



OFFICE OF THE STATE AUDITOR
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To: The Honorable Brian D. Boatright
Chief Justice
Colorado Supreme Court

From: Kerri L. Hunter, CPA, CFE
State Auditor
Colorado Office of the State Auditor

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Executive Summary of Fraud Hotline Investigation Report

On April 15, 2019, the Office of the State Auditor's (OSA) Fraud Hotline (Hotline) received an anonymous letter alleging fraud involving employees of the State Court Administrator's Office (SCAO), within the Colorado Judicial Branch. The Hotline's statutes define fraud as "occupational fraud or the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets" [Section 2-3-110.5(1)(d), C.R.S.]. When the OSA refers an occupational fraud allegation, the affected agency has the option to conduct its own investigation, request the State Auditor's participation in an investigation, or request that the State Auditor conduct the entire investigation [Section 2-3-110.5(3)(b), C.R.S.]. On May 29, 2019, Chief Justice Coats sent a letter to State Auditor Dianne Ray requesting that the OSA conduct an investigation of the allegations and stating that the Judicial Branch would fully cooperate.

Scope and Approach

The objective of the OSA's investigation was to determine whether there was evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property, and whether a report to law enforcement would be required [Section 2-3-110.5(3)(c)(IV), C.R.S.]. The OSA's investigation was not a criminal investigation [Section 2-3-110.5(1)(g), C.R.S.].

The OSA investigated occupational fraud allegations related to:

- Job protection obtained as a result of FMLA fraud.
- State compensation paid to Eric Brown (former Director, Human Resources Division), and Mindy Masias (former Chief of Staff), while they were SCAO employees earning outside consulting and speaking fees on state time.

- Payments to senior SCAO staff who were not working.
- A sole source contract awarded to Ms. Masias (dba The Leadership Practice) to provide leadership training after she left her SCAO employment.

Under the OSA's Fraud Hotline statutes, "the state auditor has access at all times to all of the books, accounts, reports, vouchers, or other records or information maintained by the agency that are directly related to the scope of the investigation" [Section 2-3-110.5(3)(c)(I), C.R.S.]. After the entrance conference on July 8, 2019, the OSA began requesting documents related to the occupational fraud allegations. The Judicial Branch initially provided documents that they determined to be relevant to the scope of the investigation. On July 24, 2019, the Judicial Branch requested, and the OSA agreed to, an access agreement to "facilitate the OSA's access to all records and information directly related to the scope of the investigation while still preserving and protecting any confidentiality, privilege, or other protection applicable to the records and information." The access agreement was executed on August 23, 2019.

After the access agreement was executed, at the request of attorneys for the Judicial Branch, the OSA provided search terms related to the scope of our investigation; the OSA and the Judicial Branch then discussed the final list of terms and agreed on the terms that would be used to query emails and some other documents and information. Based on this list, Judicial Branch staff and their attorneys then used software to identify and review the emails and some other documents and information before providing them to the OSA.

Throughout the OSA's investigation, the Judicial Branch and its attorneys were concerned about protecting their attorney-client and other privileges. Documentation that the Judicial Branch and its attorneys considered to be subject to attorney-client or other protections was not provided to the OSA, but rather the OSA was allowed to view the documentation. The Judicial Branch also provided the OSA with a log of emails and some other documents and information that the Judicial Branch (1) determined to be not relevant to the scope of the investigation and withheld on the basis of confidentiality and privilege protections, or (2) determined in consultation with the OSA to be outside the scope of our investigation. The OSA made an independent assessment of the information that the Judicial Branch provided and allowed the OSA to review. Since the OSA's intention is not to inadvertently waive the Judicial Branch's privileges, the Judicial Branch and its attorneys were granted multiple opportunities to review the report and executive summary and redact information they identified as privileged, attorney work product, or subject to other legal protections.

