

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY L. ASHFORD,

CASE NO. 20-757

Petitioner,

MOTION TO  
TAKE  
JUDICIAL  
NOTICE

vs.

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

OFFICE FOR COUNSEL FOR DISCIPLINE,

Respondent.

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

The Respondent Office for Counsel for Discipline required a written grievance letter to initiate a bar complaint in 2016. On 10/3/16, the Respondent received only one order dated 9/29/16 (out of seven orders) anonymously by mail from the judge

in case PR 14 1483 without a written grievance letter to initiate a bar complaint as required by Ruffalo.

The purpose of this motion is to take judicial notice of the Order of the judge entered in PR 14 1483 on March 8, 2021 in violation of Rippo appointing a special administrator to sue Petitioner after Petitioner sued that judge in two lawsuits. Petitioner requested the judge recuse herself five times in PR 14 1483. The 3/8/21 order appoints a special administrator to sue Petitioner while taking Petitioner's fifth motion to recuse the judge and the application to set aside judgment which have been on file since 10/2/20 under advisement. (1) The judge in PR 1483 ignores the fifth motion to recuse herself pursuant to Rippo to retaliate against Petitioner.

Petitioner Timothy Ashford sued Judge Marcena Hendrix in Timothy Ashford v. Marcena Hendrix CI 19 9165 in the Douglas County District Court on November 22, 2019 and Petitioner filed Timothy Ashford v. Marcena Hendrix 8:20 CV 36. The U.S. Supreme Court case of Rippo v. Baker, 137 S.Ct. 905 (2017) and the Nebraska case of Thompson v. Millard Public School District, 302 Neb. 70 (2019) requires the judge to recuse herself in PR 14 1483 because she has a conflict.

In the two lawsuits Petitioner has accused this judge of fraudulently mailing only one out of seven orders anonymously on 9/29/16 to the Office for Counsel for Discipline in retaliation for his racial discrimination lawsuits, violating federal statutes and violating her judicial code of ethics. So, after the Petitioner filed the 3/8/21 motion to this court, this judge appointed the same attorney she previously appointed as Guardian Ad Litem to serve as Special Administrator to sue Petitioner

in PR 14 1483. In violation of Rippo the judge ignored the Petitioner's Objection to the Guardian Ad Litem Appointment filed on 9/16/2020 and sua sponte vacated the appointment Guardian Ad Litem in her order dated March 8, 2021.

The Nebraska Attorney General is the attorney of record in two lawsuits representing this judge. (19 9165) (8:20 CV 36) The white female judge in the underlying case PR 14 1483 has taken the Petitioner's motion to recuse herself and application to set aside the judgment under advisement since 10/2/20 while appointing a special prosecutor in violation of the statute. 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 this judge signed six orders for attorney fee payments in PR 14 1483 to Petitioner in the amount of \$8,641.57. Without the consent or the prior 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. 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 Douglas County judicial letterhead stating the alleged misconduct of the Petitioner) to the Office for Counsel for Discipline which they received on 10/3/16. Based upon the 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 Office for Counsel For Discipline on 10/3/16.

In the federal court case Ashford v. Hendrix 8:20 CV 36, both the Court and the Nebraska Attorney General while representing the Office for Counsel for Discipline 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. 8:20-cv-00036-BCB-MDN Doc # 23 Filed: 07/30/20 Page 11 of 14 · Page ID # 333 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 (Judge McDermott was recused when he was sued in 16-3366)

The problem is the judge sent only the seventh order 9/29/16 anonymously through the mails and the Nebraska Revised Code of Judicial Conduct § 5-301.2 requires that the judge avoid the appearance of impropriety.

Judge Hendrix did not send a detailed written grievance letter to the Office for Counsel for Discipline for the 10/3/16 bar complaint and their procedures stated that a detailed grievance letter is required to start an investigation.

The Office for Counsel for Discipline stated in a February 5, 2021 letter to Petitioner that they refuse to release to Petitioner pursuant to Petitioner’s Freedom of Information Act request “...any and all documents of any written letters of complaint...” for the disciplinary investigation which they filed against Petitioner on 10/3/16. A written letter of grievance does not exist and has never existed against Petitioner for the 10/3/16 complaint. The Respondent implicitly admitted in the

2/5/21 letter that Judge Hendrix did not send a written grievance letter. The Respondent does not possess a grievance letter written by Judge Hendrix or written by anyone for the preliminary inquiry/bar complaint on 10/3/16 to attempt to disbar Petitioner.

“A partial and fragmentary disclosure, accompanied with the willful concealment of material and qualifying facts, is not a true statement, and is as much a fraud as an actual misrepresentation, which, in effect, it is.” State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Brenda J. Council, 289 Neb. 33 (2014). One who responds to an inquiry is guilty of fraud if he or she denies all knowledge of a fact which he or she knows to exist. Id.

