disbar Petitioner for representing black citizens and to bring criminal charges against Petitioner for his advocacy against racism in the Nebraska Court System. What would China, Russia and Iran think about the human rights in the U.S. Constitution and the U.S. Courts for allowing a state to retaliate by instituting charges to disbar a black attorney for representing the poor and black clients with unpopular cases?

The Russians and Chinese do not bring false charges against attorneys who represent unpopular clients in their country but the U.S. allow charges against attorneys in the U.S. who represent unpopular clients.

This court has effectively declined to review any fact specific state attorney discipline cases no matter how egregious. The U.S. District Courts can refuse judicial review of attorney disciplinary cases under the Younger abstention doctrine and after the state proceedings are done the U.S. District Courts can refuse attorney cases under Rooker-Feldman with the only option which is to proceed to the U.S. Supreme Court by certiorari directly from the state case. The U.S. Supreme Court almost never takes attorney discipline cases directly on certiorari. Just as judges cherish their judicial independence so they can faithfully do their jobs without fear of negative consequences, attorneys should be insulated from the abuse and weaponization of attorney disciplinary proceedings so they can do their jobs—especially representing black citizens in unpopular causes and discrimination cases.

THE NEBRASKA STATE COURT HAS NOT ALLOWED PETITIONER  
THE RIGHT TO APPEAL THE STATE COURT DECISION  
PETITION HAS NO RIGHT TO LITIGATE IN STATE COURT  
PETITIONER HAS NO RIGHT TO LITIGATE IN FEDERAL COURT

The Nebraska Court system is both the referee and the coach in this game. This Court did not acknowledge Nebraska's lack of state appellate review for this case which violate Petitioner's constitutional rights. The respondent Office for Counsel for Discipline is a part of the Nebraska court system and so are the courts.

In the Nebraska state court, the Complaint and Petition for Declaratory

Judgment and Injunctive Relief in the Timothy L. Ashford v. Office for Counsel for Discipline CI 19 3445 was dismissed without prejudice on 8/12/29. The Petitioner timely filed a motion to alter or amend judgment in CI 19 3445 on August 19, 2019. The Nebraska court did not rule on the Petitioner's Motion to Alter or Amend Judgment in CI 19 3445 filed by Petitioner on August 19, 2019. As a result of the court not ruling on the Motion to Alter or Amend the Judgment in the case of CI 19 3445 since August 19, 2019, the Petitioner can not appeal the Nebraska State Court case CI 19 3445 to the Nebraska Supreme Court and subsequently to the U.S. Supreme Court. In order to defeat the Petitioner's right to certiorari to the United States Supreme Court, the Nebraska State court can ignore the case CI 19 3445 and not rule on the final motion by the Petitioner.

The Douglas County District Court progression orders have not applied to CI 19 3445 nor has the Nebraska Attorney General filed any motion to terminate the proceedings in CI 19 3445. So, the Nebraska Attorney General statement made in another court that Appellant has failed to obtain a hearing date in CI 19 3445 is without merit. Court Rule 3-2 states F. If a party files a motion... and the motion will require the admission of evidence beyond the pleadings, ...they must set a hearing date. The motion to alter or amend judgment filed on 8/19/19 did not require a hearing because it was a question of law and no evidence was going to be admitted. The bad faith is the judge as the referee in CI 19 3445 has failed to rule on the case since 8/19/19 and the judge is allowing the coach or the Respondent to win by a dismissal which can not be appealed to the Nebraska Supreme Court.

The Petitioner requested attorney fees against the Nebraska State Assistant Attorney General in CI 19 3445. Since the court has not ruled on the CI 19 3445 case it can not be appealed. The Nebraska judge has duties in CI 19 3445 to promptly schedule motion hearings pursuant to Court Rule § 5-302.5. Competence, diligence, and cooperation. (A) A judge shall perform judicial and administrative duties, competently and diligently. The bad faith by the Office for Counsel for Discipline is the respondent violated their own rules of a requirement of a written letter from a complaining witness or they would not investigate the complaint and the Respondent accepted an anonymous disciplinary complaint filed by a judge which was not accompanied by a letter detailing the alleged known misconduct of the petitioner so the federal court should not abstain.

