

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY L. ASHFORD,

CASE NO. 20-757

Petitioner,

MOTION TO
TAKE
JUDICIAL
NOTICE

vs.

Submitted by:
Timothy L. Ashford
P.O. Box 386
Omaha, Nebraska 68112
Attorney for Petitioner

OFFICE FOR COUNSEL FOR DISCIPLINE,

Respondent.

COMES NOW the Petitioner, Timothy L. Ashford, having filed for Petition for Rehearing before this Court in case number 20-757 and pursuant to Rule 21 and the Federal Rule of Evidence 201 requests the Court take judicial notice (appropriate at any stage of a proceeding including on appeal) of the documents which follow. The court may judicially notice a fact that is not subject to reasonable dispute. The purpose of this motion is to file court documents and publications which are relevant to the issue of the court.

The purpose of this motion is to advise the court of the new attorney ethical charges filed by Respondent against Petitioner and the fact the Respondent has not dismissed two ethical charges (10/3/16)(3/19/19) against the Defendant. So,

Respondent has filed three ethical charges against Petitioner in five years and the Respondent has not dismissed any bar complaints.

The Office for Counsel for Discipline stated in a February 5, 2021 letter to Petitioner they refuse to release to Petitioner pursuant to Petitioner's Freedom of Information Act request "...any and all documents of any written letters of complaint..." for the disciplinary investigation which they filed against Petitioner on 10/3/16. A written letter of grievance does not exist and has never existed against Petitioner for the 10/3/16 complaint. The Respondent implicitly admitted in the 2/5/21 letter they never sent Petitioner a grievance letter and the Respondent does not possess a grievance letter for the preliminary inquiry on 10/3/16 to attempt to disbar Petitioner. The Respondent has received evidence to dismiss the 3/19/19 bar complaint but they have not dismissed the complaint.

"A partial and fragmentary disclosure, accompanied with the willful concealment of material and qualifying facts, is not a true statement, and is as much a fraud as an actual misrepresentation, which, in effect, it is." State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Brenda J. Council, 289 Neb. 33 (2014). One who responds to an inquiry is guilty of fraud if he or she denies all knowledge of a fact which he or she knows to exist. Id. The Nebraska Attorney General and the Office for Counsel for Discipline represented to this court and represented in state court (CI 19 9165)(CI 19 3445) and in federal court (8:20 CV 36) that a written letter of grievance existed in compliance with

Ruffalo and that all of their own disciplinary procedures were followed for the 10/3/16 complaint against Petitioner.

By waiving the response brief in this court, they implied that a written letter of grievance existed against Petitioner and they implied they followed their own procedures. The Office for Counsel for Discipline imply to this court that the 10/3/16 grievance letter exist and their procedures do not violate Ruffalo. The Respondent withheld from this court the fact they did not have a written grievance letter and they did not follow their procedures. The Respondent also has kept another disciplinary complaint open against Petitioner since 3/19/19 when the Respondent knows the violation in that complaint can not be sustained by clear and convincing evidence. The Office for Counsel for Discipline has a duty to dismiss the cases against Petitioner if there is no clear and convincing evidence of any attorney violation.

The reason they have two attorney misconduct complaints open for years is that multiple acts of attorney misconduct are deserving of more serious sanctions and are distinguishable from isolated incidents. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Brenda J. Council*, 289 Neb. 33 (2014). They have kept two invalid complaints open for as long as five years. After approximately five years, the Respondent refused to provide the written grievance letter for the bar complaint filed on 10/3/16 because it does not exist.

Shortly after Petitioner filed the 2/17/21 Motion to Take Judicial Notice in this court, the Nebraska Supreme Court has filed a third bar complaint with

instructions for the special prosecutor to prosecute the complaint against Petitioner. Although they appointed a white retired female judge as special prosecutor on 2/25/17, at this time the Petitioner has not been provided with a copy of the complaint, the Petitioner could not find the telephone number of the Special Prosecutor after calling the Clerk of the Nebraska Supreme Court and Petitioner could not locate the Special Prosecutor after calling the last known business number of the Special Prosecutor. Petitioner sent an email to the Special Prosecutor's gmail account (not a government email). Based upon the fact that the Office for Counsel for Discipline has refused to dismiss two prior complaints (10/3/16 and 3/19/19) against the Petitioner, it is obvious the Office for Counsel for Discipline and the Special Prosecutor will conduct a fair investigation.