Through the OSA's investigation, the investigation team obtained and reviewed more than 16,000 Judicial Branch documents, including emails; obtained, reviewed, and analyzed documentation from the National Center for State Courts; obtained and reviewed public information accessible online; interviewed various Judicial Branch staff; and requested information from leadership training vendors that expressed interest in the Judicial Branch's 2019 Request for Proposals (RFP) for leadership training but did not submit a proposal.

This Executive Summary summarizes the results of the OSA's investigation but does not reference all evidence supporting the OSA's conclusions.

Summary of Findings & Conclusions

Based on an examination and analysis of the information obtained and reviewed during the OSA's investigation, and based on the totality of the circumstances, the OSA made the findings and reached the conclusions summarized below.

FMLA Job Protection

In response to the Judicial Branch's assertion that information related to SCAO employees' FMLA job protection is subject to confidentiality protections under law, the OSA is not providing details in this executive summary about the FMLA-related evidence we obtained.

Based on the totality of the circumstances, the OSA did not find evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property that would require a report to law enforcement related to FMLA job protection.

Outside Employment

Ms. Masias and Mr. Brown were approved to perform outside employment work for the National Center for State Courts (NCSC) so long as it was conducted on personal time. Nevertheless, in 2018 and 2019, Ms. Masias earned at least \$17,200 and Mr. Brown earned at least \$26,800 in state salary while also conducting outside employment activities. The following table shows a breakout of hours that Ms. Masias and Mr. Brown devoted to outside employment activities while also getting paid their state salary.

Mindy Masias's Outside Employment Hours Conducted on State Time		Eric Brown's Outside Employment Hours Conducted on State Time	
Leave Type	Number of Outside Employment Hours	Leave Type	Number of Outside Employment Hours
No paid leave used ¹	21	No paid leave used ¹	643
Med-Cert Paid Time Off/Admin and other leave ²	184	Other leave	42
		Paid Time Off	1
Total	205	Total	686

Source: Investigation team analysis of SCAO leave, payroll, and human resources records and NCSC time sheets.

¹ Our assumption was that the employee could reasonably work up to 12 hours in the same day (i.e., 8 hours at SCAO job plus up to 4 more hours in the evening on outside employment), so numbers only include time in excess of 4 hours that the employee charged to outside employment activities on normal state business days.

² Med-Cert refers to leave for employees who do not qualify for FMLA but have a medical certification. This allows employees to use extended sick leave.

Based on the totality of the circumstances, the OSA concludes that there is at least some evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property that would require a report to law enforcement in connection with outside employment activities conducted by both Ms. Masias and Mr. Brown.

Paid Administrative Leave

SCAO Employee #1¹

On April 12, 2018, SCAO Employee #1 was notified that they were the subject of a disciplinary investigation related to inappropriate use of information they obtained through their position and was placed on paid administrative leave.

SCAO Employee #1 allegedly had access to information that SCAO Employee #1 could have used against Ms. Masias and Mr. Brown.

SCAO Employee #1 eventually separated from the SCAO and received 15 months of paid administrative leave and severance based their annual salary, for a total of \$143,000. Based on settlement data the Judicial Branch provided for eight employees who received settlement agreements from 2000 through 2017, SCAO Employee #1 received the highest amount the Judicial Branch paid in administrative leave and severance.

Mr. Ryan was involved with the negotiation of SCAO Employee #1's settlement and ultimately approved the agreement. In addition, Mr. Brown and Ms. Masias handled certain aspects of SCAO Employee #1's disciplinary investigation and settlement themselves and without always involving legal counsel, even though they had actual or potential conflicts of interest since they were targets of SCAO Employee #1's alleged misconduct. Mr. Brown acknowledged the potential conflict by recusing himself from the SCAO's disciplinary investigation of SCAO Employee #1's alleged conduct, and there is evidence that Ms. Masias was concerned about information that SCAO Employee #1 might have had in their possession. During the negotiations, Mr. Brown and Ms. Masias acted contrary to the advice of the SCAO's legal counsel. Mr. Ryan's involvement could have neutralized any influence from Ms. Masias and/or Mr. Brown, but there is evidence that Mr. Ryan was a personal friend of SCAO Employee #1, and that he disregarded the SCAO counsel's perspective that a lower settlement amount would have been appropriate.

