

STATEMENT FROM CHIEF JUSTICE BRIAN D. BOATRIGHT REGARDING INVESTIGATION INTO LEADERSHIP SERVICES CONTRACT

Last year, the Colorado Supreme Court initiated an independent investigation into highly-publicized allegations that a training services contract was improperly awarded to former senior administrator Mindy Masias to prevent her from disclosing alleged misconduct within the Colorado Judicial Department.

A special committee of leaders from the executive and legislative branches selected RCT, Ltd. to conduct this investigation. No one from the Judicial Department participated in the selection of RCT, which is led by former U.S. Attorney for the District of Colorado Robert Troyer. RCT operated independently of the Department, and the Department did not have any say or control in the investigation process or in the findings of the investigation.

Today, we make public RCT's full, unredacted investigation report. The report is available here. <https://www.courts.state.co.us/announcements/LeadershipServicesContract.cfm>

(A separate independent investigation into allegations of harassment and discrimination is forthcoming, and we look forward to also sharing those results soon.)

Below I have spotlighted the investigation's most important findings relative to the public allegations, controversies, and speculations that have revolved around these events for more than a year. But I urge everyone with an interest in the Department's future to read the report in full.

What the RCT Investigation Found: The Contract Was Not Awarded to Prevent Disclosure of Allegations of Judicial Misconduct

Contrary to allegations made and repeated in news media coverage, Troyer and his investigators concluded that the contract was not a "payoff" to silence Masias from filing a discrimination lawsuit or revealing supposed evidence of judicial misconduct:

From Report Page 43: *"Of all the evidence we obtained, only one witness ([former State Court Administrator Chris] Ryan) asserts that the Contract was approved to hide misconduct. Yet, there is overwhelming countervailing evidence, and Ryan's assertions are internally inconsistent and contrary to his own behavior. Most importantly, [former Chief Justice]*

Coats had already tentatively agreed with the proposal to contract with Masias at least three months before [former Human Resources Director Eric] Brown presented the alleged “dirt” in his talking-points list. Therefore, we conclude that the “dirt” did not motivate Coats’s thinking at that time.”

The report also provides important clarity to the nature and role of the alleged “memo” outlining Masias’ purported knowledge of misconduct:

From Report Page 19 – *“Further, at no time did Brown or Ryan provide or even suggest that they possessed a document purporting to detail “dirt” about the Department. In fact, both Brown and Ryan did possess such a document. Indeed, Brown authored that document prior to the meeting [with Coats] at Ryan’s request. The document is not truly a ‘memo,’ as it has been publicly characterized. It is better characterized as a list of talking points... Neither Morrison, Coats, nor Rottman ever saw a copy of Brown’s talking points until July 2019 [after Ryan’s resignation].”*

That said, the report is appropriately critical of the Leadership Services Contract, the environment that facilitated it, and the process by which it was awarded. We acknowledge and accept those findings. It is important to note here that the contract was cancelled in July 2019, and the Department made no payments under the contract.

The report concludes that the awarding of the contract was driven by three key factors:

From Report Page 6 – *“... First, the internal culture of SCAO was characterized by toxic relationships, factionalism, and a lack of accountability for key leaders in the Department. Second, the Department’s procurement rules were overly permissive and did not sufficiently deter procurement misconduct, including the unethical behavior demonstrated (as we explain below) in the approval of the Contract. Third, several Department leaders made critical errors in judgment or engaged in outright misconduct.”*

Of former Chief Justice Coats, the report finds:

From Report Page 46 – *“Coats was misled, and his judgment failed him on other fronts, but he did not approve the Contract to silence Masias.”*

Regarding Ryan's actions related to Masias and the Contract, RCT finds:

From Report Page 48-49 – *“Ryan was liked and trusted in his former position at the Department. But he was relatively new to the SCA job, felt he had no alliances at the SCAO, and had no past leadership experience in this environment under these pressures. He recognized the deep cultural flaws he inherited at the SCAO. He also likely felt alone, vulnerable, and ill-equipped to fix the underlying problems with SCAO personnel and culture. Justices detached from administrative and personnel matters had selected him without a fair process and left him to deal with managing Masias. He misjudged that a contract with Masias would solve the problem, and he chose the worst of the tactics common in that culture to get the Contract approved.*

Specifically, over the next nine months, Ryan adopted a “keep your friends close and your enemies closer” relationship with Brown. He [Ryan] controlled information. He lied to Coats about Masias’s history of reimbursement misconduct. He lied to Coats about the justification for a sole-source contract. He helped remove the Director of Financial Services because he was an obstacle to [the Masias] Contract approval. He lied about signing the Contract in April 2019. He hid Masias’s surreptitious recording of [former Chief Justice] Rice from Coats and [the Chief Justice’s counsel, Andrew] Rottman. He lied to SCAO legal staff about Coats’s knowledge of that recording, telling one lawyer he had told Coats about the recording and telling another he had not told Coats because Coats did not want to know. He intimidated [SCAO Chief Legal Counsel, Terri] Morrison so she would not interfere with his plans. Ryan thus gradually built an increasingly fragile edifice of deceptions that eventually imploded.”

