

# **Independent Investigation into the Leadership Services Contract Awarded by the Colorado Judicial Department to the Leadership Practice LLC**

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## Introduction

The Colorado Judicial Department (“Department”) is one of three branches of Colorado’s government. The Department administers state courts in 24 judicial districts spread across Colorado. Each year, those courts resolve tens of thousands of small-scale controversies that affect individual litigants, as well as large-scale, precedent-setting disputes that deeply impact residents across the entire state.

The Department’s mission is to provide a “fair and impartial system of justice.” As such, its greatest asset is its credibility. The collective trust of Colorado residents is premised on our belief that the courts, and the Department as a whole, are administered with fairness and the public good as their highest goals. Thus, while allegations of corruption, self-dealing, and cover-up are problematic in any organ of government, they are particularly damaging when they arise within the Department.

Mindy Masias worked for the Department for many years, ultimately serving as Chief of Staff in the State Court Administrator’s Office (“SCAO”), which administers the state courts. In March 2019, Masias resigned under threat of termination for dishonesty and financial misconduct, which we discuss more fully below. Within three weeks thereafter, she received a sole-source, five-year contract from the Department to provide training to Judicial employees statewide at a cost of \$532,000 per year (“Contract”).

Initially, only insiders were aware of the Contract, but soon residents of Colorado learned about it through a series of news reports. These reports alleged, in summary, that the Department awarded the Contract to Masias in exchange for her agreement not to reveal information that might damage the Department, including allegations of sexual harassment and other rule violations by judges and senior Department staff. Following those reports, public officials,

including the Chief Justice of the Colorado Supreme Court, as well as Colorado's Governor, its Attorney General, and members of its legislature, called for or supported an independent investigation. In October 2021, we were retained to conduct that investigation. Specifically, we were asked to determine "whether the contract was awarded to prevent disclosure of alleged misconduct at the Department." Further, we were asked to review "management practices that were used to inform the handling of these events, including, but not limited to, procurement processes and oversight."

Today, through this report, we share our conclusions. First, the internal culture of the SCAO was characterized by toxic relationships, factionalism, and a lack of accountability for key leaders. 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. However, the evidence also demonstrates that the Contract was not awarded to prevent the disclosure of allegations of judicial misconduct, as has been publicly alleged.

The Department has already taken steps to address some of these issues. But there is much more work to be done. At the conclusion of this Report, we provide fourteen actionable recommendations for changes the Department should make to correct the conditions discussed herein. We also strongly recommend that the Department commit to regular public reporting about the specific steps it takes and its progress in implementing these recommendations. Only through purposeful and transparent leadership from the Colorado Supreme Court can the Department -- a vital component of our state government -- regain the public trust.

## Methodology

During this investigation, we interviewed 27 current and former employees of the Department, including all sitting (and some retired) Justices of the Colorado Supreme Court, as well as Department leaders and subordinate employees. We also sought, received, and reviewed over ten thousand records from Department officials. The Department was transparent and open throughout this process, and it produced the information we sought.

Most individuals willingly cooperated with the investigation. However, in February 2022, the Office of the Colorado State Auditor (“OSA”) released the results of its own audit. Among other things, the OSA referred three former Department employees -- Chris Ryan (former State Court Administrator), Mindy Masias (former Chief of Staff), and Eric Brown (former Director of Human Resources) -- for criminal investigation. Although Ryan had twice given extensive accounts to the press concerning the Contract and had been interviewed by the OSA about the same subject, after the OSA released its report Ryan declined our request for an interview. Nonetheless, we have reviewed all of his statements to the media and his interviews with the OSA. Masias and Brown also declined to cooperate with this investigation. We were therefore not able to obtain their first-hand accounts or question them about their roles in approving or obtaining the Contract.

The thousands of documents we reviewed included internal and external emails, policies and procedures, procurement and budget records, notes and memoranda, employment records, and other related material. During our investigation, however, we learned that Masias’s laptop, which she used for her work on behalf of the Department, was “wiped” (likely by Masias or Brown) when she went on leave from the Department. Thus, data previously stored there was inaccessible to us despite forensic attempts to recover it. As discussed below, we also discovered

that Masias and Brown commonly used personal email accounts to avoid Department scrutiny of their communications. We did not have access to those personal email accounts.

