

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 purpose of this motion is to advise the court the attorney who signed the waiver of the brief for Respondent the State of Nebraska is no longer with the Office of the Nebraska Attorney General and this is the companion case 8:20CV36 (1). Nebraska has started a third unresolved bar complaint (10/3/16 and 3/19/19) against Petitioner by appointing Special Counsel on 2/25/21. (2) Petitioner has not

received a notice from the Nebraska Attorney General of a new attorney. Petitioner has not received the bar complaint. (2)

“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’s Office and the Office for Counsel for Discipline was aware at the time the Nebraska Attorney General filed the written waiver in this court that they did not have a written grievance letter for the bar complaint dated 10/3/16 in compliance with their own procedures which they filed against the Petitioner in compliance with Ruffalo. In their 2/25/21 letter, Respondent implicitly admits they did not follow their disciplinary procedures for the 10/3/16 complaint against Petitioner by their statement the grievance letter, which is the evidence to disbar Petitioner, is confidential from Petitioner. (3) Respondent did not have a grievance letter and Respondent misled this court. The Nebraska Attorney General and the Office for Counsel for Discipline represented in state court (CI 19 9165)( CI 19 3445) that a written letter of grievance existed.

The Nebraska Supreme Court appointed a special judge in

CI 19 3445 for the state Office for Counsel for Discipline lawsuit. (4) After Petitioner requested attorney fees against the Nebraska Attorney General in CI 19 3445 for violation of the Nebraska Rules of Professional Conduct § 3-503.3. Candor toward the tribunal, (a) A lawyer shall not knowingly:(2) fail to disclose to the tribunal legal authority, the specially appointed judge in the Ashford v. Office for Counsel for Discipline CI 19 3445 has not ruled on the 8/19/19 Motion to Alter and Amend filed by Petitioner. (5-6) The judge's only job in CI 19 3445 was to dismiss the case on 8/12/19 after her appointment on 6/4/19. Since the judge has violated state court progression rules and her ethical judicial duty pursuant to § 5-302.5 to perform her judicial duties competently and diligently because an order was not issued since 8/19/19, Petitioner can not appeal CI 19 3445 to the Nebraska Supreme Court and to this court. Local Rule 4.2(B) (1) The local court rule states that if no evidence will be offered at any hearing the Petitioner does not have to request a hearing date. Local Rule 4.2(B) (1).

On February 25, 2021, the Nebraska Supreme Court has appointed special counsel to investigate the Petitioner in a new bar complaint and as of March 7, 2021 Petitioner has not received notice of the third unresolved disciplinary complaint (10/3/21 and 3/19/19) in approximately five years. (2) Just as the specially appointed judge in CI 19 3445 was appointed to dismiss the case and refused to rule on Petitioner's motion to amend filed on 8/19/19, the appointment of the Special Prosecutor is to disbar Petitioner. John C. Nimmer v. Hon. Michael G. Heavican Case No. 20-6546. In Nebraska if the Petitioner loses the disbarment proceeding (which Petitioner will lose) the court will assess the cost of the judgment against the

Petitioner. Id. With absolutely no evidence against Petitioner, the Respondent Office for Counsel for Discipline has not dismissed the two charges (10/3/16 and 3/19/19) against Petitioner so the new disciplinary action 2/25/21 is solely to disbar the Petitioner for his advocacy on behalf of unpopular clients. Id. The appointment of special counsel does not solve the separation of powers problem because their client is the Respondent Office for Counsel for Discipline. Id. The special prosecutor is not independent from the Nebraska Supreme Court and the Respondent Office for Counsel for Discipline. Id.

In response to the Petitioner's Omaha Star Article dated March 7, 2014, "Is the Douglas County Court Racist? the Petitioner received letters on official judicial letterhead stationery from the Nebraska Supreme Court 3/12/14 and the Douglas County Court 3/11/14. (7-9) On March 11, 2015, the Nebraska Supreme Court approved a rule for the "Appointment of Counsel in Criminal Cases" which included a rotation of appointments of black attorneys who previously did not receive appointments to represent indigent defendants in Douglas County, Nebraska. (10) As a result of Petitioner's actions approximately 10 black attorneys have received approximately \$200,000 in attorney fees.

After receiving the notice of the lawsuit in CI 19 9615 filed on November 22, 2019, the white female judge in the underlying case PR 14 1483 denied the Petitioner's motion to recuse herself on 12/19/19. (11) Rippo v. Baker, 137 S.Ct. 905 (2017); Thompson v. Millard Public School District, 302 Neb. 70 (2019). In the underlying case PR 14 1483 the guardians approved, the family did not object to the

payments and the court signed six orders for attorney fee payments in PR 14 1483 to Petitioner in the amount of \$8,641.57. (12)(Seven pages) Without the consent or the knowledge of the family or guardians and after signing six orders dated 12/16/14-10/19/15 awarding \$8,641.57 to Petitioner in attorney fees, the white female judge in PR 14 1483 signed a seventh order dated 9/29/16 holding the Petitioner must reimburse the estate \$8,265. (13)(Three pages) The white female judge, without the consent or knowledge of the family, anonymously mailed only the seventh 9/29/16 order for Petitioner to reimburse \$8,265 (without writing a detailed letter on official judicial letterhead stating the alleged misconduct of the Petitioner) to the Office for Counsel for Discipline which they received on 10/3/16. (13) Based upon two day mail time in Nebraska, the white female judge is the only person who could have sent the 9/29/16 order to the Respondent. (13)

Nine days before the white female judge sent the anonymous bar complaint against the Petitioner to the Office for Counsel for Discipline without writing a grievance letter, the white female judge abused her discretion in sentencing a black man to jail and ordering that black man to pay \$6,000 in restitution. CR 16 3923 (14) The attorney fees charged by Petitioner in PR 14 1483 were similar and lower than attorney fees charged in reported cases. In Re Guardianship and Conservatorship of James D. Forster, an alleged incapacitated and protected person. 22 Neb. App. 478, 856 N.W.2d 134 (2014).

Without a resolution of the attorney fees and without notice to the parties, the court closed PR 14 1483 and Petitioner filed an application and motion to set aside

judgment on 8/5/20 to reopen the case. (15) While a motion for recusal for the white female judge in PR 14 1483 was pending, she appointed a guardian ad litem, who was not qualified because she had not taken the guardian ad litem class, to represent the family. (16) Petitioner filed an objection to the guardian ad litem appointment on 9/5/20. The racist pattern of the Nebraska court system is to not rule on the motions filed by Petitioner if they are adverse to the State and Respondent. (CI 19 3445)(PR 14 1483) .

Without following their procedures of receiving a written letter of grievance from the complaining party or they will not start an investigation, the Office for Counsel for Discipline initiated an investigation against the Petitioner dated 10/3/16. (17) Now, the grievance letter, which never existed, is confidential from the Petitioner. (3)

By waiving the response brief in this court, Respondent implied that a written letter of grievance existed against Petitioner and Respondent implied they followed their own procedures. The Office for Counsel for Discipline implied to this court that the 10/3/16 grievance letter existed and their procedures do not violate the constitution or Ruffalo. The Respondent withheld from this court the fact they did not have a written grievance letter and Respondent did not follow their procedures.

The Respondent failed to write a brief in this case because they would have had to admit the Respondent has held an anonymous bar complaint filed on 10/3/16 against Petitioner in retaliation for his racial discrimination lawsuits open for five

years when their own rules stated they will not start an investigation without a written letter of grievance. The Respondent's brief would have to admit that their argument for judicial and quasi-judicial immunity does not apply because the judge did not act like a judge by changing six orders into a seventh order for payment and anonymously mailing only the seventh order 10/29/16 to report alleged attorney misconduct to the Office for Counsel for Discipline in retaliation, in part, for a racial discrimination lawsuit Petitioner filed against Douglas County. The act of sending an anonymous order without a written grievance letter on official letterhead stationery violates the law and judicial ethics; therefore, a judge is not immune from liability for nonjudicial actions. Schottel v. Young, 687 F.3d 370 (8th Cir. 2012).

Respondent has the bar complaints open against Petitioner because 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). State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court, relator, v. James C. Hart, Jr., respondent. No. S-05-376

Although Petitioner won Petitioner's first Criminal Justice Act (CJA) Panel federal criminal jury trial, Petitioner was banned from the CJA without a reason. (18)(One page) (19)(One page) Petitioner was appointed to a murder case in 2000 by Douglas County. Petitioner was banned from the Douglas County Murder Panel in 2015 without an explanation.

Petitioner has complained to the Nebraska courts of the racism (18-27) : "It is racist for this court to treat African American Attorney Timothy Ashford as a pro se criminal defendant... These documents represent just a small amount of the racism the Petitioner has received from the Nebraska Court system.

Nebraska and the Respondent have 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. Kill all the lawyers! No white attorney will represent Petitioner because of retaliation by the Office for Counsel for Discipline so Petitioner requests attorney fees if awarded by this court. Although the world appears outraged over the treatment of Russia's leading opposition leader Alexey Navalny, it is the moral and ethical duty of this court to protect the constitutional rights of all attorneys who represent unpopular clients.

Please take judicial notice of that which follows:

1. Order 8:20 CV 36 Phoebe L. Gydesen as counsel of Record Ryan S. Post in the United States District Court dated March 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 v. Timothy L. Ashford S 21 51003 (2 Pages)

3. Office of Counsel for Discipline letter dated February 25, 2021
4. Order of Appointment of special judge in Ashford v. Office for Counsel for Discipline case in the Douglas County District Court CI 19 3445 dated 6/4/19
5. Order of dismissal Timothy L. Ashford v. Office for Counsel for Discipline CI 19 3445 in the Douglas County District Court dated 8/12/19. (4 Pages)
6. Motion to Amend Timothy L. Ashford v. Office for Counsel for Discipline CI 19 3445 Motion and Brief in Support of Motion to Amend the Complaint August 19, 2019 (6 Pages)
7. Omaha Star March 7, 2014 Article "Is the Douglas County Court Racist?" Omaha Star March 7, 2014 (1 Page)
8. 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)
9. 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)
10. Rule 4-17. Appointment of Conflict Counsel in Criminal Cases (3 Pages)
11. Order denying recusal of judge whom Petitioner sued from presiding over Petitioner's case dated 12/19/19 case number PR 14 1483 in the County Court of Douglas County, Nebraska (2 Pages)

12. Six Orders to pay attorney fees dated 12/16/14-\$2,802.50; 1/2/15-\$375.00; 1/23/15-\$375.00; 4/17/15-\$3,650.00; 8/31/15-; and 10/19/15-\$750.00 case number PR 14 1483 in the County Court of Douglas County, Nebraska (7 Pages)

13. Order dated 9/29/16 to reimburse \$8,265.00 (after signing six orders dated 12/16/14-10/19/15 awarding \$8,641.57) in case number PR 14 1483 in the County Court of Douglas County, Nebraska (3 Pages)

14. Order in the State of Nebraska v. Terrance A. Crawford in the Douglas County District Court Douglas County, Nebraska CR 16 3923 (Where white female judge in PR 14 1483 abused her discretion in a case involving a black man on 9/21/16. (9 pages)

15. Application and Motion to Set Aside Judgment dated 8/5/20 in case number PR 14 1483 in the County Court of Douglas County, Nebraska (Three pages)

16. Objection to Guardian Ad Litem Appointment dated 9/16/20 in case number PR 14 1483 in the County Court of Douglas County, Nebraska (Seven pages)

17. 10.4.16 Office for Counsel for Discipline Letter

18. Letter from the Office of the Federal Public Defender for the District of Nebraska date September 9, 2016 signed by David R. Stickman (1 Page)

19. Judgment in U.S. v. Nathaniel L. Ranier in the U.S. District Court for the District of Nebraska 8:04-cr-00274-LSC-TDT Doc # 66 Filed: 02/04/05 Page 1 of 1 · Page ID # 143

20. Brief in Support of Motion to Withdraw in the U.S. v. Christopher Baskin in the U.S. District Court for the District of Nebraska 8:15-cr-00313-LSC-FG3 Doc # 38 Filed: 01/03/16 Page 1 of 19 · Page ID # 89 (Judge appointed standby counsel for Petitioner in a federal criminal jury trial after only allowing black Petitioner 4 days on 1/3/16 to prepare for a federal criminal jury trial and allowing all of the white attorneys at least 30 days to prepare for trial which ended in a plea in April 2017. The client is still in jail.)