The Petitioner does not waive confidentiality of the new complaint because Petitioner has not seen the new complaint. The Respondent has retaliated against Petitioner by keeping a bar complaint open for approximately five years (10/3/16) and another bar complaint (3/19/19) open for two years without clear and convincing evidence of violation of the attorney ethical rules because Petitioner has sued judges for racial discrimination, represented former Black Panther Party Members for Self Defense and represented poor people.

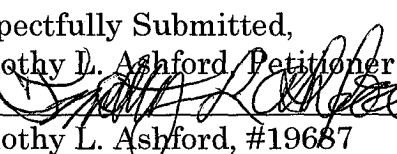
The court can order a brief from Respondent. If no brief is supplied the court can order the relief of proceeding in the U.S. District court with the dismissed complaint. Now, although this court restrains from the state disciplinary action, this court can rule that the disciplinary prosecutor can not serve as judge in a

disciplinary action, this court can grant certiorari to rule the disciplinary office and the Court system have to be separate and this court can return the case to the Nebraska District Court (8:19-CV-243) with directions for a visiting judge outside of Nebraska to conduct the case. The exhibits follow:

1. Office for Counsel for Discipline letter dated February 5, 2021
2. Nebraska Supreme Court Letter from the Nebraska Supreme Court dated February 25, 2021 from Justice Michael Heavican appointing a Special Counsel in State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court (1 Page)
3. Clerk of the Nebraska Supreme Court and the Nebraska Court of Appeals letter of Appointment of Special Prosecutor to the Honorable Teresa K. Luther dated February 25, 2021
4. Omaha Star March 7, 2014 Article "Is the Douglas County Court Racist?" Omaha Star March 7, 2014 (1 Page)
5. Nebraska Supreme Court Letter from the Nebraska Supreme Court dated March 12, 2014 from Justice Michael Heavican in response to Omaha Star Article dated March 7, 2014 (1 Page)
6. Douglas County Letter from the Douglas County Court Judge Craig McDermott Presiding Judge March 11, 2014 in response to Omaha Star Article dated March 7, 2014 (1 Page)

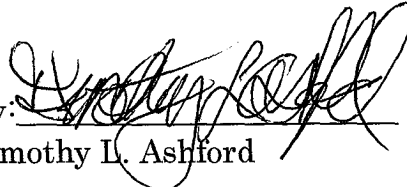
7. Timothy L. Ashford v. Douglas County, 8:15 CV 8 880 F.3d 990 (2018 8th Cir.) Eighth Circuit Court of Appeals Case (Timothy L. Ashford v. John Does in the Eighth Circuit Court of Appeals Case number 16-3366) (4 Pages)
8. "County must pay lawyer for killer's final appeal" Omaha World Herald December 10, 2018 (1 Page)
9. "Judge orders payment of fees to lawyer for killer's final appeal" Omaha World Herald "July 20, 2017 (1 Page)
10. Omaha Star October 29, 2009 "Attorney Timothy L. Ashford Panelist at Nebraska State Bar Association" (1 Page)

Dated this 2nd day of March, 2021.

Respectfully Submitted,
Timothy L. Ashford, Petitioner
By: 
Timothy L. Ashford, #19687
P.O. Box 386
Omaha, Nebraska 68101
(402) 660-5544
Attorney for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that this motion to take judicial notice is presented in good faith and not for delay.

By: 
Timothy L. Ashford

CERTIFICATE OF FILING AND SERVICE

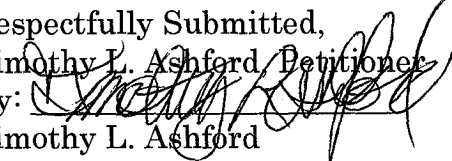
The undersigned certifies that on the 3rd day of March, 2021 he served the foregoing Motion to Take Judicial Notice and the documents via U.S. First Class Mail, postage prepaid, as follows: the Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543 (One original copy only as per Court's April 15, 2021 Covid Order) 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 3rd day of March, 2021. (1 Copy)

By: 
Timothy L. Ashford

CERTIFICATE OF COMPLIANCE WITH RULE 33

I, Timothy L. Ashford, counsel for Timothy L. Ashford and Timothy L. Ashford, PC LLO, hereby certify that the undersigned certifies that to the best of his knowledge the foregoing motion to take judicial notice does not exceed the word or page limitations of Rule 33.