Despite these limitations, we have full confidence in our core conclusions and the recommendations set forth herein for the simple reason that they are supported by numerous and diverse sources of corroborating and uncontroverted evidence, both testimonial and documentary.



## Factual Summary

We begin with an overview of key facts regarding the Department, its relevant employees, and the circumstances surrounding approval of the Contract. The powers of Colorado’s government are divided into three distinct departments: legislative, executive, and judicial. The Judicial Department employs over 4,000 people. The Colorado Supreme Court has “general superintending control” over all the Department courts, and the Chief Justice of the Colorado Supreme Court is “the executive head of the judicial system.” (Colo. Const. art. VI, §5(2) (1876).) The Justices of the Colorado Supreme Court appoint one from among their ranks to serve as Chief Justice. (Id.) The Chief Justice has a Counsel to the Chief Justice, a Department employee who serves as an advisor and executive strategist to the Chief Justice on legal, policy, and administrative matters. The Justices also appoint a State Court Administrator (“SCA”) to aid the administration “of all courts within the Judicial Department.” (Id. at §5(3); §13-3-101, C.R.S. (2021).) The SCA is responsible to the Colorado Supreme Court and serves at its pleasure. (§13-3-101, C.R.S.) The SCA leads the SCAO, which resides within and provides central administrative infrastructure services to the Department.

The SCA oversees all administrative responsibilities associated with the courts and probation for the Department. In other words, the SCA is responsible for implementing and enforcing the rules and policies of the Colorado Supreme Court as they apply to court administration. In 2018, the SCA had a Chief of Staff, who was the second-in-command at the SCAO.

The SCAO is organized into five Divisions, each of which is headed by a Director: Court Services, Financial Services, Information Technology Services, Probation Services, and Human Resources. The SCAO also has a “Legal Counsel Unit” staffed by seven attorneys. That unit

reviews and drafts contracts, handles personnel matters, provides counsel on legislative issues, and generally provides legal advice to Department personnel. The Legal Counsel Unit is led by the Judicial Legal Counsel, who serves as in-house counsel to the Department and reports directly to the SCA. The Judicial Legal Counsel is not a “Division Director” but is a member of the SCAO’s senior management team and provides legal advice to Department personnel.

### **Ryan’s Selection as SCA**

In late 2016, the then-SCA, Jerry Marroney, announced his intent to retire in June 2017; therefore, in March 2017 the Colorado Supreme Court began the process of selecting a new SCA. The Court engaged the National Center for State Courts to conduct a nationwide search. Applicants identified and screened in that search were interviewed by a selection committee comprised of Department personnel. That committee narrowed applicants to a group of four finalists who would be interviewed by the Supreme Court. Eric Brown, who was the SCAO’s Director of Human Resources, was a member of that selection committee. Chris Ryan, who at the time was the Clerk of the Supreme Court and Court of Appeals, was a member of that selection committee. Ryan was not an applicant for the SCA job. Mindy Masias, who at the time was the SCA’s Chief of Staff, did apply for the SCA job, and she was chosen as a finalist.<sup>1</sup>

Masias had been a Judicial Department employee since 1995. She rose to Director of Human Resources in 2004, and in June 2014 Marroney promoted her to Chief of Staff. In May 2017, the Supreme Court Justices decided not to select any of the four finalists for the SCA job and instead appointed Ryan as interim SCA. Several months later, in September 2017, the Justices decided to advance Ryan from interim to permanent SCA without engaging in another

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<sup>1</sup> Appendix A, attached hereto, identifies the key players involved in the circumstances surrounding approval of the Contract. Appendix B is a timeline of the key events.

selection process. Masias remained in her SCA Chief of Staff position but now served under Ryan, her new boss. At least one Justice emphasized to Ryan that establishing a good working relationship with Masias should be one of his top priorities as new SCA because she likely would be stung by his selection for the SCA job outside the open hiring process she had endured -- and because she was an important leader within the SCAO and the Department.