21. Order in the U.S. v. Christopher Baskin in the U.S. District Court for the District of Nebraska 8:15-cr-00313-LSC-FG3 Doc # 33 Filed: 12/30/15 Page 1 of 1 · Page ID # 73

(Order appointing standby counsel for a black attorney.)

22. Motion for Leave to Withdraw Evidentiary Hearing in the U.S. v. Christopher Baskin in the U.S. District Court for the District of Nebraska 8:15-cr-00313-LSC-FG3 Doc # 41 Filed: 01/05/16 Page 2 of 3 · Page ID # 160

(White attorney states Christopher Baskin was denied assistance of counsel

23. 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)

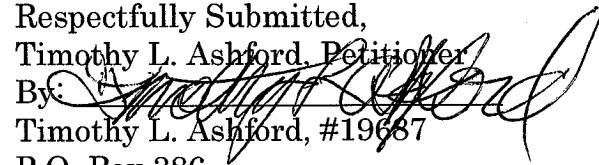
(Racial Discrimination lawsuit against judges in Douglas County)

24. "County must pay lawyer for killer's final appeal" Omaha World Herald

December 10, 2016 (1 Page)

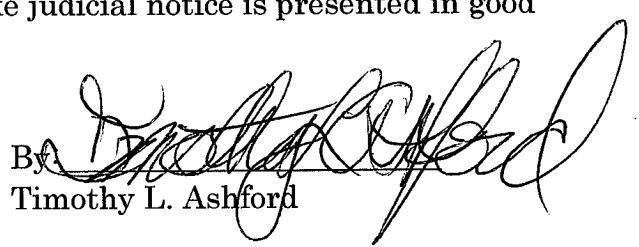
25. Omaha Star October 29, 2009 "Attorney Timothy L. Ashford Panelist at Nebraska State Bar Association" (1 Page)

Dated this 7<sup>th</sup> 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

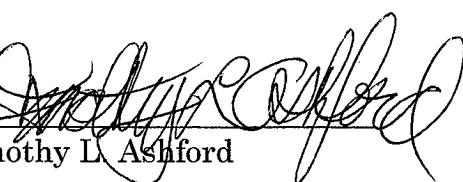
#### CERTIFICATE OF COUNSEL

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

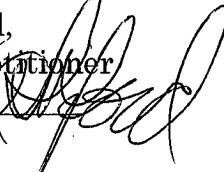
The undersigned certifies that on the 8<sup>th</sup> day of March, 2021 he served the foregoing Motion to Take Judicial Notice and the documents via U.S. First Class Mail, postage prepaid, as follows: the Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543 (One original copy 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 8<sup>th</sup> 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 7<sup>th</sup> day of March, 2021.

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TIMOTHY L. ASHFORD, and TIMOTHY  
L. ASHFORD, PC LLO,

Plaintiffs,

vs.

DOUGLAS COUNTY,

Defendant.

**8:20CV36**

**ORDER**

IT IS ORDERED that the motion to withdraw filed by Phoebe L. Gydesen on behalf of Ryan S. Post, as counsel of record for Defendants Marcena Hendrix and State of Nebraska, (Filing No. 80), is granted. Ryan S. Post shall no longer receive electronic notice in this case.

Dated this 5th day of March, 2021.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge

EXHIBIT 1

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.

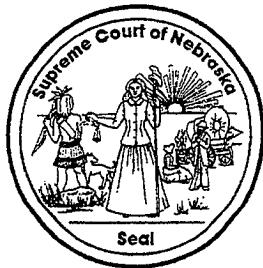
You will be reimbursed for your services at the rate of \$150 per hour. Thank you for agreeing to serve.

Sincerely,

Michael G. Heavican

jmh

EXHIBIT 2



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,

Wendy A. Wussey  
Clerk

cc: Counsel for Discipline, Mark Weber  
Respondent Timothy Ashford



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

Counsel for  
Discipline

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

February 5, 2021

**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

**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*

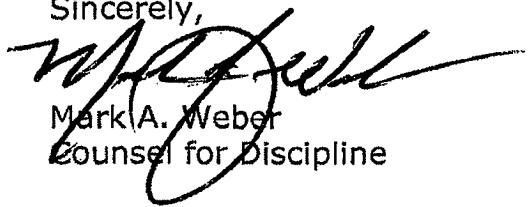
- (1) the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or*
- (2) the proceeding is based upon conviction of a crime.*

EXHIBIT 3

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".

Mark A. Weber  
Counsel for Discipline

MAW: M



001876193D01

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

CT19-3445

In re Appointment  
of Judge.

## ORDER

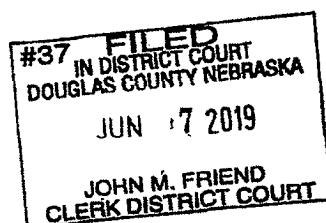
IT IS HEREBY ORDERED that the Honorable Darla Ideus, District Court Judge for the 3<sup>rd</sup> Judicial District, is appointed to serve as a District Court Judge for the 4<sup>th</sup> Judicial District for the case of *Timothy Ashford v. Office for Counsel for Discipline*, No. CI19-3445, in the District Court for Douglas County, Nebraska, until full disposition of the same.

Dated this 4<sup>th</sup> day of June, 2019.

BY THE COURT:

**Chief Justice**

EXHIBIT 6



## CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 7, 2019, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Office for Counsel for Discipline  
c/o Atty General - State of NE  
2115 State Capitol  
Lincoln, NE 68509

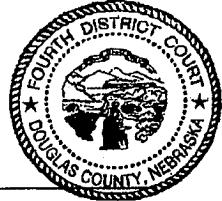
Mark Weber  
c/o Atty General - State of NE  
2115 State Capitol  
Lincoln, NE 68509

Timothy L Ashford  
tash178346@aol.com

Date: June 7, 2019

BY THE COURT:

*John M. Friend*  
CLERK



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TIMOTHY L. ASHFORD, PC LLO,  
TIMOTHY L. ASHFORD,

Plaintiffs,

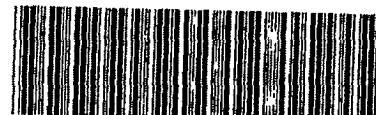
vs.

OFFICE FOR COUNSEL FOR  
DISCIPLINE, and MARK WEBER, in his  
official capacity,

Defendants.

CASE NO. CI 19-3445

ORDER OF DISMISSAL



001876393D01

This matter came before the Court on July 16, 2019, on Plaintiffs, Timothy L. Ashford, PC LLO and Timothy L. Ashford's ("Plaintiffs") Third Amended Motion for Temporary Restraining Order and Preliminary Injunction, and Defendants, Office for Counsel for Discipline and Mark Weber's ("Defendants") Motion to Dismiss. Plaintiff Timothy L. Ashford appeared on his own behalf. Assistant Attorney General Ryan S. Post appeared on behalf of Defendants. The Court heard arguments and took the matter under advisement. The Court, being fully advised in the premises, finds and orders as follows.

EVIDENTIARY RULING

In opposition to Defendants' motion to dismiss, Plaintiffs offered Exhibits 1 through 19. Defendants objected to Exhibits 3, 8, 9, 10, 11, and 18 on hearsay and relevancy, and Exhibit 12 on relevancy. Defendants' objections are sustained.

At the hearing, Defendants indicated that they would not consent to having their motion converted to a motion for summary judgment, because the immunity bar addresses all of the issues before the Court. The Court agrees. Thus, the Court treats Defendants' motion as one to dismiss the Amended Complaint for lack of subject matter jurisdiction under Neb. Ct. R. § 6-1112(b)(1), and declines to consider the exhibits submitted in opposition to Defendants' motion. *See Washington v. Conley*, 273 Neb. 908, 912, 734 N.W.2d 306, 311 (2007) (holding that a facial attack on the complaint requires a court to "look only to the complaint in order to determine whether the plaintiff has sufficiently alleged a basis of subject matter jurisdiction.") (emphasis added).

EXHIBIT 5

#37 FILED  
IN DISTRICT COURT  
DOUGLAS COUNTY NEBRASKA  
AUG 12 2019  
JOHN M. FRIEND  
CLERK DISTRICT COURT

## BACKGROUND

On April 30, 2019, Plaintiffs filed an Amended Complaint against Defendants seeking declaratory relief and an injunction under NEB. REV. STAT. §§ 25-21,149 *et seq.* and 42 U.S.C. § 1983. The Amended Complaint lists twelve causes of action generally related to preliminary inquiries initiated by the Office for Counsel for Discipline and requests a declaration, injunction, costs, and attorney fees.

On June 25, 2019, Plaintiffs filed a Third Amended Motion for Temporary Restraining Order and Preliminary Injunction to enjoin Defendants from investigating the bar complaint filed against Mr. Ashford. On June 26, 2019, Defendants moved to dismiss Plaintiffs' Amended Complaint in its entirety pursuant to Neb. Ct. R. Pldg. §§ 6-1112(b)(1) and (6).

## STANDARD OF REVIEW

A motion to dismiss for lack of subject matter jurisdiction under Neb. Ct. R. Pldg. § 6-1112(b)(1) which is limited to a facial attack on the pleadings is subject to the same standard of review as a motion brought under Neb. Ct. R. Pldg. § 6-1112(b)(6). *Anderson v. Wells Fargo Financial Accept.*, 269 Neb. 595, 599, 694 N.W.2d 625 (2005). The Court must accept as true all allegations in a plaintiff's complaint and must draw all reasonable inferences in favor of the plaintiff. *Id.* "If the allegations of a complaint do not survive the jurisdictional attack, then there is no jurisdiction even to consider the other claims, much less to entertain a Rule 12(b)(6) motion to dismiss those claims." *Id.* at 601, 694 N.W.2d at 630 (internal quotation omitted).

## ANALYSIS

Plaintiffs' Amended Complaint asks this Court to recuse the Office for Counsel for Discipline from participating in the investigation of the bar complaint allegedly filed against Mr. Ashford by the Douglas County Court because (1) it is a conflict of interest for one branch of the Nebraska Supreme Court—Office for Counsel for Discipline—to investigate a complaint filed by another branch of the Nebraska Supreme Court—Douglas County Court, and (2) the Office for Counsel for Discipline, as a quasi-judicial entity with the duties of a judge, cannot be both the prosecutor and the judge to determine whether an investigation is warranted. Am. Compl. ¶¶ 22–23, 66–67.

Defendant Mark Weber is the Director of the Office for Counsel for Discipline. Am. Compl. ¶ 4. Under Neb. Ct. R. § 3-322(B), Defendant Weber is immune from suit for carrying out the following duties:

The Counsel for Discipline, his or her representatives, and members of the Disciplinary Review Board, Committees on Inquiry, and Advisory Committee; the director and any members of the Nebraska Lawyer's Assistance Program; and all others (whether or not members of the Association) whose assistance is requested by any of the foregoing in

connection with the enforcement of these rules shall be immune from suit for any conduct in the course of their official duties under these rules.

He is also entitled to quasi-judicial immunity:

In exercising its inherent power to regulate the bar, [the Nebraska Supreme Court] uses the Counsel for Discipline for investigative purposes. The Counsel for Discipline has been given, among other things, the power to investigate allegations of misconduct, prepare and file charges of misconduct against attorneys, and dismiss charges. The exercise of these powers and duties expressly involves discretion and judgment. Thus, in performing his or her powers and duties, the Counsel for Discipline is performing a judicial function and is entitled to quasi-judicial immunity.

*Noffsinger v. Neb. State Bar Ass'n*, 261 Neb. 184, 190, 622 N.W.2d 620, 625 (2001) (internal citations omitted). Here, Defendant Weber was sued for actions taken in the course of carrying out his official duties. Therefore, he is immune under Neb. Ct. R. § 3-322 and is entitled to quasi-judicial immunity.