Dated this 2nd day of March, 2021.

Respectfully Submitted,
Timothy L. Ashford, Petitioner
By: 
Timothy L. Ashford
Counsel of Record
Timothy L. Ashford PC LLO
1603 Farnam Street
P.O. Box 386
Omaha, Nebraska 68101
(402) 660-5544
Tash178346@aol.com



STATE OF
NEBRASKA
JUDICIAL BRANCH

Counsel for
Discipline

Office of the Counsel for Discipline

Mark A. Weber
Counsel for Discipline

Julie L. Agena
Deputy Counsel for Discipline

John W. Steele
Assistant Counsel for Discipline

Kent L. Frobish
Assistant Counsel for Discipline

February 5, 2021

Mr. Timothy L. Ashford
P.O. Box 386
Omaha, NE 68101

Re: Public Records Request

Dear Mr. Ashford:

My office is in receipt of your public records request received on February 4, 2021. 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 of Counsel for Discipline...and which include written letters of complaint on official Douglas County judicial letterhead stationary received by the Office for Counsel for Discipline filed against Timothy L. Ashford..."

The records you seek, as stated above, are records relating to attorney discipline investigations. Pursuant to Neb. Ct. R. § 3-318(A), such records are not public records. This rule section states:

*(A) The hearings, records, or proceedings of the Counsel for Discipline, the Committee on Inquiry, and the Disciplinary Review Board **are confidential and shall not be made public** except that the pendency, subject matter, and status of an investigation may be disclosed by the Committee on Inquiry involved or the Disciplinary Review Board if*

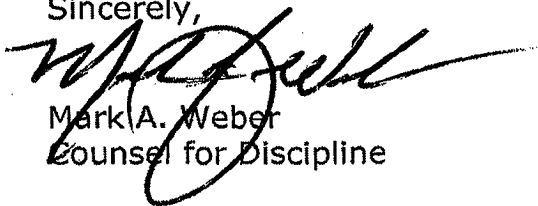
(1) the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or

(2) the proceeding is based upon conviction of a crime.

Under the Public Records Act itself, any records developed by public bodies charged with duties of investigation of persons when the records are part of the investigation, may be withheld by the public body. See Neb. Rev. Stat. § 84-712.05(5). Counsel for Discipline is charged with the duty to investigate complaints of attorney misconduct, and any records relating to attorney discipline investigations that are in my possession may be withheld under statute.

Pursuant to Neb. Rev. Stat. § 84-712.04(1)(c), you are hereby notified you may have an administrative or judicial right of review under Neb. Rev. Stat. § 84-712.03.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Weber', is written over the typed name and title.

Mark A. Weber
Counsel for Discipline

MAW: M

NEBRASKA SUPREME COURT

MICHAEL G. HEAVICAN
CHIEF JUSTICE



P.O. BOX 98910
STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509
(402) 471-3738

February 25, 2021

Teresa K. Luther
43 Sonja Drive
Doniphan, Nebraska 68832

Re: *State of Nebraska ex rel. Counsel for Discipline of the
Nebraska Supreme Court v. Timothy Ashford*, No. S-21-510003

Dear Ms. Luther:

On February 25, 2021, the Supreme Court appointed you to serve as Special Counsel in the proceedings in the above-referenced matter.

You will be reimbursed for your services at the rate of \$150 per hour. Thank you for agreeing to serve.

Sincerely,

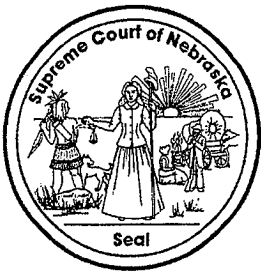
A handwritten signature in black ink, appearing to read "Michael G. Heavican".