Ten months later, on July 18, 2018, Justice Nathan “Ben” Coats was appointed by his colleagues to serve as Chief Justice. Numerous Department personnel have shared that at the time of his appointment a dysfunctional organizational culture existed within the SCAO that involved feuding, secrecy, retaliation, and fear, particularly between the Human Resources and Financial Services Divisions. Moreover, the Supreme Court did not actively supervise the SCAO and generally relied upon the SCA to oversee the SCAO. As a result, the Justices, including newly appointed Chief Justice Coats, were unaware of the toxic organizational culture within the SCAO.

Shortly after his appointment as Chief Justice, Coats attended a multi-day leadership training program provided by a vendor (who had been under contract to provide such training to Department employees since 2009). This training did not address the administrative responsibilities of a Chief Justice, such as managing a large budget or staff. In fact, Coats did not receive any training to handle his new administrative responsibilities as Chief Justice, the “executive head of the judicial system.” (Colo. Const. art. IV, §5(2).) Ryan had participated in this leadership training several times before, and he attended it again alongside Coats. During and after the training, Ryan and Coats began to discuss their visions for a different, revamped leadership training program more tailored to the specific needs of the Department once the existing training contracts ended in about a year.

### **Masias's Falsified Reimbursement Request**

The same week Coats was appointed Chief Justice, a dispute arose over a \$161.82 reimbursement request Masias had submitted for two shag bean-bag chairs she had been approved to purchase as employee-appreciation gifts. Masias was entitled to reimbursement, but she submitted her request for the wrong fiscal year. Instead of correcting her error when it was pointed out to her, Masias falsified the date on the supporting paperwork and resubmitted it. When the Financial Services Division caught the falsification, Masias was repeatedly dishonest with Department personnel and an independent investigator who was hired by the Department. This reimbursement matter caused longstanding rancor between Masias and certain personnel in the Financial Services Division to boil to the surface.

Also at this time, the OSA was conducting its statewide audit, which included a routine audit of financial operations and controls within the Department. Top Financial Services Division personnel insisted to Ryan and Coats that unless Masias were terminated for her misconduct, they could not sign the Management Representation Letter required to pass that audit. Financial Services Division personnel also told Ryan and Coats that without that Management Representation Letter certifying the Department's financial controls as sound, the high bond rating for the entire State of Colorado could be jeopardized.

Ryan and Coats were reluctant to terminate Masias but believed that their options were limited because the Department needed a signed Management Representation Letter. They were also concerned about the optics of terminating the highest-ranking female employee at the SCAO, who had also recently been denied the SCA position. Masias was well-regarded in many of the Department's 24 judicial districts. Both Ryan and Coats therefore preferred demoting Masias for her dishonesty, placing her in a position to oversee leadership training, and removing her spending and signature authorities. They sought guidance from the OSA to determine if this

approach would satisfy the auditors. But the OSA would not provide such advice, and the SCAO's Financial Services Division leaders remained adamant that Masias must be terminated for her intentionally deceptive behavior, which violated the Department's fiscal and personnel rules.

Therefore, in October 2018, Coats and Ryan began to discuss allowing Masias to resign or terminating her if she chose not to. Ryan also suggested that if Masias chose to resign they might be able to bring her back to the Department on a contract to create a new leadership training program. Coats indicated that if Ryan investigated and found no other misconduct by Masias, and she resigned, the Department would consider contracting with her to perform leadership training. Coats explained this approach to the other Justices, and none objected.

To determine whether Masias had engaged in any other misconduct, Coats directed Ryan to audit the reimbursement compliance histories of all the SCAO Directors and compare them to Masias's history. Ryan agreed to do so and also mentioned to Coats the possibility of doing a "sole-source" contract with Masias, meaning that the Department would not publicly solicit bids but instead contract with Masias without first considering other possible vendors. Coats did not accept or reject this idea at that time. Instead, he simply directed Ryan to ensure that any contract with Masias would be done "above board," and "by the book," in full compliance with Department rules.

After Coats and Ryan discussed the "resignation and contract" idea, on November 7, 2018, Ryan notified Masias that she could voluntarily resign from the Department before November 14th or she would be terminated on November 15th. On November 9th, Masias instead filed for leave and protection under the Family Medical Leave Act. On November 12<sup>th</sup>, Ryan approved her for 12 weeks of leave. Once Ryan approved her leave, Masias was paid her

salary and protected from termination until February 2019. In November 2018, SCAO legal staff began to arrange for termination or negotiate a resignation agreement with Masias's counsel. But they received no meaningful response from Masias's counsel until February 2019. The day after delivering Masias's termination/resignation notice to her, Ryan notified the Director of Financial Services to "watch out because HR will be coming for you."