The Office for Counsel for Discipline is also immune under sovereign immunity. Article V, § 22 of the Nebraska Constitution provides: "The state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought." This provision is not self-executing and no suit may be maintained against the State unless the Legislature, by law, has so provided. *State ex rel. Rhiley v. Neb. State Patrol*, 301 Neb. 241, 247, 917 N.W.2d 903, 908 (2018). "A waiver of sovereign immunity is found only where stated by the most express language of a statute or by such overwhelming implication from the text as will allow no other reasonable construction." *Id.* at 248, 917 N.W.2d at 909. "Absent legislative action waiving sovereign immunity, a trial court lacks subject matter jurisdiction over an action against the State." *Id.* "[A] suit against a state agency is a suit against the State and is subject to sovereign immunity." *Zawaideh v. Neb. Dep't of HHS Regulations & Licensure*, 285 Neb. 48, 55, 825 N.W.2d 204, 211 (2013). The burden rests with the plaintiff to demonstrate how the State has waived sovereign immunity for his or her claim. *See id.*

Here, Plaintiffs cite no authority indicating that the Office for Counsel for Discipline, as a state agency, has waived its sovereign immunity for this action. Nor is the Court able to find any such authority. Therefore, this Court lacks subject matter jurisdiction over Plaintiffs' claims against the Office for Counsel for Discipline.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion to Dismiss is **SUSTAINED**. Plaintiffs' Third Amended Motion for Temporary Restraining Order and Preliminary Injunction is **DENIED**. Plaintiffs' Amended Complaint is **DISMISSED** in its entirety.

DATED this 12 day of August, 2019.

BY THE COURT:

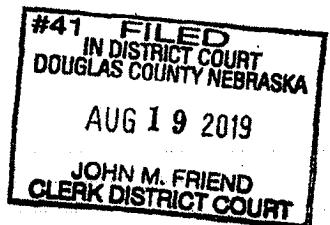


**Darla S. Ideus**  
District Court Judge

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TIMOTHY L. ASHFORD, PC LLO, ) CASE NO. CI 19 3445  
TIMOTHY L. ASHFORD, )  
Plaintiffs, )  
MOTION TO  
ALTER OR AMEND  
THE JUDGMENT  
V )  
OFFICE FOR COUNSEL FOR )  
DISCIPLINE, )  
MARK WEBER, IN HIS OFFICIAL )  
CAPACITY, )  
JOHN DOES, 1-100, )  
JANE DOES, 1-100 )  
Defendants. )

EXHIBIT 6



COMES NOW, Timothy L. Ashford, pursuant to Neb. Rev. Stat. § 25-1144.01 a timely motion for a new trial and pursuant to Neb. Rev. Stat. § 25-1329 motion to alter or amend a judgment of the order entered on August 12, 2019 and states as follows:

CASE HISTORY

1. The hearing to dismiss the complaint filed by the Defendant pursuant to Neb. Ct. R. § 6-1112(b)(1) was held on July 16, 2019. The court ordered briefs were due on the day of the hearing July 16, 2019 and the defendant filed his brief on July 16, 2019. No responsive briefs citing case law were due on July 16, 2019 or ordered by the court after the hearing. The court did not hold a hearing on the specific issues in the brief filed on July 16, 2019 on the subject matter jurisdiction but only on the generic motion to dismiss filed by the defendants pursuant to Neb. Ct. R. § 6-1112(b)(1). The Assistant Attorney General informed the court that they would not consent to converting the motion to



JKW

dismiss to a motion for summary judgment because the immunity bar addressed all the issues and the court agreed. The only briefs on the issue of subject matter was due on July 16, 2019. So technically, based upon the briefing schedule and only one brief was submitted on the issue, the immunity bar was insurmountable and the case was dismissed based only upon Nebraska law. It was disingenuous for the Defendant to not apprise the court of all relevant case law which includes U.S. Supreme Court case law on the issue of sovereign immunity. Nebraska Rules of Professional Conduct § 3-503.3. Candor toward the tribunal. (a) A lawyer shall not knowingly: (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. The U.S. Supreme court case law is controlling on this issue of sovereign immunity. No federal law was cited by the defendant or the court. Federal law controls the issue of sovereign immunity.

**THE UNITED STATES SUPREME COURT CASE EX PARTE YOUNG  
ALLOWS INJUNCTIVE RELIEF AGAINST THE STATE UNDER  
THE FOURTEENTH AMENDMENT**

2. The court held in the August 12, 2019 order that the Plaintiff cites no authority that the Office for Counsel for Discipline has waived its sovereign immunity. Nor is the court able to find any such authority. The court did not request or order any responsive briefs on the issue of sovereign immunity. *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed.2d 714 (1908) provides an exception to sovereign immunity. The Court has recognized an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State. *Pennhurst State School & Hospital v. Halderman*, 104 S.Ct. 900 (1983). This was the holding in *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed.2d 714 (1908), in which a federal court

enjoined the Attorney General of the State of Minnesota from bringing suit to enforce a state statute that allegedly violated the Fourteenth Amendment. *Id.* This Court held that the Eleventh Amendment did not prohibit issuance of this injunction. *Id.* The theory of the case was that an unconstitutional enactment is “void” and therefore does not “impart to [the officer] any immunity from responsibility to the supreme authority of the United States.” *Id.*, at 160, 28 S.Ct., at 454. Since the State could not authorize the action, the officer was “stripped of his official or representative character and [was] subjected to the consequences of his official conduct.” *Ibid.* *Id.*

3. While the rule permitting suits alleging conduct contrary to “the supreme authority of the United States” has survived, the theory of Young has not been provided an expansive interpretation. *Id.* Thus, in *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), the Court emphasized that the Eleventh Amendment bars some forms of injunctive relief against state officials for violation of federal law. *Id.*, at 666–667, 94 S.Ct., at 1357–1358. *Id.* In particular, *Edelman* held that when a plaintiff sues a state official alleging a violation of federal law, the federal court \*103 may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief. *Id.* Under the theory of Young, such a suit would not be one against the State since the federal-law allegation would strip the state officer of his official authority. *Id.* Nevertheless, retroactive relief was barred by the Eleventh Amendment. *Id.*

#### **CASE LAW REQUIRES REVERSAL**

4. The court's failure to hold hearing thereafter requires reversal. The court transformed the motion to dismiss into a motion for summary judgment and failure to hold a hearing thereafter required reversal. *DMK Biodiesel, LLC v. McCoy*, 285 Neb. 974 (2013). On

August 12, 2019, the court granted the Defendant's motion to dismiss the Plaintiff's Amended Complaint and Plaintiff's Third Amended Motion for Temporary Restraining Order and Preliminary Injunction. The court granted the Defendant's motion to dismiss based upon sovereign immunity. The court held the Plaintiff cites no authority that the Office for Counsel for Discipline has waived its sovereign immunity. Nor is the court able to find any such authority.

5. Because a motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint, not the claim's substantive merits, a court may typically look only at the face of the complaint to decide a motion to dismiss. Pleading Rule 12(b)(6). Ferer v. Erickson & Sederstrom, P.C. 272 Neb. 113 (2006).
6. In dismissing the complaint, the court held the immunity bar addressed all of the issues in the August 12, 2019 order. When the district court took into consideration the memorandum and agreements, which were matters outside the pleadings, it transformed the motion to dismiss into a motion for summary judgment and failure to hold a hearing thereafter required reversal. DMK Biodiesel, LLC v. McCoy, 285 Neb. 974 (2013). Because Nebraska's current notice pleading rules are modeled after Federal Rules of Civil Procedure, the court looks to federal decisions for guidance. DMK Biodiesel, LLC v. McCoy, 285 Neb. 974 (2013).

**IT WAS ERROR FOR THE COURT TO  
SUSTAIN DEFENDANT'S OBJECTION TO THE EXHIBITS  
ON HEARSAY AND RELEVANCE**

7. The court erred in sustaining the objections of the Defendant to Exhibits 3, 8, 9, 10, 11 and 18. The exhibits should have been admitted pursuant to Neb. Rev. Stat. § 27-902. Rule 902. Self-authentication; when. Extrinsic evidence of authenticity as a condition

precedent to admissibility is not required with respect to the following: (6) Printed materials purporting to be newspapers or periodicals; The documents should have been admitted pursuant to Neb. Rev. Stat. § 27-402 Relevance.

**PLAINTIF REQUEST LEAVE OF COURT**  
**TO AMEND THE FIRST AMENDED COMPLAINT**

8. If the court grants the motion to alter and amend judgment the Plaintiff requests leave of the court to amend the pleadings pursuant to Court Rule § 6-1115. Amended and supplemental pleadings. Amendments. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires.
9. The Plaintiff request the complaint is amended to sue the Office for Counsel for Discipline Mark Weber in his individual capacity.
10. The Plaintiff requests leave of the court to amend this case CI 19 3445 to conform to the federal case in the Eighth Circuit Court of Appeals Timothy L. Ashford v. Office for Counsel for Discipline In the Eighth Circuit Court of Appeals case number 19-2618 and the United States District Court for the District of Nebraska case number 8:19 CV 243.
11. Sovereign immunity does not prevent the Plaintiff from suing Mark Weber in his individual capacity for injunctive relief. *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed.2d 714 (1908).

**VIOLATION OF FEDERAL LAW**

12. The declaratory judgment action is to recuse the Office for Counsel for Discipline based upon the fact the Douglas County Court, which filed the anonymous bar complaint against the Petitioner, and the Office for Counsel for Discipline are part of the same judicial system which is comprised of the Nebraska Supreme Court which is an inherent

conflict. The July 16, 2019 order of the court excluded another basis for the complaint which is located in the First Amended Complaint at Count 12. Defendants deprive Petitioner of his constitutional rights to know the exact nature of the allegations and the identity of the accuser in the Douglas County Court who filed the anonymous bar complaint against Petitioner. The Douglas County Court is not a private individual.

“Where attorney had no notice in state disbarment proceedings that his employment of certain person would be considered a disbarment offense until after both he and that person had testified at length on all material facts pertaining to that phase of case, absence of fair notice as to reach of grievance procedure and precise nature of charges deprived attorney of procedural due process, even though he was thereafter given several months to respond to that charge. In the Matter of John Ruffalo, Jr., 391 U.S. 961, 88 S.Ct. 1833 (1968).

13. The Office for Counsel for Discipline is a quasi-judicial entity with the duties of a judge and no judge can serve as both prosecutor and judge. Noffsinger v. Nebraska State Bar Association, 261 Neb. 184 (2001)(In performing powers and duties to investigate allegations of misconduct, prepare and file charges of misconduct against attorneys, and dismiss charges, which expressly involve discretion and judgment, the state bar association's counsel for discipline is performing a judicial function and is entitled to quasi-judicial immunity.)(State bar association, as an arm of the Supreme Court, has quasi-judicial immunity in its own right.); Williams v. Pennsylvania, 136 S.Ct. 1899 (2016) (under Due Process Clause there is an impermissible risk of actual bias when judge earlier had significant, personal involvement as a prosecutor in critical decision regarding a defendant's case); Johnson v. Mississippi, 91 S.Ct. 1778 (1971) (Trial judge against

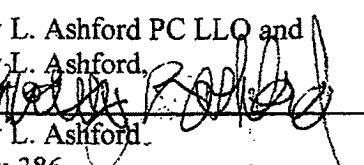
whom affidavits of prejudice had been filed and who was losing party in civil rights suits begun by defendant should have recused himself as requested by defendant prior to contempt proceeding.)

**COURTS HAVE ALLOWED LAWSUITS AGAINST JUDGES  
TO PROCEED WHEN THE JUDGES ARE NOT PERFORMING A CONCRETE  
JUDICIAL CASE OR CONTROVERSY**

14. Courts have held lawsuits against judges are not allowed to be dismissed against the judges when they violate the U.S. Constitution and federal law and are not engaged in a judicial case or controversy; therefore, the Office for Counsel for Discipline is not entitled to judicial immunity because they are not performing a concrete function in a judicial case or controversy. *Mitchell v. Fishbein*, 377 F.3d 157 (2004).
15. In order to be entitled to absolute judicial immunity on the ground that decisions are integrally related to judicial proceeding, official must be engaged in acts that are integrally related not simply to judicial process in general but to a concrete judicial case or controversy. *Mitchell v. Fishbein*, 377 F.3d 157 (2004).  
The issue in this case is judicial immunity does not apply to the Office for Counsel For Discipline when they investigate complaints because to enjoy judicial immunity, the official must be engaged in acts that are integrally related not simply to the judicial process in general but to concrete judicial case or controversy.  
*Mitchell v. Fishbein*, 377 F.3d 157 (2004). In order to be entitled to absolute judicial immunity on ground that decisions are integrally related to judicial proceeding, official must be engaged in acts that are integrally related not simply to the judicial process in general but to concrete judicial case or controversy.  
*Mitchell v. Fishbein*, 377 F.3d 157 (2004).

Plaintiff requests the court grant the this motion to alter or amend the judgment in  
Timothy L. Ashford, PC LLO v. Office for Counsel for Discipline CI 19 3445 and Plaintiff  
requests attorney fees and costs.