Another Nebraska Attorney is making the same violation of constitutional rights that the Office for Counsel for Discipline serves as both prosecutor and judge in the current case before the U.S. Supreme Court case of State Ex. Rel. Counsel for Discipline v. Nimmer, S17-111, 300 Neb. 906 (2018) Nimmer v. Heavican, et. al, 4:18-cv-3123 (Dist. Neb) Nimmer v. Heavican, et. al, 19-2426 (8th Cir.) ("The Due Process and Privileges and Immunities clauses of the Fourteenth Amendment to the US Constitution, and Article V Sec. 4 (states required to have a Republican Form of Government), mandate separation of powers in the taking of private property.)

#### BAD FAITH YOUNGER EXCEPTION

The Petitioner argues that the bad faith exception to the Younger case applies in Ashford v. Office for Counsel for Discipline 8:19 CV 243/19-2618

because the Nebraska state court has not adequately provided a safeguard for the Petitioner's constitutional rights because the Nebraska state court set up obstacles to a fair hearing for the Petitioner, failed to rule on motions, ruled on motions without an argument from the Petitioner and has ignored motions filed by the Petitioner since 8/19/19 in CI 19 3445.

Petitioner seeks the litigation of his lawsuit in federal court based upon the bad faith exception to Younger based upon Petitioner's race in violation of his constitutional rights, 42 U.S.C. § 1981, 42 U.S.C. § 1983 and his due process rights.

#### RETALIATION FOR PETITIONER'S ACTIVISM

Petitioner represented former Black Panther Party Member for Self Defense Wopashitwe Mondo Eyen We Langa "Mondo" also known as David Rice pro bono for 20 years. Douglas County District Judge James T. Gleason appointed Petitioner to represent former Black Panther Party Member for Self Defense Party Wopashitwe Mondo Eyen We Langa "Mondo" aka David Rice. After Petitioner sued him for racial discrimination he denied Petitioner's attorney fees. Timothy L. Ashford v. Douglas County, 880 F.3d 990 (2018 8<sup>th</sup> Cir.)(Timothy L. Ashford v. John Does in the Eighth Circuit Court of Appeals Case number 16-3366). State v. Rice, 295 Neb. 241 (2016). Douglas County District Court Judge James T. Gleason refused to pay Petitioner's attorney fee invoice for representing former Black Panther Party Member for Self Defense "Mondo" also known as David L. Rice stating the representation was frivolous in addition to writing "this judge received notice that he had been sued in the United States District Court by the applicant herein." The

Nebraska Supreme Court reversed Judge Gleason's denial of attorney fees and remanded the case for further proceedings. State v. Rice, 295 Neb. 241 (2016). The lower court ordered payment of the invoice. Petitioner now represents the co-defendant former Black Panther Party Member for Self-Defense Edward Poindexter.

Petitioner wrote an article "Is the Douglas County Court Racist?" which appeared in the Omaha Star March 7, 2014. Petitioner filed the racial discrimination lawsuit Timothy L. Ashford v. John Does in the Eighth Circuit Court of Appeals Case number 16-3366 which was based on the fact that a panel of judges and attorneys in Omaha, Douglas County, Nebraska did not appoint black attorneys to represent poor defendants in murder cases, felony cases and misdemeanor cases (which is similar to refusing to allow black jurors to decide a murder case as a juror). Timothy L. Ashford v. Douglas County, 880 F.3d 990 (2018 8<sup>th</sup> Cir.) One year after Petitioner's article "Is the Douglas County Court Racist" was written in the Omaha Star March 7, 2014, the Nebraska Supreme Court implemented rule 4-17 to appoint all attorneys, which includes black attorneys, on a rotational basis by the judges in Nebraska. After Petitioner wrote the article and filed the lawsuit (16-3366), the Douglas County Court appointed approximately 10 black attorneys to represent indigent criminal defendants in misdemeanor and felony cases. As a result of Petitioner's article and lawsuit, black attorneys have received more than \$200,000 in attorney fees since 2016.

