

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court’s mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):

District Court/Agency Case Number(s):

District Court/Agency Location:

Case Name:  v.

If District Court, docket entry number(s) of order(s) appealed from:

Name of party/parties submitting this form:

Please briefly describe the dispute that gave rise to this lawsuit.

Ashford owns the Sheraton Anchorage Hotel and Spa, where employees are represented by Unite Here Local 878. After employees authorized a consumer boycott of the hotel during collective-bargaining negotiations, Ashford filed suit against Local 878 under Alaska law for defamation and tortious interference with contractual and prospective relations. The suit was dismissed, and Local 878 brought unfair-labor-practice charges with the NLRB.

Briefly describe the result below and the main issues on appeal.

The Board found that Ashford violated Section 8(a)(1) of the National Labor Relations Act by filing and pursuing an unlawful lawsuit, either because (1) the suit was preempted by the NLRA or (2) the suit was objectively baseless and was filed in retaliation for activity protected by the NLRA. It also found that Ashford could be held liable for the unlawful suit even though it did not directly employ the employees at the hotel. To remedy the violation, the Board ordered Ashford to reimburse Local 878 for expenses incurred in defending against the lawsuit and to post a remedial notice.

Describe any proceedings remaining below or any related proceedings in other tribunals.

none

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

### CERTIFICATION OF COUNSEL

I certify that:

- a current service list with telephone and fax numbers and email addresses
- is attached (see 9th Circuit Rule 3-2).
- I understand that failure to provide the Court with a completed form and
- service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

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*Counsel for National Labor Relations Board*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD	)	
	)	
	)	
Petitioner	)	No. 18-71872
	)	
v.	)	Case No. 19-CA-032761
	)	
ASHFORD TRS NICKEL, LLC,	)	
ASHFORD HOSPITALITY TRUST,	)	
INC. and all AHT affiliated	)	
enterprises, a single business	)	
enterprise and a single employer	)	
Respondent	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, and that the foregoing document was served on all parties or their counsel of record via the CM/ECF system.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street SE  
Washington, DC 20570

Dated at Washington, DC  
this 6th day of July 2018