DATED this 19<sup>th</sup> day of August, 2019.

Timothy L. Ashford PC LLO and  
Timothy L. Ashford,  
By:   
Timothy L. Ashford  
P.O. Box 386  
Omaha, Nebraska 68101  
(402) 660-5544  
Attorney for the Plaintiffs

Certificate of Service

I hereby certify that on August 19, 2019 I sent this document by email to  
Ryan.post@nebraska.gov Office of the Nebraska Attorney General Folsom, Kim  
kfolsom@lancaster.ne.gov bailiff to specially appointed Lancaster, Nebraska District Judge  
Darla Ideus from the Nebraska Third Judicial District to serve as District Judge in the Fourth  
Judicial District Douglas County, Nebraska for CI 19 3445.

By: s/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 2100 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 (a black female attorney Jackie Burfield 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. Ruitner 2:04CR273 in 2005 (the U. S. Attorney wins nearly 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 Burfield 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 Burfield 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's 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 sets 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 selected 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 DCC 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.

EXHIBIT 7

NEBRASKA SUPREME COURT



MICHAEL G. HEAVICAN  
CHIEF JUSTICE

P.O. BOX 88910  
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

EXHIBIT 8

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,

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

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. Marzuzzo  
Derek R. Vaughn

# COUNTY COURT Douglas County, Nebraska

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

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

## EXHIBIT 9

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

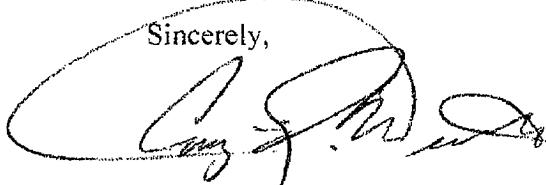
Re: Correspondence of March 7, 2014, and Douglas County Court Appointments

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

## Rule 4-17. Appointment of Conflict Counsel in Criminal Cases

**A. Authority.** Pursuant to Neb. Ct. R. §§ 6-1525 and 6-1467, the judges of the District Court and County Court of Douglas County (the Courts) adopt this rule for furnishing conflict representation in the Courts for any person who is financially unable to obtain adequate representation in felony, misdemeanor, or post-conviction cases pursuant to Neb. Rev. Stat. §§ 29-3901 to 29-3908 and §§ 29-3001 to 29-3004 (Reissue 2008 & Cum. Supp. 2014).

**B. Statement of Policy.** The objective of this plan is to attain the ideal of equality before the law for all persons. This plan shall be administered so that those eligible for services pursuant to Neb. Rev. Stat. §§ 29-3901 to 29-3908 and §§ 29-3001 to 29-3004 (Reissue 2008 & Cum. Supp. 2014) will not be deprived of any element of representation necessary to an adequate defense because they are financially unable to pay for adequate representation. The further objective of this plan is to particularize the requirements for court appointments in Douglas County, Nebraska.

**C. Appointment of Private Attorneys.** The Douglas County Public Defender's Office shall have first priority to be appointed for any indigent defendant in all criminal cases within the county. This rule establishes the process for the appointment of private attorneys to represent indigent defendants when the Public Defender's staff has a conflict of interest. A panel of private attorneys who are eligible and willing to be appointed to provide representation in Douglas County is hereby recognized. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys pursuant to Neb. Ct. R. §§ 6-1525 and 6-1467 is set forth below.

**D. Duties of Appointed Counsel.** The services to be rendered on behalf of a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person. Attorneys appointed to the panel shall conform to the highest standards of professional conduct and shall refrain from conduct unbecoming a member of the bar.

**E. Creation of Panel.** The District Court and County Court of Douglas County (the Courts) shall establish a panel of private attorneys (hereafter referred to as the "DC Panel"). All attorneys who are eligible and willing to be appointed to provide representation will be placed on the DC Panel.

### **F. Composition of Panel.**

1. Attorneys who serve on the DC Panel must be members in good standing of the Nebraska bar and must have demonstrated experience in, and knowledge of, the Nebraska Rules of Criminal Procedure and the Nebraska Rules of Evidence. The Courts shall approve attorneys for membership on the DC Panel and the composition of the DC Panel after

EXHIBIT 10

receiving recommendations from the Panel Selection Committee (the Committee) established pursuant to subsection 2 of this Plan.

Members of the DC Panel shall serve indefinitely and continuously at the pleasure of the Courts.

2. The Courts shall jointly establish a Panel Selection Committee (the Committee). The Committee shall consist of two District Court judges, two County Court judges, two private attorneys who are experienced in criminal defense work, and the Douglas County Public Defender. The Committee shall select its own chairperson.

The Committee shall meet at least once each year, and at such other times as the Committee deems appropriate, to consider applications for addition to the DC Panel. The Committee shall review the qualifications of applicants and shall recommend, for approval by the Courts, the attorneys to be included on the DC Panel and, based upon the attorney's experience, skill, and competence, the category of cases which each attorney can handle. If an attorney disputes the category in which he or she has been placed for assignment of cases, the attorney may submit to the Committee a written explanation of the basis for such dispute. The Committee will then consider the dispute, will resolve the dispute by majority vote of its members, and will provide the attorney with a written disposition of the placement dispute.

At its annual meeting, the Committee shall also review in its entirety the appointment list of attorneys on the DC Panel to determine if any attorney should be removed due to failure to remain in good standing with the Nebraska bar or for cause. If the attorney is being considered for removal from the DC Panel for cause, the Committee shall give written notification to the attorney indicating the concerns with the attorney's performance giving rise to consideration for removal, and the attorney shall be given the opportunity to respond in writing or in person before a final decision is made.

At its annual meeting, the Committee shall also review the operation and administration of the DC Panel during the preceding year, and shall recommend to the Courts any changes regarding the appointment process and panel management which the Committee deems necessary or appropriate. If a majority of the judges of the Courts agree, then proposed language amending the Rule shall be submitted to the Supreme Court as provided by Neb. Ct. R. § 6-1501 entitled "Local Rules."

G. Assignment of Cases. Cases shall be assigned to attorneys based on their experience, skill, and competence. Complex or more serious cases shall be assigned to attorneys with sufficient levels of experience and competence to provide adequate representation in such cases. Attorneys who have less experience, skill, and competence shall be assigned cases which are within their capabilities.

H. Appointments and Maintenance of Appointment List. Appointments from the list of private attorneys on the DC Panel should be made on a rotational basis, subject to the

appointing court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience or lack thereof, a language consideration, a conflict of interest, or any other factor which the appointing court may deem appropriate under the circumstances. This procedure should result in a balanced distribution of appointments and compensation among the members of the DC Panel, as well as quality representation for each defendant who is financially unable to otherwise obtain adequate representation.

To be considered for appointment to the DC Panel, a private attorney shall complete the form entitled "Request to Be Added to Douglas County Court-Appointment List" and shall file it with the Douglas County District Court Administrator's Office. This form shall be available at the District Court Clerk's Office and the County Court Clerk's Office. Any private attorney on the DC Panel may request to be removed from the Panel at any time by sending a letter asking for removal to the District Court Administrator's Office, Hall of Justice, Room 500, 1701 Farnam Street, Omaha, NE 68183.

The respective Court Administrators of District Court and County Court shall maintain a current list of all attorneys included on the DC Panel, including the attorneys' current office address and telephone numbers.

I. Effective Date. This rule shall become effective on April 1, 2015.

- Request to be Added to Douglas County Court-Appointment List

*Rule 17 approved January 22, 2015, effective April 1, 2015; rule 4-17 amended November 13, 2019.*

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE GUARDIANSHIP/ )  
CONSERVATORSHIP OF JOHNNY R. BROWN. ) Case No. PR 14-1483  
 ) ORDER  
An Incapacitated Person. )

THIS MATTER came on for hearing on December 13, 2019 on Counsel's:

- 1.) "Motion to Withdraw the Motions to Withdraw".
- 2.) "Motion for a New Trial and Motion to Alter or Amend Judgment".
- 3.) "Motion for Recusal".

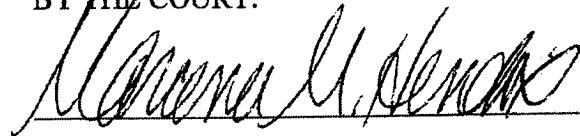
Exhibits were received.

**It is therefore Ordered that the Motions are Denied.**

Dated this 19 day December 2019.

EXHIBIT 11

BY THE COURT:



Marcena M. Hendrix,  
County Court Judge

FILED  
COUNTY COURT  
PROBATE DIVISION

DEC 19 2019



P00674394C01

Douglas County Court  
Omaha, Nebraska

CERTIFICATE OF MAILING

Copies of the foregoing were mailed on the 19 day of December 2019, to the following persons, by depositing same in the United States mail, postage prepaid:

Timothy L. Ashford  
PO Box 386  
Omaha, NE 68101

Billy R. Brown  
6623 North 41<sup>st</sup> Street  
Omaha, Ne 68112

Rita Brown  
4522 Mewmore Avenue  
Dallas, TX 75209

Renault Brown  
1206 Cole Creek Drive  
Omaha, NE 68114

Sara Smith  
2583Pinkney Street  
Omaha, Ne 68111

Malachi Brown  
1405 North 60<sup>th</sup> Street  
Omaha, NE 68132

---

MMH/sd

FILED  
COUNTY COURT  
PROBATE DIVISION

DEC 19 2019

Douglas County Court  
Nebraska

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, )  
An Incapacitated Person. ) ORDER TO PAY  
 ) ATTORNEY FEES

This matter is before the court for a motion for the allowance of fees for legal services performed in connection with the above entitled matter. Timothy L. Ashford, attorney at law, has been retained to represent Renault Brown the permanent guardian of Johnny R. Brown an incapacitated person. A hearing was held on December 16, 2014 Renault Brown was appointed as permanent guardian for his father Johnny R. Brown.

At the hearing on December 16, 2014, Renault Brown did not object to the payment of the attorney fees in the amount of \$2,802.50.

It is therefore ordered that the Renault Brown is authorized to pay Timothy L. Ashford, attorney at law, the sum of \$2,802.50 for legal fees in this matter.

Dated this 16 day of December, 2014.

BY THE COURT:

DOUGLAS COUNTY COURT JUDGE

DOUGLAS COUNTY COURT  
PROBATE DIVISION

DEC 16 2014

By: *RENEA L. CAGLE*  
Clerk of Court  
DOUGLAS COUNTY COURT  
OMAHA, NEBRASKA



P00396265C01

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, )  
An Incapacitated Person. ) ORDER TO PAY  
 ) ATTORNEY FEES

This matter is before the court for a motion for the allowance of fees for legal services performed in connection with the above entitled matter. Timothy L. Ashford, attorney at law, has been retained to represent Renault Brown the permanent guardian of Johnny R. Brown an incapacitated person. Renault Brown was appointed as permanent guardian for his father Johnny R. Brown.

Renault Brown does not object to the payment of the attorney fees in the amount of \$375.00.

It is therefore ordered that the Renault Brown is authorized to pay Timothy L. Ashford, attorney at law, the sum of \$375.00 for legal fees in this matter.

Dated this 2nd day of January, 1915.

BY THE COURT.

**Douglas County Court Judge**



P00340832C01

FILED  
COUNTY COURT  
PROBATE DIVISION

JAN 02 2015

By: Leslie Douglas  
Clerk of Court  
**DOUGLAS COUNTY COURT**  
**OMAHA, NEBRASKA**

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA.

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, )  
An Incapacitated Person. ) ORDER TO PAY  
 ) ATTORNEY FEES

This matter is before the court for a motion for the allowance of fees for legal services performed in connection with the above entitled matter. Timothy L. Ashford, attorney at law, has been retained to represent Renault Brown the permanent guardian of Johnny R. Brown an incapacitated person. Renault Brown was appointed as permanent guardian for his father Johnny R. Brown.

Renault Brown does not object to the payment of the attorney fees in the amount of \$250.00 and \$63.97 for the Daily Record publication for a total of \$313.97.

It is therefore ordered that the Renault Brown is authorized to pay Timothy L. Ashford, attorney at law, the sum of \$313.97 for legal fees in this matter.

Dated this 27 day of July, 2015.