In retaliation for successfully defending a black female attorney in a bar complaint, a white federal female judge discriminated against Petitioner and Petitioner's client by denying Petitioner's motion to continue a criminal jury trial only four days after Petitioner entered his appearance on 12/30/15. After 1/6/16, the white judge granted all of the white attorneys a continuance of 30 days or more of the trial until the judgment on 4/24/2017. 8:15-cr-00313-LSC-FG3 Doc # 38 Filed: 01/03/16 Page 1 of 19 · Page ID # 89

After becoming one of a few attorneys to win his first federal criminal jury trial in U.S. v. Rainier 8:04 CR 274 a panel in the Nebraska federal court, without explanation, banned Petitioner from the Criminal Justice Act (CJA) Panel. Although Petitioner was appointed in a murder case by the Douglas County Court in 2000 in the death of George Bibins during a police stop in Omaha, Petitioner has been banned from the Douglas County Murder panel to represent indigent defendants in murder cases because of his race in 2015. The only requirement to be placed upon the Douglas County Murder panel is to have a valid Nebraska law license. In the two separate cases Petitioner represented black attorneys in disciplinary complaints against the Office for Counsel for Discipline. State of Nebraska ex rel. Counsel for Discipline v. Carter, 282 Neb. 596 (2011); State of Nebraska ex rel. Counsel for Discipline v. Crawford, 285 Neb. 321 (2013).

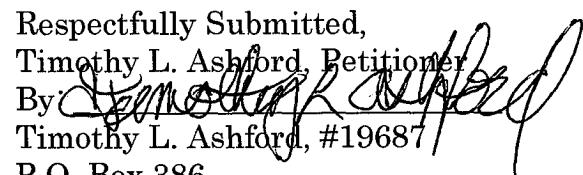
"The first thing we do, let's kill all the lawyers" quoting Shakespeare who wrote it in 1598. (Henry VI, Part 2) The adage only a fool represents himself does not apply because no white attorney will represent me for fear of retaliation from

Nebraska. The Nebraska Courts retaliated against Petitioner for his representation of blacks, poor people, former Black Panther Party Members for Self Defense and unpopular cases.

### CONCLUSION

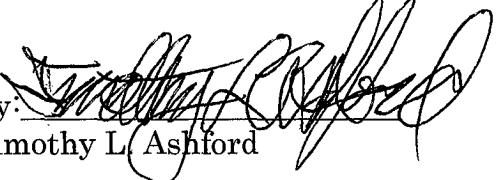
The Respondent Office for Counsel for Discipline initiated a disciplinary bar complaint against Petitioner without a letter of grievance. The intervening circumstances of a substantial or controlling effect is the Office for Counsel for Discipline in their 2/5/21 letter implicitly admit they did not send Petitioner a grievance letter for the 10/3/16 bar complaint. The Respondent Office for Counsel for Discipline has never possessed a grievance letter for the 10/3/16 complaint. White attorneys are informed of their disciplinary charges and African American Petitioner has never been informed of his disciplinary charges. This court must protect attorneys. Petitioner respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Dated this 17<sup>th</sup> day of February, 2021.

Respectfully Submitted,  
Timothy L. Ashford, Petitioner  
By   
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Attorney for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

By:   
Timothy L. Ashford

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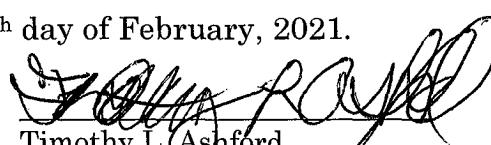
*Respondents.*

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CERTIFICATE OF SERVICE

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You are hereby notified that a true and correct copy of the Petition for Rehearing entitled Timothy L. Ashford v. Office for Counsel for Discipline was mailed by U.S. First Class Mail Postage Prepaid to the Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543 and mailed by U.S. First Class Mail Postage Prepaid to the Nebraska Attorney General Doug Peterson, 2115 State Capitol, Lincoln, NE 68509 on the 17<sup>th</sup> day of February, 2021.



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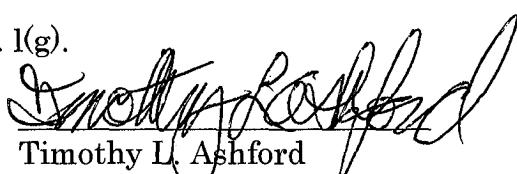
*Respondents.*

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CERTIFICATE OF COMPLIANCE WITH RULE 33.1(g)

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I, Timothy L. Ashford, counsel for Timothy L. Ashford and Timothy L. Ashford, PC LLO, hereby certify that, according to the word-count tool in Microsoft Word, the Petition for Writ of Certiorari for the Eighth Circuit consists of 4,048 words, including footnotes and excluding the sections enumerated by Rule 33.1(d). The Brief therefore complies with Rule 33.1(g).



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