As for Masias and Brown, the investigation report states:

From Report Page 49 – *“Masias and Brown made their own misjudgments and engaged in their own misconduct. Their misconduct, though, was more clearly driven by self-interest than was Ryan’s.”*

There is no way to sugarcoat the uncomfortable findings of RCT's investigation. However, with new leadership throughout the SCAO since these events, I believe that we have made significant progress in addressing many of the issues that the report identifies.

But we obviously still have plenty of work to do.

Where Do We Go From Here?

Noting that the Judicial Branch has already made substantial improvements over the last year, RCT provides 14 “actionable recommendations,” divided into six categories:

From Report Page 54 -- *“(1) Changing the SCAO’s Organizational Culture, (2) Enhancing Oversight of the SCAO, (3) Properly Preparing the Chief Justice, (4) Improving the Complaint Process for Judicial Officers, (5) Procurement Reform, and (6) Ongoing Transparency and Accountability.”*

We are already evaluating how best to implement these recommendations to ensure an organizational culture of professionalism, accountability and transparency worthy of the thousands of hard-working and dedicated people of our Branch who serve the public so effectively on a daily basis.

One recommendation to *“improve the legitimacy of the process for handling complaints”* is not uniquely specific to the Masias contract award investigation, but certainly underscores a key aspect of the culture that allowed this fraud and abuse at SCAO to occur:

From Report Page 61 -- *“While the Court now has internal rules that address complaint handling, they are vague, and to this day insufficiently specific about how complaints are received, triaged, investigated, tracked, and when complaints are referred to other investigative entities (or not).”*

In February 2021, I told the legislature that the Branch faces a crisis of confidence in leadership, and I committed to changing the culture for the better. We know now that just having the processes to hold institutions and people accountable, including at the highest levels, isn’t enough.

Our judges and their staff, probation departments, the broader legal community, elected officials, regulators and Coloradoans who rely on our system of justice must know — or be able to know — how the Judicial Branch ensures accountability to its mission and deals with misconduct. This is a critical priority going forward.

To these ends, I want to summarize some of the key governance, oversight, and accountability initiatives that we have begun to implement over the last year:

- We have put in place and continue to enhance new channels for Judicial Department employees to share complaints and report misconduct.
- We changed how we hire the State Court Administrator (SCA) by engaging in a much more transparent process, including town hall meetings and soliciting feedback from all employees throughout the state.
- We are working with the Colorado legislature to evaluate and support effective, efficient reforms in the judicial disciplinary system.
- We've changed our internal processes so that the Colorado Supreme Court functions more as a Judicial Branch "Board of Directors," rather than continuing the previously longstanding practice of having the Chief Justice alone involved in helping to administer the entire Judicial Department, while still discharging the ordinary responsibilities of a member of the state's highest court.
 - In this regard, each justice is now assigned to a major operational area of the Department (Financial Services, Court Services, Probation Services, HR, IT, etc.), with the justice sitting on the advisory committee for that operational area. Through this direct engagement with SCAO staff, the full court now collaborates on many critical administrative issues.
- We are developing a formal executive management and administration training plan for the incoming Chief Justice.
- In May and November 2020, we updated Judicial Department rules to address independent contractor and sole-source contracting challenges. Key changes included:
 - A mandatory six-month waiting period between an employee's date of separation from the Judicial Department and the date when the former employee is eligible to provide services as an independent contractor (a period of time that we are prepared to lengthen).

- Increased rigor around the use of sole-source contracts.
 - All sole-source procurements above discretionary purchasing thresholds must be coordinated by the Financial Services Division at SCAO.
 - The Financial Services Division's procurement team is required to analyze sole-source procurement requests and provide recommendations to the SCA.
 - Potential sole-source procurements are now required to be posted on a public electronic bid system utilized by the state. If a qualified vendor, other than the intended sole source provider, responds, then the procurement team will recommend a competitive procurement process be used.
 - Quarterly reporting of sole-source contracts by the SCA to the Chief Justice is now required.
- Procurement rules have been overhauled to be more in line with executive-branch procurement procedures.
- The SCA now reports monthly to the Chief Justice on every contract executed by the SCA.

We recognize that these initiatives are just the beginning and that we have much more to do.

As I said in my State of the Judiciary Address, we are fully committed to getting this right, and with your help, I am confident that we will do so. I will certainly keep you apprised of our ongoing efforts.

In the meantime, we thank RCT for its hard work and professionalism in conducting its comprehensive investigation.