BY THE COURT:

**DOUGLAS COUNTY COURT JUDGE**

**FILED  
COUNTY COURT  
PROBATE DIVISION**

JAN 23 2015

By: Louis J. Daubies  
Clerk of Court  
BOUGLIS COUNTY COURT  
OMAHA, NEBRASKA



R00343879C01

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on February 9, 2015, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Timothy L Ashford  
tash178346@aol.com



Date: February 9, 2015 BY THE COURT:

Leslie A. Douglas  
CLERK

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

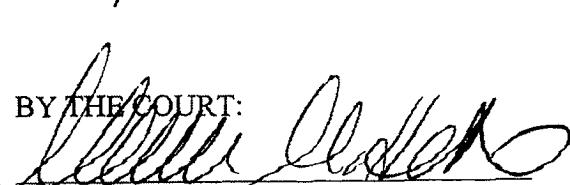
IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, )  
 ) ORDER TO PAY  
 ) ATTORNEY FEES  
An Incapacitated Person. )

This matter is before the court for a motion for the allowance of fees for legal services performed in connection with the above entitled matter. Timothy L. Ashford, attorney at law, has been retained to represent Renault Brown the permanent guardian of Johnny R. Brown an incapacitated person. Renault Brown was appointed as permanent guardian for his father Johnny R. Brown.

Renault Brown does not object to the payment of the attorney fees in the amount of \$3,650.00.

It is therefore ordered that the Renault Brown is authorized to pay Timothy L. Ashford, attorney at law, the sum of 3,650.00 for legal fees in this matter.

Dated this 31 day of August, 2015.

BY THE COURT:  
  
DOUGLAS COUNTY COURT JUDGE

FILED  
COUNTY COURT  
PROBATE DIVISION  
AUG 31 2015

By: Leslie Douglas  
DOUGLAS COUNTY COURT  
OMAHA, NEBRASKA



**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on September 4, 2015, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Timothy L Ashford  
tash178346@aol.com



Date: September 4, 2015 BY THE COURT: Leslie A. Douglas  
CLERK

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, )  
 ) ORDER TO PAY  
 ) ATTORNEY FEES  
An Incapacitated Person. )

This matter is before the court for a motion for the allowance of fees for legal services performed in connection with the above entitled matter. Timothy L. Ashford, attorney at law, has been retained to represent Renault Brown the permanent guardian of Johnny R. Brown an incapacitated person. Renault Brown was appointed as permanent guardian for his father Johnny R. Brown.

Renault Brown does not object to the payment of the attorney fees in the amount of 750.

It is therefore ordered that the Renault Brown is authorized to pay Timothy L. Ashford, attorney at law, the sum of 750 for legal fees in this matter.

Dated this 20 day of October, 2015.

FILED  
COUNTY COURT  
PROBATE DIVISION

DCI 19 2015

DOUGLAS COUNTY  
COURT OF RECORD  
DOUGLAS COUNTY COURT  
OMAHA, NEBRASKA

BY THE COURT:



PO0391534601

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE GUARDIANSHIP ) Case No. PR 14-1483  
AND CONSERVATORSHIP OF )  
JOHNNY R. BROWN ) ORDER  
)

This matter came on for hearing on May 4, 2016 on the Motion for Payment of Attorney Fees and on the court's request for a detailed accounting of services rendered for fees totaling \$13,865.00 over a 19 month period.

Timothy Ashford appeared. Renault Brown appeared. Malachi Brown appeared.

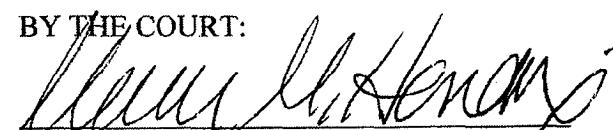
Evidence was adduced and the court took the matter under advisement for review of documents.

Based on the evidence submitted, the court cannot conclude that the fees requested are fair and reasonable. It is therefore ordered that the motion is denied. It is further ordered that counsel reimburse the ward's estate \$8,265 by October 31, 2016

Dated this 29 day of September, 2016.

EXHIBIT 13

BY THE COURT:

  
Marcena M. Hendrix,  
County Court Judge

Timothy L Ashford  
PO Box 386  
Omaha, NE 68101

Billy R Brown  
6623 North 41st Street  
Omaha, NE 68112

Rita Brown  
4522 Mewmore Avenue  
Dallas, TX 75209

FILED  
COUNTY COURT  
PROBATE DIVISION  
SEP 29 2016

Clerk of Court  
DOUGLAS COUNTY COURT  
OMAHA, NEBRASKA



P00447248C01

Renault Brown  
1206 Cole Creek Drive  
Omaha, NE 68114

Sarah Smith  
2583 Pinkney Street  
Omaha, NE 68111

*Terri L. Dobres*  
\_\_\_\_\_  
MMH/kaw:PR14-1483

FILED  
COUNTY COURT  
PROBATE DIVISION

SEP 29 2016

Clerk of Court  
DOUGLAS COUNTY COURT  
OMAHA, NEBRASKA

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on September 30, 2016, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Billy R Brown  
6623 North 41st Street  
Omaha, NE 68112

Rita Brown  
4522 Mewmore Avenue  
Dallas, TX 75209

Renault Brown  
1206 Cole Creek Drive  
Omaha, NE 68114

Sarah Smith  
2583 Pinkney Street  
Omaha, NE 68111

Timothy L Ashford  
tash178346@aol.com

Date: September 30, 2016 BY THE COURT:

*Sheryl Connolly*  
CLERK





DUGLAS COUNTY, NEBRASKA

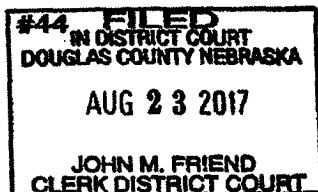
STATE OF NEBRASKA, ) CR 16-3923  
Plaintiff, )  
vs. ) ORDER  
TERENCE A. CRAWFORD, )  
Defendant, )

This matter is before the Court on an appeal filed by the Defendant from his convictions and sentences in Douglas County Court for the offenses of damage to property and disorderly conduct. The Defendant appeals to this court, arguing there was insufficient evidence as a matter of law to sustain his convictions, the sentences imposed were excessive and the county court's award of restitution was improper. Kevin Slimp, Assistant Omaha City prosecutor, appeared for the State and Matt Kahler appeared with the Defendant. The Court received Exhibits 1-6 into evidence. Argument was heard and the matter was taken under advisement. Now being fully advised in the matter, the Court finds and orders as follows:

**FACTUAL BACKGROUND**

On September 21, 2016, a bench trial took place before the Honorable Marcena Hendrix, in a consolidated trial, against Terence Crawford and his co-defendant, Wayne Sullivan, for charges of damage to property, disorderly conduct and trespass. At the conclusion of the State's evidence, the court found insufficient evidence against Sullivan with respect to all three charges, and his case was dismissed. The Motion to Dismiss was overruled as to Crawford's case. The Defendant then rested and did not put on any evidence. The court found Crawford guilty of

EXHIBIT 14



damage to property and disorderly conduct, and not guilty of trespass. A presentence investigation (PSI) was ordered by the Court.

On December 15, 2016, a sentencing hearing was held. The county court sentenced Crawford on both convictions to ninety days in jail in addition to two years of probation, with terms including one-hundred twenty hours of community service, random drug testing, and an order to pay the full amount of restitution requested by the victim in the matter.

This case arose following a dispute Crawford had with Michael Nelson over a custom paint job for Crawford's 1984 Monte Carlo. Nelson does "custom auto and paint" at his business Extreme Custom at 6505 North 56<sup>th</sup> Street in Omaha. In November of 2015, Crawford took the Monte Carlo to Nelson's shop for restoration and painting and discussed the price of completing the paint job. Nelson testified that he met with Crawford on March 16, 2016, at which time Crawford looked at his vehicle in the shop and again discussed payment. Nelson stated they came to an agreement that Crawford would pay the remaining balance of one-thousand five-hundred forty-four dollars and forty-eight cents (1,544.48). Nelson testified that Crawford was required to pay this balance before returning the vehicle.

Crawford next visited the shop on April 4, 2016 accompanied by Wayne Sullivan. Crawford tried to pick up the vehicle without paying the remaining balance. Crawford and Sullivan pushed the vehicle out onto the street, but did not take it. Crawford had arrived with a tow truck. Crawford stated he did not owe Nelson anything and that he was not going to pay him. Nelson told the tow-truck driver that Crawford had not paid, so the driver did not take the car. Nelson called the police and officers arrived. Crawford talked with his attorney and returned possession of the car to Nelson. When Crawford complained that Nelson had the car for ten months, Nelson took \$600 off the remaining balance.

Crawford returned to the shop on April 14, 2016 along with another male party. Crawford and the unidentified male entered the shop area through a door posted "Employees Only." Crawford demanded that his vehicle be returned. Nelson advised Crawford that he could take the vehicle if the balance was paid in full. Crawford refused to pay and moved items in the shop in order to remove the vehicle from an auto lift. Eventually, more of Defendant's friends arrived at the shop, including Wayne Sullivan. During the incident, several people, including Crawford and Nelson operated or attempted to operate the lift in order to lower the vehicle. Nelson acknowledged he manipulated controls of the lift to move the vehicle higher. Crawford, Sullivan, and the others were eventually successful in getting the vehicle lowered and to a pickup truck with a tow strap and towed the vehicle from the scene.

## **LEGAL ANALYSIS AND RULING**

### ***Sufficiency of Evidence***

In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Ross*, 283 Neb. 742, 749-50, 811 N.W.2d 298, 303-04 (2012).

Count I of the complaint charged the Defendant with damage to property. Under count 1, the State alleged the Defendant "on or about the 14<sup>th</sup> day of April, 2016 . . . did purposely or knowingly tamper with or damage the property of EXTREME CUSTOM FLEET AND AUTO SPA."

The evidence presented during the trial does not establish who caused the damage to the hydraulic lift. Several people, including the Defendant and the owner of the business, operated or attempted to operate the lift and could have caused the damage. But more importantly, there is a total lack of evidence showing that the damage to the lift was caused "purposely or knowingly" by the Defendant or by anyone else for that matter. The Court finds that no rational trier of fact could have found the necessary elements to justify a guilty finding for the offense of destruction of property. The Court reverses Defendant's conviction for destruction of property.

Under count II, the complaint charged the Defendant with disorderly conduct. Count II alleged the Defendant "on or about the 14<sup>th</sup> day of April, 2016 . . . 14<sup>th</sup> . . . did purposely or knowingly cause inconvenience, annoyance or alarm or created the risk thereof to any person by: (a) engaging in fighting, threatening or violent conduct; or (b) using abusive, threatening or other fighting language or gestures."

In reviewing the evidence, the Court finds there was sufficient evidence for the county court to find Defendant guilty. The evidence shows the Defendant returned to the victim's place of business to retrieve his vehicle. Just over one week earlier, he tried the same thing and was told by police and the victim he could not take his vehicle until he paid for the work done on his vehicle. Despite these warnings, the Defendant returned to the victim's place of business on April 14, 2106, with the aid of several friends, and took his vehicle from the possession of the victim without permission or having made full payment. The evidence clearly shows the Defendant used intimidation, and at times force, to accomplish his goal. While the evidence shows Defendant did not verbally threaten the victim, his presence in the company of his friends certainly was threatening. Defendant's conviction for disorderly conduct is affirmed.

### ***Restitution***

Neb.Rev.Stat. § 29-2280 (Reissue 2016) vests trial courts with the authority to order restitution for actual damages sustained by the victim of a crime for which the defendant is convicted. *State v. Mick*, 19 Neb.App. 521, 808 N.W.2d 663 (2012).

In imposing restitution, § 29-2281 provides, in part, the following parameters:

To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim.... The court may order that restitution be made immediately, in specified installments, or within a specified period of time not to exceed five years after the date of judgment or defendant's final release date from imprisonment, whichever is later.

Therefore, pursuant to § 29-2281, before restitution can be properly ordered, the trial court must consider: (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim or a crime, and (3) the amount of restitution a criminal defendant is capable of paying. *State v. Mick, supra*. The language of § 29-2281 and the case law require appropriate sworn documentation to support both the actual damages sustained by the victim and the defendant's ability to pay restitution. *Id.* Statements regarding a victim's damages, which are unsworn and uncorroborated, are insufficient bases for a restitution order. *State v. McLain*, 238 Neb. 225, 469 N.W.2d 539 (1991).