The Nebraska Attorney General and the Office for Counsel for Discipline represented to this court and represented in state court (CI 19 9165)( CI 19 3445) and in federal court (8:20 CV 36) that a written letter of grievance existed in compliance with Ruffalo and that all of their own disciplinary procedures were followed for the 10/3/16 complaint against Petitioner filed by anonymously by Judge Hendrix by sending only one of seven orders through the mail.

On 9/21/16 judge Hendrix abused her discretion in jailing another African and the District court reversed her orders in CR 16 3923. Nine days later on 9/29/16, she anonymously mailed only one of seven signed orders to start a bar complaint against Petitioner in a probate case PR 14 1483.

Sua Sponte in PR 14 1483 on 3/8/21 Judge Hendrix appointed a special administrator pursuant to Neb. Rev. Stat. § 30-2457 which states... on the petition

of any interested person and finding, after notice and hearing,... If it appears to the court that an emergency exists, appointment may be ordered without notice. This section 30-2457 permits a special administrator to be appointed after notice when a personal representative cannot or should not act and also permits the appointment of a special administrator without notice when an emergency exists. *In re Estate of Cooper*, 275 Neb. 322, 746 N.W.2d 663 (2008). The family did not file a petition, the family was not given notice and no emergency exists. So the judge appointed the special administrator without notice to the family and without an emergency in violation of Cooper. *Id.*

Without the knowledge of the family, the judge failed to rule on the motion to recuse herself and the application to set aside judgment to sua sponte appoint a special administrator after she appointed a GAL in PR 14 1483. The judge overlooked the motion for recusal and the motion to set aside to appoint the special administrator to sue the Petitioner. There is no request to appoint a special administrator from the family and no emergency.

This court should connect the dots on the conspiracy of the state to deprive the Petitioner of his constitutional rights because of Petitioner's racial discrimination lawsuits against the state of Nebraska.

First, the state of Nebraska is the supervisory entity and controls the Nebraska Attorney General, the Office for Counsel for Discipline and Judge Marcena Hendrix. The state of Nebraska has three open disbarment claims against Petitioner because Petitioner filed a racial discrimination lawsuit against the state

Ashford v. Douglas County 16-3366 which resulted in the adoption of a local Douglas County court rule 4-17 which appoints all attorneys on a rotating basis. As a direct result of Petitioner's actions, Douglas County has appointed approximately 10 black attorneys who have received approximately \$200,000 in court attorney fees.

Although the state court judge, whom Petitioner has appeared in front of numerous times over two decades, has shown Petitioner respect in CI 19 9165, the federal court in 8:20 CV 36, which is essentially the same case, has exhibited an extremely hostile vitriolic racist attitude, with words such as unethical, towards Petitioner for filing his racial discrimination lawsuits against Nebraska:

It is clear that Ashford has previously utilized his legal abilities to bring important matters to the forefront of discussion in our society. But this does not justify repeatedly filing what is essentially the same frivolous lawsuit in an effort to get back at a judge who gave him an unfavorable ruling and reported his conduct to the bar authorities. 8:20-cv-00036-BCB-MDN Doc # 23 Filed: 07/30/20 Page 13 of 14 · Page ID # 335

The four lawsuits, which include this lawsuit, were filed because the Office for Counsel for Discipline did not have a written grievance letter based upon their 2/5/21 letter to start an investigation in violation of their own procedures, in violation of Ruffalo and in violation of the Petitioner's constitutional rights.

After approximately five years, the Office For Counsel For Discipline implied in their February 5, 2021 letter to Petitioner the written letter of complaint is confidential for the bar complaint filed against Petitioner on 10/3/16 in violation of Ruffalo. They never possessed a written grievance letter. Within weeks after the new bar complaint was filed on 2/25/21, on 3/8/21 the judge who is refusing to

recuse herself in PR 14 1483, appointed a special administrator to sue Petitioner. The judge in PR 14 1483 has denied four motions to recuse herself and she has taken the fifth motion for recusal filed and the application to set aside judgment on 10/2/21 under advisement when she appointed the special administrator on 3/8/21. The judge in the state case of Ashford v. Counsel for Office for Discipline CI 19 3445 has not ruled on Petitioner's motion to alter or amend since it was filed on 8/19/19. Petitioner represents former Black Panthers, the unpopular and the poor.