### **The Existing Leadership Training Contracts**

The Department began developing its leadership training program in 2006, and in 2009 two vendors began delivering leadership training. From 2012 to 2015, their contracts were entered on a sole-source basis, without any public bidding. The 2012 "Sole Source Determination" memo documenting this decision was superficial and provided no basis for doing these contracts with a sole source; instead, it simply stated that the vendors were qualified. In 2015, the Department engaged in a public-bidding process for leadership trainers, received three bids, and selected the same vendors the Department had been using since 2009. Without another public-bidding process, the Department continued to enter into one-year contracts with those same vendors for several more years. In the spring and summer of 2018, before the Masias reimbursement dispute and before Coats was appointed Chief Justice, Brown, Masias, and Ryan were already discussing the need to revitalize the Department's leadership training and to conduct a public-bidding process to find new vendors. Subsequent actions and discussions regarding a training contract with Masias unfolded against that historical backdrop.

### **Initial Efforts by Brown to Secure a Contract for Masias**

On November 30, 2018, Brown obtained data from his staff about past and current training-vendor costs and Department budgets for training. That same day, he also sent to Ryan, "per our discussion," the Sole Source Determination memo from 2012 related to the

Department's current training vendors. These are among the first of many actions Brown took to help secure a sole-source contract for Masias. The exact nature of Masias and Brown's relationship is beyond the scope of this investigation except to the extent it damaged Department culture, shaped various parties' motivations and intentions regarding the Contract, and informs our recommendations for necessary improvements. Their relationship was viewed universally at the Department as blatantly and inappropriately close for professional colleagues. Brown prioritized Masias's interests over those of the Department itself. He was considered untrustworthy and even dishonest when it came to matters involving Masias. For example, during the SCA hiring process in the spring of 2017, Department personnel involved in the interviews chose not to share draft interview questions with Brown (a selection committee member) for fear he would share them with Masias before her interview.

In addition, while employed by the Department and with Department approval, Masias and Brown had for years worked together providing outside, paid consulting services for other entities. They also regularly discussed their future plans to work together as consultants after leaving the Department. Moreover, from the time Masias left, Brown repeatedly told others at the SCAO that he was making every effort to get Masias back working with the Department. One interviewee observed that Brown remained "obsessed" with that goal from November 2018 until March 2019.

It is noteworthy that Brown sent Masias information about current and past training vendor costs on November 5th, two days before she received her termination/resignation notice. And on December 3, 2018, Brown emailed the training cost and budget information he had obtained from staff to his personal email account.

### **Department Meetings about a Potential Contract with Masias**

On December 14, 2018, Coats, Andy Rottman (Counsel to the Chief Justice), Ryan, and Brown met and discussed the possibility of contracting with Masias if she decided to resign at the end of her leave. Brown claimed that Masias was being treated unfairly, and Ryan or Brown suggested that she could be a sole-source contractor to handle the Department's leadership training program. Coats reiterated that any contracting process must be done in full compliance with Department rules. Ryan told Coats that he would work with SCAO legal and procurement staff to ensure compliance.

During this meeting, Ryan also assured Coats that a review of Masias's reimbursement compliance history revealed only a few minor irregularities, nothing more than other SCAO Directors had. This was false. Ryan never had the reimbursement histories of the Directors audited. Instead, Ryan had requested and received a written report from SCAO audit staff examining Masias's reimbursement requests only. Contrary to what Ryan told Coats, that audit revealed that from 2016 to 2018, Masias had failed to comply with the Department's reimbursement rules in 100% of her requests. The audit showed 44 errors or irregularities in her requests, and a conclusive pattern of Masias disregarding the Department's fiscal rules and (as a result) receiving overpayments totaling \$726. Ryan did not tell Coats or Rottman any of this. Nor did he inform either of them there was a written audit report documenting these irregularities.

Based on Brown's singular advocacy for Masias at this December 14th meeting, Coats and Rottman were concerned that he was communicating with Masias; therefore, later that day Coats called Ryan and directed him to instruct Brown not to talk to Masias about her separation or make any commitments to her about a contract with the Department. Ryan agreed to do so.