The county court did not conduct any sort of restitution hearing in this case as required by law. The court simply ordered the Defendant "to pay the restitution as set forth in the presentence investigation [PSI]." The order from the sentencing court states the Defendant shall pay "\$6,412.90 [in restitution] by 11/16/2018." The Court vacates the award of restitution and remands the matter for the county court to hold a proper restitution hearing as outlined above. A sentencing court cannot just rubber stamp information provided in the PSI. Having reversed the county court's

finding of guilt on the damage to property charge, it will also be up to the county court to determine if restitution is still proper based on Defendant's conviction for disorderly conduct.

### ***Excessive Sentence***

"An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court." *State v. Jones*, 297 Neb. 557, 561, \_\_\_ N.W.2d \_\_\_, \_\_\_ (2017). "A judicial abuse of discretion exists when the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition." *Id.*

The county court sentenced the Defendant on both convictions to two years of probation, random drug testing, 120 hours of community service and 90 days in jail with no house arrest or work release. The two year probation sentence was clearly within the statutory limits for the disorderly conduct conviction, and this Court affirms the sentence of probation for 2 years. However, this Court finds that the condition that the Defendant serve the first 90 days in jail an abuse of discretion, and vacates that condition from the probation order.

The sentence of 90 days in jail as a condition of probation is excessive, and an abuse of discretion, in light of the legislature's recent changes in the Nebraska Administrative Probation Act. See 2015 Nebraska Laws, L.B. 605 which went in effect on August 30, 2015; and 2016 Nebraska law, L.B. 1094 which went in effect on April 19, 2016. It should be noted that the Defendant was sentenced on December 15, 2016 and the new provisions of the Act applied. Neb. Rev. Stat. § 83-1,135.02 (3)(Cum. Supp. 2016)(“It is the intent of the Legislature that the changes made ... by Laws 2016, LB 1094 ... apply to all committed offenders under sentence, on parole, or on probation on or after April 20, 2016, and to all persons sentence on and after such date.”) See also, *State v. Kantaras*, 294 Neb. 960, 885 N.W.2d 558 (2016).

Under current Nebraska law, a court may sentence a person regardless of whether it is a misdemeanor or felony up to 90 days in jail as a condition of probation. However, there are numerous steps a court must take before sentencing a defendant to jail as a condition of probation.

Neb. Rev. Stat § 29-2262 (Reissue 2016) provides in part:

- (2) The court may, as a condition of a sentence of probation, require the offender:
  - (b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;
  - (3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.
  - (4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:
    - (a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and
    - (b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

While the county court in sentencing the Defendant stated, "any lesser sentence would promote the disrespect for the law," the county court did not find it would "otherwise sentence the defendant to a term of imprisonment instead of probation" or inform the Defendant of how much jail time he would serve with good time. These findings and advisements are mandated by § 29-2262(3), (4)(a) and (b) when a trial court imposes jail time as a condition of probation.

On the facts of this case, no one could seriously argue the county court could have found that it would have otherwise sentenced the Defendant to a term of imprisonment without being able to impose a jail sentence as a condition of probation. The State was arguing for probation and

restitution, and not asking for jail time. The PSI officer only recommended a fine and an order of restitution. Therefore, the condition of probation requiring the Defendant to serve 90 days is vacated.

**IT IS THEREFORE ORDERED** that the Defendant's conviction for Damage to Property is reversed and remanded with directions to dismiss.

**IT IS FURTHER ORDERED** that Defendant's conviction for Disorderly Conduct is affirmed.

**IT IS FURTHER ORDERED** that this matter is remanded to the Douglas County Court for a proper restitution hearing.

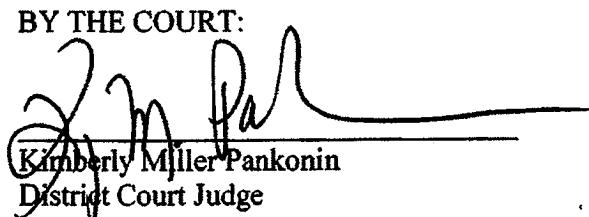
**IT IS FURTHER ORDERED** that the two years of probation sentence for Defendant's disorderly conduct conviction is affirmed, but the condition of serving 90 days in jail as a condition of probation is vacated.

**IT IS FURTHER ORDERED** that this matter be remanded to the Douglas County Court for execution of the judgment in accordance with this order. The Clerk of the District Court shall certify a copy of this order to the Douglas County Court along with the costs incurred in this Court.

**IT IS SO ORDERED.**

Dated this 23rd day of August 2017.

BY THE COURT:



Kimberly Miller Pankonin  
District Court Judge

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 24, 2017 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Matthew R Kahler  
finleyandkahler@gmail.com

Kevin J Slimp  
ProsecutorEfiling@cityofomaha.org

WOWT - 6  
cassie.crowe@wowt.com

Date: August 24, 2017

BY THE COURT:

*John M. Friend*

CLERK



IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, ) APPLICATION AND  
An Incapacitated Person. ) MOTION TO  
 ) SET ASIDE  
 ) JUDGMENT  
)

COMES NOW, Timothy L. Ashford, and pursuant to Neb. Rev. Stat. § 25-2001 makes this motion to set aside the judgment entered on 6/2/20 without prior notice to any of parties as follows:

1. PR 14 1483 was disposed of as an uncontested default on June 2, 2020 and the court has its inherent power to vacate or modify its own judgment.
2. The parties to this action were not provided prior notice of this court's intention to dispose of PR 14 1483 as an uncontested default.
3. The order of the court prevented an appeal of the attorney fees without notice to the attorney of the disposition.

WHEREFORE, movant requests an Order of the Court granting this motion to To set aside the uncontested default on June 2, 2020.

Dated this 5th day of August, 2020.

By: s/Timothy L. Ashford/  
Timothy L. Ashford  
Attorney at Law  
P.O. Box 386  
Omaha, Nebraska 68101  
(402) 660-5544

EXHIBIT 15

## CERTIFICATE OF SERVICE

It is hereby certified that on the 10th day of August, 2020 in the case of Johnny R. Brown in the County Court of Douglas County PR 14 1483 this Motion to Correct the Record was mailed by United States First Class Mail Postage prepaid on the 10th day of August, 2020 to:

Mr. Malachi Brown  
1405 North 60<sup>th</sup> Street  
Omaha, Nebraska 68132

Mr. Billy R. Brown  
6623 North 41<sup>st</sup> Street  
Omaha, Nebraska 68112

Ms. Rita Brown  
4522 Newmore Avenue  
Dallas, Texas 75209

Ms. Sarah Smith  
2583 Pinkney Street  
Omaha, Nebraska 68111

Ms. Carolyn Prescott  
7533 Erskine Street  
Omaha, Nebraska 68134

Mr. Renault Brown  
4617 North 55<sup>th</sup> Street  
Omaha, Nebraska 68104

Dated this 5th day of August, 2020.

By:s/Timothy L. Ashford/  
Timothy L. Ashford

## Certificate of Service

I hereby certify that on Thursday, August 06, 2020 I provided a true and correct copy of the Motion to the following:

Smith,Sarah, service method: First Class Mail

Brown,Johnny,R, service method: First Class Mail

Brown,Billy,R, service method: First Class Mail

Brown,Rita, service method: First Class Mail

Ashford,Timothy, service method: First Class Mail

Spahn,Susan, represented by Spahn,Susan,J (Bar Number: 18650) service method:  
Electronic Service to [sspahn@fitzlaw.com](mailto:sspahn@fitzlaw.com)

Signature: /s/ Timothy Ashford (Bar Number: 19687)

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ) PR 14 1483  
GUARDIANSHIP/CONSERVATORSHIP OF )  
JOHNNY R. BROWN, ) OBJECTION  
 ) TO GUARDIAN  
 ) AD LITEM  
 ) APPOINTMENT  
An Incapacitated Person. )  
)

COMES NOW, Timothy L. Ashford, and objects to the appointment of the  
Guardian Ad Litem for the reasons which follow:

1. The attorney was appointed by the judge after a motion to recuse herself was filed.
2. Under Neb. Rev. Stat. § 30-4202, only a lawyer duly licensed by the Nebraska Supreme Court may be appointed to serve as a guardian ad litem in proceedings under the Nebraska Probate Code. (2) When feasible, the duties of a guardian ad litem should be personal to the appointed lawyer and should not normally be delegated to another lawyer. (3) Prior to appointment as guardian ad litem, the lawyer shall fulfill the training requirements as set forth in section (G) of these standards.
3. Practice standards § 6-1469. Practice standards for guardians ad litem for proceedings under the Nebraska Probate Code.

(B) Appointment.

(1) Under Neb. Rev. Stat. § 30-4202, only a lawyer duly licensed by the Nebraska Supreme Court may be appointed to serve as a guardian ad litem in proceedings under the Nebraska Probate Code.

(2) When feasible, the duties of a guardian ad litem should be personal to the appointed lawyer and should not normally be delegated to another lawyer.

(3) Prior to appointment as guardian ad litem, the lawyer shall fulfill the training requirements as set forth in section (G) of these standards.

~~Other language states: (b) Before serving as a guardian ad litem, complete the training requirements for a guardian ad litem as provided under Supreme Court rule.~~

4. The attorney appointed has not taken the Guardian Ad Litem training which is stated in her motion for status hearing.
5. Based upon the fact judge Hendrix filed an anonymous bar complaint is the reason for the motion for recusal and the reason for the objection to the appointment of the Guardian Ad Litem.
6. The judge has a conflict in the appointment of the Guardian Ad Litem because the attorney sued her in both state and federal court.
7. In Ashford v. Hendrix 8:20 CV 36, both the Court and the State agree the Neb. Rev. Code of Judicial Conduct notes that “[t]aking action to address known misconduct is a judge’s obligation.” § 5-302.15, cmt 1. Submitting a bar complaint is an “action to address known misconduct” and such activity is therefore within the scope of Hendrix’s employment as a judicial officer.

ID # 333

8. THE COURT AND THE PROSECUTOR STATE IT IS THE DUTY OF THE WHITE JUDGE TO REPORT "KNOWN MISCONDUCT" BUT NO GRIEVANCE LETTER OF "KNOWN MISCONDUCT" WRITTEN ON OFFICIAL JUDICIAL LETTERHEAD WAS PROVIDED TO PLAINTIFF IN VIOLATION OF THE OFFICE FOR COUNSEL FOR DISCIPLINE RULES AND THE U.S. CONSTITUTION In the Matter of John Ruffalo, Jr., 391 U.S. 961 (1968). 8:20-cv-00036-BCB-MDN Doc # 36 Filed: 08/23/20 Page 8 of 23 - Page ID # 400
9. The U.S. District Court of Nebraska has ruled that judge Hendrix sent the bar complaint on 9/29/16. 8:20-cv-00036-BCB-MDN Doc # 23 Filed: 07/30/20 Page 11 of 14 - Page ID # 333

10. Nebraska Revised Code of Judicial Conduct § 5-301.2 requires that the judge avoid the appearance of impropriety.

11. In *Ashford v. Hendrix U.S. Dist. Court 8:20 CV 36 (Doc. 1 P 45-50)* NO DETAILED GRIEVANCE LETTER WAS SUBMITTED BY THE DEFENDANT (Hendrix) ON OFFICIAL JUDICIAL LETTERHEAD STATIONERY AND NO DETAILED GRIEVANCE LETTER WAS RECEIVED BY THE OFFICE FOR COUNSEL FOR DISCIPLINE

12. The attorney general representing Hendrix did not deny she sent the 9/29/16 bar complaint and the attorney representing Hendrix did not state that Hendrix sent a detailed letter of the alleged “known misconduct” on official judicial letterhead stationary to file the bar complaint.
13. Official must be engaged in acts that are integrally related not simply to judicial process in general but to a concrete judicial case or controversy. *Mitchell v. Fishbein*, 377 F.3d 157 (2004). “First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge’s judicial capacity. *Schottel v. Young*, 687 F.3d 370 (8th Cir. 2012). The act of sending an anonymous bar complaint which consists of only one order dated 9/29/16 (out of seven orders) without a detailed letter of grievance to the Office for Counsel for Discipline on official judicial stationery is an action not taken in the judge’s judicial capacity. 8:20-cv-00036-BCB-MDN Doc # 36 Filed: 08/23/20 Page 9-10 of 23 - Page ID # 402
14. The judge was sued in (8:20CV 36/ CI 19 9165) and she refuses to recuse herself in the Douglas County Probate Case Number PR 14 1483 *Rippo v. Baker*, 137 S.Ct. 905 (2017); *Thompson v. Millard Public School District*, 302 Neb. 70 (2019) require the judges step down from my case.