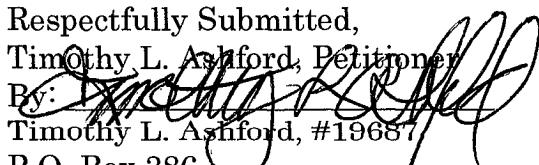
This case is an example of the systemic racism and the systemic corruption of the Nebraska Attorney Disciplinary System as well as the Nebraska Judicial System. As of March 10, 2021, Petitioner has not received the new bar complaint from the state which will be the third unresolved bar complaint filed against Petitioner in five years. The attorney who signed the waiver is no longer with the Nebraska Attorney General. Petitioner has not received notice that a new attorney has entered their appearance. Please take judicial notice of Dubin v. Office of Disciplinary Counsel 20-1249 and Nimmer v. Heavican 20-6546. The actions of the state of Nebraska is systemic racist retaliation against this African American attorney for his representation. The Petitioner has three unresolved bar complaints from the state of Nebraska in violation of Petitioner's constitutional rights. If this court does not protect the attorneys who represent unpopular clients this nation will lose all their freedoms.

The court can order the Nebraska Attorney General enter an appearance and order a brief from the Office for Counsel for Discipline. If no brief is filed the court

can order the relief of reversing the dismissed complaint and proceeding in the U.S. District Court. The Court can order the Nebraska District Court (8:19-CV-243)(8:20 CV 36) to allow Petitioner to file an amended complaint with directions for a visiting judge outside of Nebraska and the Eighth Circuit to conduct the cases (8:19-CV-243)(8:20 CV 36) electronically. The exhibits follow:

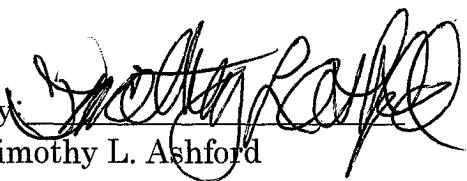
1. Order by judge 3/8/21 who was sued by Petitioner in two lawsuits appointing special administrator to sue Petitioner in PR 14 1483 while taking Petitioner's motion for recusal and application to set aside judgment under advisement since 10/2/20
2. Office for Counsel for Discipline letter dated February 5, 2021
3. 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)
4. Douglas County Journal Entry and Order dated 10/2/20
5. Acceptance in PR 14 1483 dated 10/29/14
6. Objection to Guardian Ad Litem appointment in PR 14 1483 on 9/16/20
7. Douglas County Rule 4-17. Appointment of Conflict Counsel

Dated this 11<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

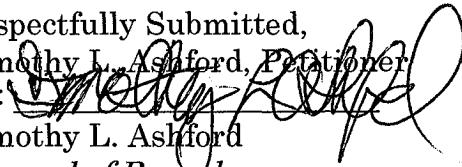
The undersigned certifies that on the 11<sup>th</sup> day of March, 2021 he served the foregoing Motion to Take Judicial Notice and the documents via U.S. First Class Mail, postage prepaid, as follows: the Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543 (One original copy 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 10<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 11<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 COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF ) Case No. PR 14-1483  
Johnny R. Brown ) ORDER  
Protected Person. )

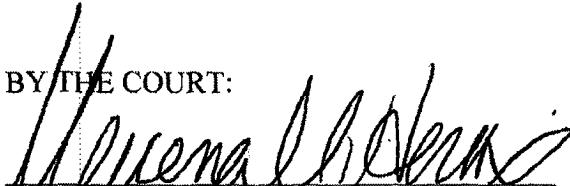
The Order of July 29, 2020 appointing a Guardian Ad Litem is hereby vacated.

It is therefore Ordered that Susan Spahn is appointed Special Administrator to pursue collection of monies and to close the matter.

Motions to Recuse remains under advisement as does the Application to Set Aside Judgment.

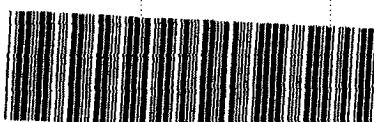
Dated this 8 day of March, 2021.

BY THE COURT:

  
Marcena M. Hendrix,  
County Court Judge

FILED  
COUNTY COURT  
PROBATE DIVISION  
MAR 8 2020

Clerk of Court  
DOUGLAS COUNTY COURT  
OMAHA NEBRASKA



P00728067C01

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 8, 2021, 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

Susan J Spahn  
sspahn@fitzlaw.com

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

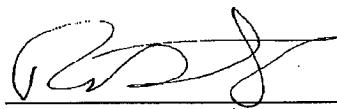
Rita Brown  
4522 Mewmore Avenue  
Dallas, TX 75209

Sarah Smith  
2583 Pinkney Street  
Omaha, NE 68111

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

Date: March 8, 2021

BY THE COURT:

  
CLERK



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

Counsel for  
Discipline

**Office of the Counsel for Discipline**

**Mark A. Weber**  
Counsel for Discipline

**Julie L. Agena**  
Deputy Counsel for Discipline

**John W. Steele**  
Assistant Counsel for Discipline

**Kent L. Frobish**  
Assistant Counsel for Discipline

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

February 5, 2021

**Re: Public Records Request**

Dear Mr. Ashford:

My office is in receipt of your public records request received on February 4, 2021. In the request you seek records of my office during the dates of September 28, 2016 until October 4, 2016, "which includes any and all documents of any written letters of complaint received by the Office of Counsel for Discipline...and which include written letters of complaint on official Douglas County judicial letterhead stationary received by the Office for Counsel for Discipline filed against Timothy L. Ashford..."