Based on the totality of the circumstances, the OSA concludes that there is at least some evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property in connection with SCAO Employee #1's settlement agreement that would require a report to law enforcement as it concerns SCAO Employee #1, Mr. Brown, Ms. Masias, and Mr. Ryan.

Mindy Masias

In August 2018, Ms. Masias became the subject of an SCAO investigation that resulted in her negotiating a resignation agreement, through which she received \$19,400 in paid administrative leave based on her annual salary and stayed employed through March 19, 2019. Although witnesses provided differing versions of how the agreement was reached and what influencing factors may have been present, the total amount paid under the agreement does not appear to be outside the bounds of reasonableness. Based on the totality of the circumstances, the OSA did not find evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property that would require a report to law enforcement on the issue of paid administrative leave for Ms. Masias.

¹ The Judicial Branch reported to us that it is not authorized to disclose the name of the employee and/or the circumstances of the employee's separation from the Branch.

David Kribs

In March 2019, Mr. Kribs became the subject of an SCAO investigation and was placed on paid administrative leave. Mr. Kribs chose to participate in the SCAO's Voluntary Separation Incentive Program and negotiated an Agreement for Voluntary Layoff and Release of Claims. According to this agreement, Mr. Kribs received \$87,400 in paid administrative leave through September 30, 2019. Sources speculated that the timing of the SCAO's investigation of Mr. Kribs in relation to Ms. Masias's departure from SCAO employment created an impression that the two events could have been connected, but the OSA did not find evidence to corroborate this theory. Based on the totality of the circumstances, the OSA did not find evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property that would require a report to law enforcement on the issue of paid administrative leave for Mr. Kribs.

Leadership Training Contract

Ms. Masias ended her employment with the SCAO on March 19, 2019. Twenty days later, Ms. Masias signed a contract between the Judicial Branch and her company, The Leadership Practice, to provide leadership training. The OSA reviewed evidence associated with each phase of the procurement and contracting process that resulted in this contract.

First, the OSA found that Ms. Masias had access to potentially damaging information about the Judicial Branch. This information included notes about alleged sexual misconduct, discrimination, and other misconduct by Judicial Branch staff and judges. Additionally, there is evidence that Ms. Masias secretly recorded her conversation with former Chief Justice Nancy Rice, which included a discussion about why Ms. Masias was not selected to be State Court Administrator when she applied for that job.

Second, the OSA found evidence that before Ms. Masias resigned, and while Ms. Masias was the subject of an SCAO investigation, Mr. Ryan reviewed proposed revisions to Ms. Masias's job description that would have made her head of the Judicial Branch's leadership training. In addition, multiple sources described two meetings in December 2018 and/or January 2019 (before Ms. Masias resigned) during which Judicial Branch staff discussed the possibility of contracting with Ms. Masias to provide leadership training.

Third, the OSA found some evidence that Ms. Masias requested the promise of a contract before resigning. However, the OSA did not obtain evidence that Ms. Masias was promised a contract for such services prior to her signing a Resignation Agreement and Release of Claims. Further, the contract has since been terminated, and as of the date this report was published, Ms. Masias had not received any public funds for services rendered under the contract. Additionally, the Judicial Branch has taken the position that it will not voluntarily pay any outstanding invoices.

Still, the process by which Ms. Masias was awarded the sole source contract for leadership training appears to have been flawed in several respects.

Solicitation Phase

The SCAO prepared an RFP to secure leadership training services. There is evidence that Mr. Brown was initially involved with drafting an RFP for leadership training services despite having a potential conflict of interest because of a personal relationship he had with Ms. Masias. In addition, there is some evidence that Mr. Brown sought to influence the RFP process in a way that would ensure Ms. Masias would receive the leadership training contract, including by inserting experience requirements that were restrictive enough to preclude any other vendors from submitting bids. There is also evidence that Mr. Brown shared information with Ms. Masias that may have conferred an

advantage to her and that she may have used to inform the proposal she submitted in March 2019 to provide leadership training. Additionally, there appear to be lapses in the process, sufficient to suggest that Ms. Masias and Mr. Brown were attempting to influence the process in Ms. Masias's favor.