Michael G. Heavican

jmh

c

A handwritten signature in black ink, appearing to read "Mark Weber".
Mark WeberA handwritten signature in black ink, appearing to read "Timothy Ashford".
Timothy Ashford



CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS

2413 State Capitol, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731
FAX (402) 471-3480

February 25, 2021

Honorable Teresa K. Luther
43 Sonja Drive
Doniphan, Nebraska 68832

FILED

FEB 25 2021

**NEBRASKA SUPREME COURT
COURT APPEALS**

Dear Judge Luther:

Re: No. S-21-510003, State of Nebraska ex rel. Counsel for Discipline of the State of Nebraska
Supreme Court v. Timothy Ashford

On February 25, 2021, you were appointed as Special Counsel by the Nebraska Supreme Court in the above-captioned matter. Please contact the Office of the Counsel for Discipline to obtain copies of documents and procedural instructions necessary to prosecute this complaint.

If you would like to receive further notices regarding the case, please contact our office at (402) 471-3731 to update your contact information.

Very truly yours,

A handwritten signature in cursive script, reading "Wendy A. Wussow".

Wendy A. Wussow
Clerk

cc: Counsel for Discipline, Mark Weber
Respondent Timothy Ashford

THE OMAHA STAR

Dedicated to the Service of the People that NO Good Cause Shall Lack a Champion and that Evil Shall Not Go Unopposed

Vol. 76 - No. 10 Omaha, Nebraska

Friday, March 7, 2014

75 cents

Is The Douglas County Court System Racist?



By Timothy L. Ashford,
Attorney
(c) 2014

Omaha was the most dangerous city for a black man to live in the U.S. in 2011 and the most racist place to practice law.

The Violence Policy Center determined that Omaha had the highest black homicide rate in 2011 and the Douglas County Court System (DCC) has not appointed one black attorney to represent any defendant in a murder trial since I opened my law practice in 1998.

In a criminal case, the law requires the court to appoint and pay a private attorney to represent a defendant who cannot afford an attorney, if the public defender has a conflict. If two indigent people are charged with murder, one is appointed to the public defender and one to a private attorney.

The DCC has a racist practice of not appointing black attorneys to represent indigent defendants in murder trials and serious felonies. Most of the black attorneys in private practice receive juvenile court appointments (there are approximately 200 black attorneys licensed in Nebraska).

Just as Rosa Parks sat on the back of the bus, the black attorneys in 2014 sit on the back of the bus of court appointments in murder trials.

The argument is black attorneys are not qualified to handle murder trials but black female attorney Jackie Barfield won her first murder trial in the case of State v. Washington Docket 160 Number 411 in Douglas County in 2005. I am the only defense attorney to win a first federal criminal jury trial in the U.S. District Court in Nebraska in the case of U.S. vs. Rounier 8:04CR273 in 2005 (the U.S. Attorney wins ninety-five percent of their jury trials). (After filing numerous requests with the court, I was recently appointed to represent a man convicted of murder on appeal and not in the trial.) Both of us are qualified to represent defendants in a murder trial because we have been practicing law for more than twenty years.

In order to receive a court appointment for a murder trial you need a law license and white male attorneys, some of whom have never won a murder trial, are always appointed by the DCC.

If attorney Barfield was in California, she would not be limited to the legal Nebraska glass ceiling and she could be the attorney general just like California Attorney General Kamala D. Harris for whom President Barack Obama said, "Kamala is brilliant, dedicated and by far, the best looking attorney general." However, in

Nebraska Attorney Barfield cannot receive an appointment to a murder trial after she won a murder trial.

The DCC's system of appointing white males is an affirmative action program for the white male attorneys. After the white male attorneys are appointed murder trial after murder trial, the system grandfather the white male attorneys in "as the attorneys to be appointed for murder trials" at the exclusion of black attorneys.

Why are court appointments to black attorneys important to this community? Naturally, murder trials and serious felonies pay more than other cases because of the long hours and the legal work but more importantly it is fair and colorblind. The symbol of justice is a lady wearing a blindfold and holding the scales of justice. If the lady of justice and the DCC are not color blind when appointing licensed qualified attorneys to murder trials and other serious felony cases, is the DCC color blind when it gets a bond and determines the sentence of black defendants?