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

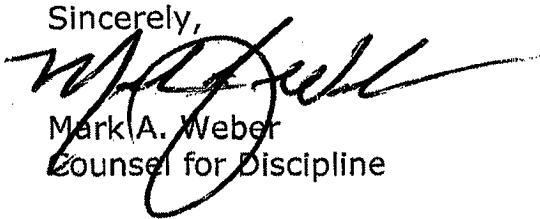
(A) *The hearings, records, or proceedings of the Counsel for Discipline, the Committee on Inquiry, and the Disciplinary Review Board are confidential and shall not be made public except that the pendency, subject matter, and status of an investigation may be disclosed by the Committee on Inquiry involved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

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

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

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

Sincerely,

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

Mark A. Weber  
Counsel for Discipline

MAW: M

United States Court of Appeals  
For the Eighth Circuit

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No. 16-3366

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

*Plaintiffs - Appellants*

v.

Douglas County; State of Nebraska

*Defendants*

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

*Defendants - Appellees*

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

*Defendants*

Thomas Riley, Individually and in his Official Capacity

*Defendant - Appellee*

Denise Frost

*Defendant*

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

*Defendants - Appellees*

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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.

## IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

Johnny R Brown, Protected person

Printed on 10/02/2020 at 9:43

Case ID: PR 14 1483

Room 01C30

Page 1

Decision Date 10/02/2020

A P P E A R A N C E S

Judge	Marcena M Hendrix	Appeared
Guardian/Conservator	Renault Brown	Did NOT Appear
Counsel	Timothy L Ashford	Appeared
Guardian ad Litem	Susan Spahn	Did NOT Appear
Counsel	Susan J Spahn	Appeared
Interested Party	Billy R Brown	Did NOT Appear
Interested Party	Rita Brown	Did NOT Appear
Interested Party	Sarah Smith	Did NOT Appear
Interested Party	Timothy Ashford	Did NOT Appear
Successor Guardian	Malachi Brown	Did NOT Appear
Counsel	Timothy L Ashford	Appeared
Ward	Johnny R Brown	Did NOT Appear

H E A R I N G

Hearing held on Fifth Motion for Recusal, Motion to Set Aside

Taken under advisement.

Hon.

*Marcena M. Hendrix*

Marcena M Hendrix



10/02/2020

Date

tcd

Bailiff

Tape Nos. Digital Recorder**CERTIFICATE OF SERVICE**

I the undersigned, certify that on October 2, 2020 I served a copy of the foregoing upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or E-mail:

Renault Brown  
4617 North 55th Street  
Omaha, NE 68104-2236

Timothy L Ashford  
tash178346@aol.com

Susan Spahn  
200 Regency One  
10050 Regency Circle  
Omaha, NE 68114

Susan J Spahn  
sspahn@fitzlaw.com

COURT COPY

**FILED BY**

Clerk of the Douglas County Court  
10/02/2020

## IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

Johnny R Brown, Protected person

Printed on 10/02/2020 at 9:43

Case ID: PR 14 1483

Room 01C30

Page 2

Decision Date 10/02/2020

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

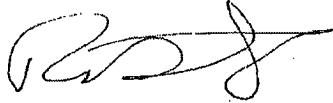
Rita Brown  
4522 Mewmore Avenue  
Dallas, TX 75209

Sarah Smith  
2583 Pinkney Street  
Omaha, NE 68111

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

Malachi Brown  
1405 North 60th Street  
Omaha, NE 68132

Date: October 2, 2020

Signature: 

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF THE  
GUARDIANSHIP/CONSERVATORSHIP  
JOHNNY BROWN,

An Incapacitated Person.

) PR: 14-1483

) ACCEPTANCE

*McDermott*

I, Renault Brown, accept appointment as Temporary and Permanent  
Guardian/Conservator of Johnny R. Brown and state that I will perform the  
duties of Guardian/Conservator according to the law and I submit to the  
jurisdiction of this Court.

DATED this 29<sup>th</sup> day of October, 2014.

*Renault J. Brown*  
Renault Brown

FILED  
COUNTY COURT  
PROBATE DIVISION

OCT 29 2014

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



P00328254C01

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.

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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

*ALLEGING “KNOWN MISCONDUCT”. 8:20-cv-00036-BCB-MDN Doc #*

*36 Filed: 08/23/20 Page 7 of 23 - Page ID # 399*

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)

## 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**

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.*