Although 24 prospective bidders viewed the solicitation summary online and eight vendors downloaded the solicitation documents, the Judicial Branch did not receive any proposals in response to its RFP. Three of the vendors reported that they did not submit proposals because the experience requirements were too restrictive, and two vendors reported that they did not submit proposals because the RFP seemed to be tailored for another firm.

Award Phase & Sole Source Justification

The Judicial Branch never reissued the RFP after it closed without bids. Instead, the Judicial Branch proceeded with a sole source contract to Ms. Masias.

Judicial Branch Purchasing Fiscal Rule 2.3 allows sole source purchases "when there is only one product or service that will meet the Department's need and there is only one vendor to provide that product or service." However, there is evidence that Mr. Brown began contemplating and discussing the idea of entering into a sole source contract with Ms. Masias before the RFP was issued. The sole source justification, which Mr. Brown drafted, and Mr. Ryan approved, did not address why only Ms. Masias could meet the Judicial Branch's needs, nor did it explain why other available training vendors were not suitable to provide that service.

Further, Ms. Masias signed a contract to provide leadership training services 20 days after her resignation. Shortly thereafter she began providing services under the contract, which had an initial term of 5 years (June 3, 2019 through March 31, 2024) and was valued at \$2.75 million (up to \$550,000 per year).

Post-Award and Administration Phase

The evidence indicates that, although Chief Justice Coats participated in an earlier meeting to discuss preparing an RFP for leadership training services, it was not until July 2019 that he learned of Ms. Masias's secret recording of former Chief Justice Rice, and of the conversations about a possible sole source contract with Ms. Masias. At that point, after consulting with the Supreme Court, Chief Justice Coats recommended that the Judicial Branch withdraw from the sole source contract.

Soon thereafter, the Judicial Branch notified Ms. Masias that it was terminating her contract. The termination was effective August 19, 2019. By then, Ms. Masias had already submitted two invoices totaling \$133,000. The first invoice was for services rendered April 15, 2019 through June 30, 2019. The second invoice was for services rendered July 1, 2019 through July 15, 2019. The Judicial Branch provided two signed versions of the same contract, one that Mr. Ryan signed on April 11, 2019, and a second that Mr. Ryan signed on June 3, 2019. A legal analysis as to the Judicial Branch's contractual obligations and resulting liability was beyond the scope of the OSA's investigation and report, but if the April 11, 2019 contract is operable and binding, the Judicial Branch may have some outstanding liability for services rendered.

Based on the totality of the circumstances, there is at least some evidence of occupational fraud, apparently illegal transactions, and/or misuse or embezzlement of public funds or property in connection with Mr. Brown's and Ms. Masias's apparent attempt to influence the RFP, sole source contract, and related processes in favor of Ms. Masias, and ultimately resulting in the award of a sole source contract to Ms. Masias. The evidence requires a report to law enforcement with respect

to Mr. Brown and Ms. Masias. The OSA does not take a position on whether any fiscal or procurement rules were violated in connection with the RFP and/or contract. Additionally, the OSA does not take a position with respect to any ethical or code of conduct issues raised by the facts uncovered during the OSA's investigation. Instead, the OSA considered only whether a report to law enforcement would be required under the circumstances.

Law Enforcement Report

Section, 2-3-110.5(3)(c)(IV), C.R.S., states that if an investigation of a Hotline allegation "finds evidence of apparently illegal transactions or misuse or embezzlement of public funds or property," the State Auditor is required to report the matter to a law enforcement agency, a district attorney, or the Attorney General, as appropriate. Based on the evidence we obtained, the OSA has concluded that a report to law enforcement is required.