In other parts of the country, black leaders would be outraged and very suspicious of a DCC that does not appoint a black attorney, who has won a murder trial, and appoints white males who have never won a murder trial. (Imagine if we did not allow a black to serve as police chief or a judge!) Remember, the first black general Benjamin Davis convinced the military to end discrimination by using the talented licensed black Tuskegee Airmen in combat.

Just as blacks cannot be excluded from serving on jury duty, black attorneys should not be excluded from representing poor defendants in murder trials.

In 2014, this community should ask the logical question is the DEC racist or rigged or both? I raised the issue of the appointment of black attorneys to represent indigent defendants in murder trials years ago with everyone including the Nebraska Supreme Court and the Nebraska Minority Justice Committee but nothing was done.

Ironically, last year one member of the Douglas County Board of Commissioners, who issue payments to attorneys, gave an award to African American Nebraska State Senator Ernie Chambers for his South Africa bill on apartheid in 1988. In 2014, imagine if South African Nelson Mandela, who was an attorney, was alive and practicing law in Douglas County he would not be appointed to a murder trial because he is a black attorney.

Just as history has shown Rosa Parks was right to demand that she have a seat in the front of the bus, history will show that in 2014 I am right for demanding that black attorneys move to the front of the court appointment bus and are appointed to murder trials and other serious felony trials.

NEBRASKA SUPREME COURT



MICHAEL G. HEAVICAN
CHIEF JUSTICE

P.O. BOX 96910
STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509
(402) 471-3738

March 12, 2014

Honorable Marlon Polk, Presiding Judge
Douglas County District Court
1701 Farnam Street
Omaha, Nebraska 68183

Honorable Craig McDermott, Presiding Judge
Douglas County Court
1701 Farnam Street
Omaha, Nebraska 68183

Honorable Douglas Johnson, Presiding Judge
Juvenile Court Judge
1701 Farnam Street
Omaha, Nebraska 68183

Dear Judge Polk, Judge McDermott, and Judge Johnson:

Enclosed is a copy of a letter from Timothy Ashford to Counsel for Discipline Dennis Carlson regarding the Douglas County court system. Also enclosed is a copy of an article, authored by Mr. Ashford, which appeared in a recent edition of the *Omaha Star* newspaper.

At its Consultation of March 12, 2014, the Court discussed the issue of representation of indigent defendants in Douglas County. The Supreme Court looks forward to reviewing the work product of the Douglas County District Court judges, the Douglas County Court judges, and the Douglas County Juvenile Court judges consistent with Neb. Ct. R. §§ 6-1467, 6-1525, and 6-1704. Amendments to those rules were adopted by the Court on February 12, 2014, and copies of the rules are enclosed for your reference.

Your attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael G. Heavican", written over a horizontal line.

Michael G. Heavican

jmh

c

Timothy Ashford

Douglas Johnson, Administrator
Douglas County District Court

Leslie Douglas, Administrator
Douglas County Court

Ray Curtis, Administrator
Douglas County Juvenile Court

Judges
Craig Q. McDermott
Presiding Judge

COUNTY COURT Douglas County, Nebraska

Hall of Justice, 2nd Floor, 1701 Farnam Street
Omaha, Nebraska 68183
(402) 444-5428 FAX (402) 444-6890

Lawrence E. Barrett
Susan M. Bazis
Joseph P. Caniglia
Thomas K. Harmon
Marcena M. Hendrix
John E. Huber
Marcela A. Keim
Sheryl L. Lohaus
Darryl R. Lowe
Jeffrey L. Marcuzzo
Derek R. Vaughn

Leslie A. Douglas
Judicial Administrator
444-7550

Civil/Small Claims Division
Omaha/Douglas Civic Center
1819 Farnam Street
444-5424

Criminal/Traffic Division
Hall of Justice, 2nd Floor
1701 Farnam Street
444-5387

Probate Division
Hall of Justice, 3rd Floor
1701 Farnam Street
444-7152

March 11, 2014

Mr. Timothy L. Ashford
Attorney at Law
P.O. Box 386
Omaha, NE 68101

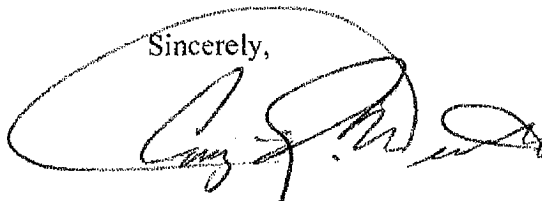
Re: Correspondence of March 7, 2014, and Douglas County Court Appointments

Dear Mr. Ashford:

I am in receipt of your correspondence dated March 7, 2014, and the attachment of the *Omaha Star* and the article that you referenced and attached. This is to advise you that I have forwarded a copy of the same to each of the County Court Judges.