ID # 402

15. The family did not request the appointment of a Guardian Ad Litem.
16. The judge has a pending motion to recuse herself in this case based upon the fact that she has been sued in two lawsuits by Timothy L. Ashford v. Marcena Hendrix in the Douglas County District Court CI 19 9165 and Timothy L. Ashford v. Marcena Hendrix in U.S.District Court 8:20 CV 36 by the attorney representing the family of Johnny R. Brown.

WHEREFORE, movant requests an Order of the Court granting this Objection to Guardian Ad Litem appointment.

Dated this 16th day of September, 2020.

By: S/Timothy L. Ashford/  
Timothy L. Ashford  
Attorney at Law  
P.O. Box 386  
Omaha, Nebraska 68101  
(402) 660-5544

## CERTIFICATE OF SERVICE

It is hereby certified that on the 17<sup>th</sup> day of September, 2020 in the case of Johnny R. Brown in the County Court of Douglas County PR 14 1483 this Objection to Guardian Ad Litem and the Application and Motion to Set Aside Judgment was emailed to attorney Susan Spahn and the Objection to Guardian Ad Litem mailed by United States First Class Mail Postage prepaid on the 17<sup>th</sup> day of September, 2020 to:

Mr. Malachi Brown  
1405 North 60<sup>th</sup> Street  
Omaha, Nebraska 68132

Mr. Billy R. Brown  
6623 North 41<sup>st</sup> Street  
Omaha, Nebraska 68112

Ms. Rita Brown  
4522 Newmore Avenue  
Dallas, Texas 75209

Ms. Sarah Smith  
2583 Pinkney Street  
Omaha, Nebraska 68111

Ms. Carolyn Prescott  
7533 Erskine Street  
Omaha, Nebraska 68134

Mr. Renault Brown  
4617 North 55<sup>th</sup> Street  
Omaha, Nebraska 68104

By: S/Timothy L. Ashford  
Timothy L. Ashford

## Certificate of Service

I hereby certify that on Thursday, September 17, 2020 I provided a true and correct copy of the Objection to the following:

Spahn,Susan, represented by Spahn,Susan,J (Bar Number: 18650) service method:  
Electronic Service to [sspahn@fitzlaw.com](mailto:sspahn@fitzlaw.com)

Smith,Sarah, service method: First Class Mail

Brown,Billy,R, service method: First Class Mail

Brown,Rita, service method: First Class Mail

Ashford,Timothy, service method: First Class Mail

Brown,Johnny,R, service method: First Class Mail

Signature: /s/ Timothy Ashford (Bar Number: 19687)

# SUPREME COURT OF NEBRASKA



## COUNSEL FOR DISCIPLINE

Mark A. Weber  
Counsel for Discipline

John W. Steele  
Assistant Counsel for Discipline

Kent L. Frobish  
Assistant Counsel for Discipline

Julie L. Agena  
Assistant Counsel for Discipline

October 4, 2016

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

Dear Mr. Ashford:

The Counsel for Discipline is investigating a complaint against you received by this office on October 3, 2016.

Pursuant to Nebraska Court Rule 53-309(C), this office is conducting a preliminary inquiry. I would appreciate a written response from you addressing the issues raised. Specifically, please provide me with any information you have regarding your handling of the matter and the fees in question. Please provide me with copies of your billing statements for all work completed on the matter as well.

After your response is received, the entire matter will be reviewed and a determination made as to whether an investigation is warranted.

Sincerely,

Julie L. Agena  
Assistant Counsel for Discipline

Enc.

EXHIBIT 17

Counsel for Discipline of the  
Nebraska Supreme Court  
3808 Normal Blvd., Lincoln, Nebraska 68506

*Office of the*  
**FEDERAL PUBLIC DEFENDER**  
**FOR THE DISTRICT OF NEBRASKA**

---

**David R. Stickman**  
**Federal Public Defender**

**Suite 300N**  
**222 South 15th Street**  
**Omaha NE 68102**

**(402) 221-7896**  
**Fax: (402) 221-7884**

---

**September 9, 2016**

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

**RE: CJA Panel**

Dear Mr. Ashford:

You have been removed from the CJA Panel. The CJA Panel Selection Committee determined that you should be removed from the CJA Panel. Judge Gerrard did not participate in the decision. Chief Judge Smith Camp approved the decision on February 22, 2016.

You can ask to be reinstated to the CJA Panel. If you are interested in doing so, please advise me in writing before December 1, 2016.

Very truly yours,



**David R. Stickman**  
**Federal Public Defender**

DRS/cjh

**EXHIBIT 18**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) Case Number 8:04CR274  
Plaintiff, )  
v. ) JUDGMENT  
NATHANIEL L. RAINIER, )  
Defendant. )

The defendant having entered a plea of not guilty to Counts I and II of the Indictment, and the jury having found that the defendant is not guilty,

IT IS ORDERED that judgment is hereby entered accordingly, and the defendant is discharged as to these counts.

DATED this 4<sup>th</sup> day of February, 2005.

BY THE COURT:

s/Laurie Smith Camp  
Laurie Smith Camp  
United States District Judge

EXHIBIT 19

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:15CR313
	)	
Plaintiff.	)	BRIEF IN SUPPORT OF
	)	MOTION TO
v.	)	WITHDRAW
	)	
CHRISTOPHER BASKIN,	)	
	)	
Defendant.	)	REQUEST FOR A
	)	HEARING

EXHIBIT 20

COMES NOW, Timothy L. Ashford, and hereby moves the Court for an Order granting him leave to Withdraw as Counsel for the Defendant in the above-entitled matter. Withdrawal is allowed pursuant to Nebraska Rules of Professional Conduct 3-501.16 and for the reasons set out in this Brief in Support of the Motion to Withdraw.

1. It is racist for this court to treat African American Attorney Timothy Ashford as a pro se criminal defendant and appoint white attorney Michael Gooch as standby counsel. (Court filing no. 33)
2. As an attorney who won the first federal jury trial that he tried in federal court (U.S. v. Rainier 8:04CR274) (Ex. 1), Gooch's knowledge of the case and preparation for the trial will result in a conviction to African American

Defendant Christopher Baskin based upon the fact that he failed to meet the deadline to comply with a request from the Defendant and he did not show good cause for reopening the deadline for filing pretrial motions to seek an independent examination of controlled substances (Court filing no. 19) and the fact that Attorney Gooch has not subpoenaed one witness (other than the witnesses listed by the prosecutor) on behalf of the Defendant Christopher Baskin (Court filing no. 24) which indicates no investigation was conducted to present a defense therefore Attorney Ashford moves to withdraw because Attorney Ashford does not want Attorney Gooch as standby counsel.

3. Based on the foregoing, Attorney Ashford, this court and Defendant Christopher Baskin have issues which can not be resolved and Attorney Ashford moves to withdraw and this court should grant this motion to withdraw.

4. The Preamble to the Nebraska Rules of Professional Conduct state (4) In all professional functions a lawyer should be competent, prompt and diligent. Attorney Ashford does not have enough time to properly prepare for trial.

1. It is racist for this court to treat African American Attorney Timothy Ashford as a pro se criminal defendant and appoint white attorney Michael Gooch as standby counsel. (Court filing no. 33)

For the record, defense counsel Ashford is African-American, the judge is white and Michael Gooch is white. The order is racist. (Court filing no. 33)

The Court held, "While the Defendant has the right to retain the lawyer of his choice, the Court will deny the pending Motion to withdraw in light of Gooch's knowledge of the case and preparation for the trial, and will require that he serve as stand-by counsel during trial pursuant to his CJA appointment." (Filing No. 33 )

Standby counsel or advisory counsel refers to a lawyer who ASSISTS A CLIENT who has invoked his right to self-representation

The order does not state standby counsel to who?

Christopher Baskin HAS NOT INVOKED HIS RIGHT TO SELF-REPRESENTATION.

Attorney Ashford entered his appearance as the attorney of record for the Defendant. Standby counsel or advisory counsel refers to a lawyer who assists a client who has invoked his right to self-representation.

Standby counsel is defined as that which follows:

Standby counsel or advisory counsel refers to a lawyer who assists a client

who has invoked his right to self-representation. If the client becomes disruptive or otherwise unable to conduct his own defense, the judge may order the standby counsel to take over the defense.

A standby counsel means a lawyer or attorney who is appointed to assist a client who has invoked his/her right to self-representation. A standby counsel is not an *amicus curiae*, instead s/he is an assistant who will serve to safeguard a fair and expeditious trial.

Not since *Plessy v. Ferguson* has a court unilaterally taken away a right of a black man. The appointment of standby counsel is humiliating, embarrassing and racist.

I refuse to play the role of criminal defendant and allow a white attorney to serve as my standby counsel. Defense counsel Ashford refuses to be treated as if he is a pro se defendant without any legal skills by the appointment of Michael Gooch as standby counsel by this court. Defense counsel Ashford refuses to allow a white male attorney Michael Gooch to supervise him as standby counsel.

Defense counsel Ashford has constitutional rights under the United States Constitution and the Nebraska Constitution to be treated as a practicing licensed attorney by this federal court.

Attorney Ashford is licensed in the United States Supreme Court, the Eighth Circuit Court of Appeals, the Sixth Circuit Court of Appeals, the Colorado

Courts have defined standby counsel. A defendant in a criminal prosecution has a Sixth Amendment right to waive appointed counsel and proceed pro se. *Faretta v. California*, 422 U.S. 806 (1975). The right to the effective assistance of counsel and the right to self-representation are “separate rights depicted on the opposite sides of the same [6th] Amendment coin.” *United States v. Purnett*, 910 F.2d 51, 54 (2d Cir. 1990). The right is not absolute, however, and a court may deny a defendant’s request to proceed pro se, or revoke the right in certain circumstance.

The appointment of Michael Gooch as standby counsel was a legal error and a racist violation of attorney Timothy Ashford’s rights. If this court appointed a white male standby counsel for a female attorney it would be sexist so the appointment of standby counsel for African American Attorney Timothy Ashford is racist.

The name Michael Gooch DOES NOT APPEAR ON THE LAW LICENSE OF TIMOTHY ASHFORD. The court has no evidence that Attorney Ashford is incompetent or needs the help of STANDBY COUNSEL. Attorney Ashford competes with Attorney Gooch for clients and this court has declared that Attorney Ashford must be supervised by white male Attorney Gooch so that is detrimental to the business interests of Attorney Ashford.

**CREDENTIALS OF AFRICAN AMERICAN**

in May, 2008 based, in part, upon allegations made by witnesses in the Giles and Brown trial. Judge Smith Camp was the presiding judge in that trial. Two informants-Roosevelt Jackson Jr. and George Moore-testified in the federal trial on October 15, 2007 that Crawford approached them and asked them to provide exoneration for Giles. The Omaha World-Herald reported in an October 18, 2007 article that Jackson testified that Ms. Crawford asked him to fabricate a story and Moore, a witness to the triple homicide, stated Crawford came to him with a note that said, "Pin everything on Charmar." After a year of investigation and a review of Ms. Crawford's written response to the allegations, John Steele of the Counsel for Discipline dismissed the grievance filed by Judge Smith Camp against Ms. Crawford without prejudice October 31, 2008.

On December 21, 2015, Judge Smith Camp questioned my competency by asking my client in court, without a complaint from my client, if I was performing competently. My client stated that I was competent. (Rivera 8:14 CR 283) However, the receipt of a written complaint from Baskin regarding the competency of white attorney Michael Gooch resulted in the appointment of Gooch as my standby counsel. (Court filing no. 33) White male attorney Gooch was never questioned about his competency although he missed a court filing deadline and he failed to subpoena any witnesses.

I refuse the representation based upon the fact the court is treating me like a criminal defendant or an incompetent attorney and appointed standby counsel. My client has decided to hire a black attorney after the court has appointed two white attorneys and now the court states that the last white attorney must serve in a standby or supervisory role to the black attorney he has hired in violation of his constitutional rights. (Court filing 33)

The appointment of a white attorney as my standby counsel is offensive and racially the imposition of Plessy v. Ferguson which abrogates my rights to practice law without white supervision. Just as the Plessy v. Ferguson imposed segregation, this court demoted my law degree to that of a criminal by ordering a white male attorney as standby counsel.