Thank you.

Sincerely,



Craig Q. McDermott
Presiding Judge

CQM/am

United States Court of Appeals
For the Eighth Circuit

No. 16-3366

Timothy L. Ashford; Timothy L. Ashford, P.C.L.L.O.

Plaintiffs - Appellants

v.

Douglas County; State of Nebraska

Defendants

John Does, 1-1000; Jane Does, 1-1000; W. Russell Bowie, in his Official
Capacity; Craig McDermott, in his Official Capacity

Defendants - Appellees

Douglas Johnson; Leslie Johnson; John Doe; Shelly Stratman; Horacio Wheelock

Defendants

Thomas Riley, Individually and in his Official Capacity

Defendant - Appellee

Denise Frost

Defendant

James Gleason, Individually and in his Official Capacity; Timothy Burns,
Individually and in his Official Capacity; Derick Vaughn, Individually and in his
Official Capacity

Defendants - Appellees

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: November 16, 2017
Filed: January 25, 2018
[Published]

Before BENTON, SHEPHERD, and KELLY, Circuit Judges.

PER CURIAM.

Nebraska lawyer Timothy Ashford appeals a district court order dismissing his race discrimination suit on grounds of judicial and quasi-judicial immunity. We conclude that Ashford lacked standing in the district court, so we vacate the district court's judgment and remand with instructions to dismiss the case without prejudice.

Our decision turns on the facts that were before the district court when it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(6). "When considering a Rule 12(b)(6) motion, the court generally must ignore materials outside the pleadings, but it may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are necessarily embraced by the pleadings." Smithrud v. City of St. Paul, 746 F.3d 391, 395 (8th Cir. 2014) (quotation omitted). We must treat the complaint's factual allegations as true. See Taxi Connection v. Dakota, Minnesota & E. R.R. Corp., 513 F.3d 823, 825–26 (8th Cir. 2008).

Ashford's pleadings necessarily embrace Nebraska Fourth Judicial District Local Rule 4-17.¹ That rule sets out the process for appointing lawyers to represent indigent defendants in Douglas County. To be appointed to the panel of attorneys eligible to represent indigent defendants, licensed Nebraska lawyers must submit an application to the Douglas County District Court Administrator. R. 4-17(H). A selection committee then meets and decides whether each applicant is eligible to join the panel, and what types of cases the applicant is eligible to receive. R. 4-17(F)(2). The selection committee is made up of four judges, two private attorneys with criminal defense experience, and the Douglas County Public Defender. Id. Beyond requiring that the selection committee "meet at least once each year, and at such other times as the Committee deems appropriate," the rule does not set out the dates for committee meetings. Id.

Rule 4-17 went into effect on April 1, 2015, three months after Ashford initially filed this lawsuit. On June 29, 2015, Ashford filed his Rule 4-17 application. He sought eligibility to represent indigent murder defendants. About six weeks later, on September 1, 2015, Ashford filed his now operative second amended complaint. That complaint alleged only that Ashford had not yet received a response from the selection committee.

The district court dismissed Ashford's claims under Fed. R. Civ. P. 12(b)(6) because it concluded that the selection committee members were protected by judicial and quasi-judicial immunity. We express no opinion on that determination. Instead, we conclude that Ashford's second amended complaint did not adequately allege an injury in fact, and so did not vest the district court with jurisdiction.

¹Although Ashford's complaint does not explicitly cite Rule 4-17, its allegations refer to the Rule 4-17 selection committee members, and it references the Rule 4-17 panel-selection process. The named defendants are parties to this case by virtue of their membership on the Rule 4-17 selection committee. The rule is also a matter of public record.

Before a federal court may resolve the merits of a plaintiff's claims, the "plaintiff must show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical." Missourians for Fiscal Accountability v. Klahr, 830 F.3d 789, 794 (8th Cir. 2016) (quotation marks omitted).

Ashford's complaint alleges that he applied to represent indigent murder defendants on June 29, 2015, and had not heard back by September 1, 2015. But the selection committee is only required to meet once per year. See R. 4-17(F)(2). Ashford does not allege that the selection committee has even considered his application. Nor does the selection committee's six-week silence raise an inference that it de facto denied Ashford's application through inaction.

We are mindful that facts may have developed during the long pendency of this litigation. But those facts are not now before us. We are bound to evaluate standing based on the record that was before the district court. That record lacked factual allegations sufficient to establish an injury in fact and permit meaningful evaluation of judicial and quasi-judicial immunity. The district court therefore lacked jurisdiction to adjudicate Ashford's claims.

We deny as moot Ashford's pending motions to take judicial notice,² vacate the judgment of the district court, and remand with instructions to dismiss the case without prejudice.

²Ashford's November 16, 2017, motion is styled a motion "to seal a document," but is in fact a motion to take judicial notice of a sealed document.

MIDLANDS

Omaha World-Herald

SATURDAY, DECEMBER 10, 2016

SECTION B

WEDNESDAY, DECEMBER 14, 2016 • 58

County must pay lawyer for killer's final appeal

Attorney's case had been deemed frivolous after he was appointed to man convicted in police death

By Joe Driscoll

WORLD-HERALD BUREAU

LINCOLN — Douglas County must pay attorney's fees to a lawyer who handled the final appeal of a man convicted in the 1979 booby-trap bombing that killed an Omaha police officer.

The Nebraska Supreme Court ruled Friday that Douglas County District Judge James Gleason abused his discretion when he refused to order payment to Timothy Ashford. The Omaha lawyer claimed about \$7,400 in fees for work he did on the final post-conviction motion filed by David Rice before his death earlier this year.

The judge had agreed to appoint Ashford to represent the indigent Rice, who went by the name Mondo we Langa. But the judge later called the appeal frivolous and rejected Ashford's claim for payment.

The Supreme Court judges said once a court appoints a lawyer to a case, reasonable fees must be paid. The high court or-

dered the case back to Douglas County District Court for the assignment of fees but said a different judge must now handle the matter.

Omaha Police Officer Larry Minard died when a suitcase filled with dynamite exploded as he responded to a 911 call reporting a woman screaming inside a vacant house.

The death during a period of racial tension in Omaha touched off a massive hunt for those responsible. Several days after the explosion, Rice and Ed Peindexter turned themselves in to police.

At their joint trial, a 15-year-old former member of the Black Panthers, Duane Peak, testified that he had planted the bomb and called 911 at the direction of Rice and Peindexter.

Both men consistently claimed they were innocent, and they have been portrayed as "political prisoners" by some advocates. The advocates say the men were framed via false testimony and withheld and tampered evidence for their radical views.

Rice died in March at the infirmary of the Nebraska State Penitentiary after a lengthy respiratory illness. He was 68.

Judge orders payment of fees to lawyer for killer's final appeal

By JOE DUGGAN
WORLD-HERALD BUREAU

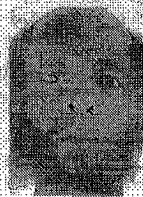
LINCOLN — A judge has ordered final payment of legal fees to the attorney for David Rice, who died in prison last year while serving a life term for the 1970 killing of an Omaha police officer.

The recent payment of \$1,251 in fees was for arguing an appeal before the Nebraska Supreme Court, said Timothy Ashford, the lawyer who represented Rice. The money was in addition to \$7,400 Ashford received earlier for other legal work he'd done on behalf of the inmate, who went by the name Mondo we Langa.

Ashford was appointed to represent Rice on a postconviction motion aimed at getting the conviction overturned. But Douglas County District Judge James Gleason ruled that the motion was frivolous and refused to authorize county payment of his fees.

Ashford appealed the judge's decision, which was overturned by the Supreme Court.