#### **FACTS OF THE CASE**

The defendant is charged with conspiracy and possession with intent to deliver a controlled substance in violation of Title 21 U.S.C. Code § 841(a) (1) & (b) (1) and 21 U.S.C. Code § 846. The court set this case for trial January 6, 2016. Attorney Ashford was hired recently on December 28, 2015. Attorney Ashford requested additional time to prepare for the trial. The client was advised of the reasons for seeking a continuance. United States Attorney Doug Amen discussed this continuance with Defense Counsel on December 29, 2015. The Defendant seeks a continuance until March 28, 2016. United States Attorney Doug Amen has

no objection to the continuance until March 28, 2016. The client was explained and he understands that the time sought by the extension will be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161 et. Seq. The client signed an affidavit.

2. As an attorney who won the first federal jury trial that he tried in federal court (U.S. v. Rainier 8:04CR274) (Ex. 1), Gooch's knowledge of the case and preparation for the trial will result in a conviction to African American Defendant Christopher Baskin based upon the fact that he failed to meet the deadline to comply with a request from the Defendant and he did not show good cause for reopening the deadline for filing pretrial motions to seek an independent examination of controlled substances (Court filing no. 19) and the fact that Attorney Gooch has not subpoenaed one witness (other than the three witnesses listed by the prosecutor) on behalf of the Defendant Christopher Baskin (Court filing no. 24) which indicates no investigation was conducted to present a defense therefore Attorney Ashford moves to withdraw because Attorney Ashford does not want Attorney Gooch as standby counsel.

#### TRIAL STRATEGY

Now, the court will argue that Defense Attorney Ashford knew about the missed deadline and the substandard witness list when he filed his notice of appearance. First, the missed deadline is an appealable issue. (Court filing no. 19) Second, the witness list deficiency could have been cured by a continuance to investigate and subpoena witnesses who are not on the government witness list. (Court filing no. 24)

On appeal the court will use the criteria in Strickland which is a criminal defendant must show that 1) counsel's performance fell below an objective standard of reasonableness, and 2) that counsel's performance gives rise to a reasonable probability that, if counsel had performed adequately, the result would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984) If the case proceeds on January 6, 2016, on appeal Defendant Baskin can show that white male attorney Michael Gooch objectively missed the deadline for a filing (Court filing no. 19) and he can objectively show that he failed to subpoena witnesses other than witnesses on the government list (Court filing no. 24).

**Another argument to grant this withdrawal and to support my refusal to allow white male attorney Michael Gooch to serve as standby counsel is that Defendant Christopher Baskin attempted to fire Michael Gooch. Now, that Defendant Baskin has hired Attorney Ashford he has been informed that white male attorney Gooch is the standby attorney to the attorney Ashford.**

**Defendant Baskin will not trust Attorney Ashford because Attorney Ashford by court order is now under the supervision of standby white male Attorney Gooch who the defendant attempted to fire. Defendant Baskin will not share all of the information with Attorney Ashford because he will be in fear that this information will be shared with white male Attorney Gooch. The attorney client relationship is tainted by the court's ruling that white male attorney Gooch is standby counsel. (Court filing no. 33)**

**By refusing to terminate the representation of white male Attorney Gooch, this court has violated Defendant Baskin's Sixth Amendment right to hire independent counsel of his choosing and tainted this proceeding.**

**3. Based on the foregoing, Attorney Ashford, this court and Defendant Christopher Baskin have issues which can not be resolved and Attorney Ashford moves to withdraw and this court should grant this motion to withdraw.**

Numerous articles have been written but one article sums up the withdrawal.

Withdrawing as Counsel By Edward J. Cleary, Director Minnesota Office of Lawyers Professional Responsibility Reprinted from *Bench & Bar of Minnesota* (November 1999) **In the U.S. District Court for the District of Minnesota, Local Rule 83.7** makes several distinctions regarding withdrawal of counsel which are not found in the state rules. Ftn 1 **First, "leave of court" is not required if the Notice of Withdrawal is accompanied by "a Substitution of Counsel,"** provided that the substitution occurs 90 or more days in advance of trial for a civil matter or 30 or more days in advance of trial for a criminal case and also provided that the substitution does not "delay the trial" (which would defeat the objective

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on January 3, 2016 the foregoing was filed with the Clerk of the Court and the Clerk of the Court using the CM/ECF system will send electronic notice of the same to all parties via the CM/ECF notification system.

S/Timothy L. Ashford/  
Timothy L. Ashford #19687

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

CASE NO. 8:15CR313

Plaintiff,

ORDER

vs.

CHRISTOPHER BASKIN,

EXHIBIT 21

Defendant.

This matter is before the Court on the Motion for Leave to Withdraw (Filing No. 32) filed by Michael D. Gooch, CJA Panel Attorney, who was appointed to represent Defendant Christopher Baskin. Gooch seeks leave to withdraw in light of the entry of an appearance by retained counsel, Timothy L. Ashford, on December 29, 2015. This matter is set for trial to a jury commencing on January 6, 2016. Ashford's Motion to Continue (Filing No. 26) was denied. (See Filing No. 27.) While the Defendant has the right to retain the lawyer of his choice, the Court will deny the pending Motion to Withdraw in light of Gooch's knowledge of the case and preparation for the trial, and will require that he serve as stand-by counsel during trial pursuant to his CJA appointment.

IT IS ORDERED:

1. The Motion for Leave to Withdraw (Filing No. 32) filed by Michael D. Gooch is denied; and
2. This matter remains on the Court's trial calendar with the first day of trial commencing on Wednesday, January 6, 2016, at 8:30 a.m.

DATED this 30<sup>th</sup> day of December, 2015.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) CASE NO. 8:15CR313  
 )  
 Plaintiff, )  
 )  
 vs. ) MOTION FOR LEAVE TO  
 ) WITHDRAW  
 CHRISTOPHER BASKIN, ) REQUEST FOR EVIDENTIARY  
 ) HEARING  
 Defendant. )

COMES NOW Christopher Baskin, by and through his attorney of record and moves this Court for leave to withdraw from representation of this Defendant in the above captioned matter.

I. Defendant sent a letter to the Court demanding this action. He asserts that my failure to timely file a motion for leave to file motions, my failure to file a motion to obtain funds to have the seized controlled substances subjected to independent testing, and my failure to file a motion challenging the filing of the current indictment raising questions about possible vindictiveness in the increased penalty being sought have denied him the effective assistance of counsel guaranteed by the Constitution of the United States. Moreover, Defendant has complained that he and I have different views of the quantity and quality of the evidence the prosecutor seeks to offer in the upcoming trial.

EXHIBIT 22

The issues raised by Defendant's letter have not been addressed by the Court. The hand written letter addressed to the Court was received by the Court and then delivered to the Magistrate Judge. The Magistrate Judge took no action on the letter and did not file the original with the Clerk of the Court. The letter was not apparently returned to the District Judge either.

II. Defendant retained counsel at his own expense, apparently by borrowing money from his mother, since he remains detained and is indigent. This Court ordered CJA Panel Attorney Michael D. Gooch to serve as standby counsel to Defendant's retained attorney.

When that attorney moved to withdraw, his motion was granted. However at the hearing on that motion to withdraw, there was no evidence adduced and no argument was permitted of either Defendant or Standby Counsel. The effect of the ruling of the Court is that Defendant has been denied counsel of his choice for which he had demonstrated an ability to pay from funds borrowed from his family without providing Defendant with a chance to be heard. The simple expedient of discharging "Standby Counsel" was not considered by the Court.

Defendant has waived any right to a speedy trial on the record in open court, which waiver has been accepted by the Court.

Counsel anticipates that this motion will consume between 15 and 20 minutes, but that it does require an evidentiary hearing. Counsel expects that Defendant and Counsel may be called upon to provide testimony in support of this motion and Defendant's letter.

/s/ Michael D. Gooch

---

Michael D. Gooch #15273  
Attorney at Law  
1004 South 131<sup>st</sup> Avenue  
Omaha, NE 68154  
(402) 333-0722  
[mdgooch@cox.net](mailto:mdgooch@cox.net)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion for leave to withdraw has been served upon Assistant United States Attorney Doug Amen, by electronic filing this 5th day of January 2016.

/s/ Michael D. Gooch

---

Michael D. Gooch

## County must pay lawyer for killer's final appeal

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

By JOE LUGCAN  
WORLD HERALD BUREAU

OMAHA — Douglas County must pay attorney's fees to a lawyer who handled the final appeal of a man convicted in the 1970 sniper case involving the killing of Omaha police officer

The Nebraska Supreme Court denied Friday that Douglas County District Judge James Glenson abused his discretion when he refused to order payment to Timothy Ashford, the Omaha lawyer who claimed about \$4,000 in fees for work he did on the final appeal conviction motion filed by Donald Rice before he died in August this year.

The judge had agreed to appoint Ashford to represent the innocent Rice, who went by the name Merle Lee Lanes. But the judge later called the appeal frivolous, and rejected Ashford's claim for payment.

The Supreme Court judges said they were upholding a power of a county administrator to determine legal expenses

denied the case back to Douglas County for the assignment of counsel since a different judge must now handle the matter.

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

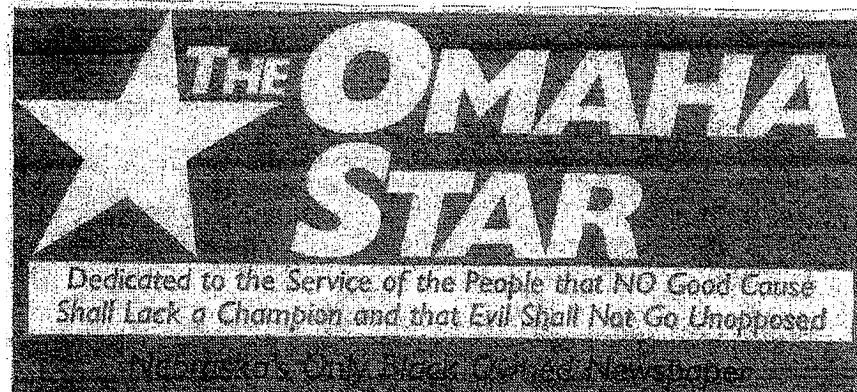
The death, during a period of racial tension in Omaha, touched off a massive hunt for those responsible. Seven days after the explosion, Rice and Ed Pindexter turned themselves in to police.

At their joint trial, a 15-year-old former member of the Black Panthers, Orlane Rice, testified that he had planted the bomb and called off the direction of Rice and Pindexter.

Both men consistently claimed the were innocent and they have been political or political prisoners, by some advocates. The advocates say the men were trained, 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 suffering respiratory distress. He was 30.

EXHIBIT 24



Vol. 71 - No. 44, Omaha, Nebraska Thursday, October 29, 2009 50 cents

## 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, Amie C. Martinez and Clarence Mock, who is currently the special prosecutor of the CSI David Kofoed 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!"

EXHIBIT 25

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.

EXHIBIT 26

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*

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

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

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Before BENTON, SHEPHERD, and KELLY, Circuit Judges.

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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.<sup>1</sup> 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.

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<sup>1</sup>Although 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,<sup>2</sup> vacate the judgment of the district court, and remand with instructions to dismiss the case without prejudice.

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<sup>2</sup>Ashford'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.

JOHN M. FRIEND  
CLERK OF THE DISTRICT COURT  
DOUGLAS COUNTY  
JANE ALEXANDER, CHIEF DEPUTY  
HALL OF JUSTICE / OMAHA, NEBRASKA 68183



DATE: APRIL 30, 2020

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

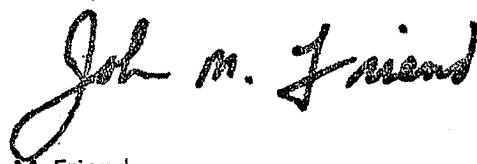
EXHIBIT 27

RE: BILL OF EXCEPTIONS  
081-115 / 081-116 - STATE vs. RICE / POINDEXTER - (MULTIPLE EXTENSIONS GIVEN)

THE PROJECTED RE-OPEN DATE FOR THE CLERKS OFFICE IS MAY 18, 2020. PLEASE RETURN THE BOE WHEN WE RE-OPEN.

Our records indicate the Bill of Exceptions in the above case has been checked out from this office since JANUARY 30, 2020. Please return the Bill of Exceptions to our office, the 30 day check out privilege has expired.

Very Truly Yours,

  
John M. Friend  
Clerk of District Court

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