Omaha Police Officer Larry Minard died when a suitcase filled with dynamite exploded as he responded to a 911 call reporting a woman screaming



David Rice
(Mondo we Langa)

Convicted in 1970 killing of Omaha police officer, he died in prison last year.

inside a vacant house.

Several days after the explosion, Rice and Ed Poindexter turned themselves in to police. At their joint trial, a 15-year-old former member of the Black Panthers, Duane Peak, testified that he had planted the bomb and called 911 at the direction of Rice and Poindexter.

Both men consistently claimed their innocence. Their advocates say the men were framed for their political views because they helped lead a Black Panther-like organization during a time of high racial tension in Omaha.

Rice died last year at the infirmary of the Nebraska State Penitentiary after a lengthy respiratory illness. He was 68.

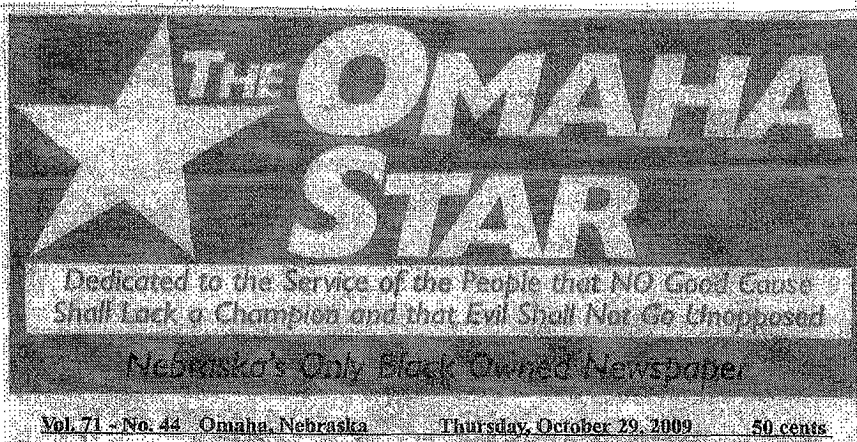
Poindexter, 72, underwent cardiovascular surgery last year at a Lincoln hospital. He is an inmate at the Nebraska State Penitentiary.

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Attorney Timothy L. Ashford Panelist At Nebraska State Bar Association

By S. Tate

Attorney Timothy L. Ashford was a featured panelist at the recent Nebraska State Bar Association (NSBA) Annual Meeting on Oct. 14 at the Doubletree Hotel.

Ashford was a featured Ethics Seminar Faculty Member on the Panel "Building Solid Attorney-Client Relationships and Avoiding Disciplinary Grievances-Hot Tips from the Trenches." The Moderator and planning chair was Dennis G. Carlson from the Nebraska Supreme Court Counsel for Discipline. The Honorable Michael G. Heavican, Chief Justice of the Nebraska Supreme Court, gave the opening remarks on "Ethical Behavior in the Legal Profession and Why Is It So Important?" Other Ethics Seminar Faculty Members speaking on the panel were James Martin Davis, Annie C. Martinez and Clarence Mock, who is currently the special prosecutor of the CSI David Kotfeld case in Cass County, Nebraska.

There were approximately 580 attorneys listening to the speakers at this Ethics seminar and that is approximately nine percent of all the active attorneys in Nebraska said Carlson.

The reason the Ethics seminar had 580 attorneys in that room is that for the first time

in 2010 Nebraska has joined a number of other states by requiring that the attorneys obtain 10 hours of Continuing Legal Education (CLE) credits by attending 10 hours of class which was offered in this NSBA Annual Meeting said Ashford. The Ethics seminar was three credit hours he added.

One attorney from Iowa said he had been going to CLE presentations for 32 years and had never attended a better seminar and he said he could have heard a pin drop during the presentations, added Carlson. A number of attorneys mentioned that they appreciated the practical ideas and suggestions offered by the presenters, said Carlson, the program was a huge success.

"It was an honor and a privilege to be invited by my peers and the powerbrokers in the NSBA to speak at the NSBA Annual Meeting," said Ashford. "I was honored to be the first speaker on the first panel of the most well attended NSBA Annual Meeting in Nebraska history."

"I thought Tim did a great job" said Tom White an attorney, who was in the audience, and a democratic candidate for the second congressional district seat. "I was knocked over by Tim's speech!"