On approximately December 22, 2018, Brown called Ryan to tell him that Masias was very angry and was threatening to sue the Department because her separation was not being



handled as it would be for a male employee. Brown also told Ryan that Masias was threatening to make public over 20 years of “dirt” on the Department. In response, Ryan convened a meeting on December 26, 2018, with Brown and the Department’s Judicial Legal Counsel, Terri Morrison, to discuss Masias’s alleged threats. Before that meeting, Ryan instructed Brown to document what Masias had told him. At the meeting Brown described some of the “dirt” to Morrison and Ryan, including past allegations of sexual harassment by judges and Department staff. Brown also told them that in May of 2017 Masias had surreptitiously recorded a conversation she had with then-Chief Justice Nancy Rice in which Rice appeared to confirm Masias did not get the SCA job, at least in part, because of her gender.

Brown claimed that Masias intended to sue the Department for discrimination. Brown and Ryan told Morrison that in order to avoid a lawsuit and prevent the public revelation of this “dirt,” the Department needed to secure a leadership training contract for Masias. Morrison objected and was shocked to learn that Masias had breached the Department’s trust by surreptitiously recording Rice. But she was adamant that none of this was a proper reason to contract with Masias. After the meeting Morrison also told Ryan that for several reasons Masias’s threat was empty and she did not have a valid gender-discrimination claim. Ryan appeared to ignore Morrison’s advice.

Numerous times over the ensuing months, Morrison implored Ryan to tell Coats about Masias’s surreptitious recording of Rice. Each time, without further explanation or patience for discussion of the topic, Ryan told Morrison that “the Chief doesn’t want to know.” Morrison deliberated about whether to tell Coats herself, but she feared that Ryan would fire her for “going over his head.” Ryan also lied about this issue to other Legal Counsel Unit staff, stating that he had informed Coats about the surreptitious recording. He had done no such thing.

Soon after the December 26<sup>th</sup> meeting, sometime in late December 2018 or early January 2019, Ryan and Brown went to meet with Coats and Rottman. Ryan has asserted that he convened the meeting to inform Coats and Rottman about Masias's threat to sue and reveal "dirt." Coats and Rottman did not know this was the meeting's purpose; they understood only that Ryan and Brown would report on the status of "the Mindy situation." There was no written agenda, and no documents were distributed. Instead, Brown simply launched into a description of long-past incidents of alleged misconduct within the Department of which Masias was aware. Brown did not present these as issues that needed attention, just as information Masias possessed. It was not clear whether Brown was reading from a document when he presented this information.

Rottman and Coats were unsure what Brown's point was in describing these incidents, and they grew impatient. After several minutes, Brown stopped and asked Coats if he should continue. Coats turned to Ryan and asked, "Do I need to hear more of this?" Ryan simply looked sheepish, shrugged, and may have said something akin to, "Up to you, Chief," whereupon Coats told Brown to stop. Coats then asked where they were with the Masias contract idea that had been under discussion for almost three months. He also asked about Masias's health. In addition, Coats stated that (1) he did not care what "dirt" Masias had about the Department, (2) the Department was not going to make any concessions to her about the termination, and (3) neither he nor the Department was trying to do anything to harm Masias.

Ryan reiterated that a training contract with Masias was in the best interests of the Department, and that it was essential to the SCAO's success and his plans to reorganize the SCAO. Coats authorized Ryan to pursue a contract. As he had done earlier, Coats told Ryan to proceed "by the book." *At no time during this meeting did Brown or Ryan tell Coats or Rottman*

*that Masias had surreptitiously recorded Rice. At no time did they indicate Masias was threatening to sue, claiming discrimination, making any other claim or demand, seeking a settlement, or demanding a contract (which had already been in discussion for months) in exchange for an agreement not to reveal “dirt” about the Department. After Ryan and Brown left the meeting, Coats told Rottman that if they were going to explore a contract with Masias they were not going to consider any of the information that Brown had detailed.*

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 at Ryan’s request. The document is not truly a “memo,” as it has been publicly described. It is better characterized as a list of talking points. It is undated, has no subject line, and is not to or from anyone. Without organization or introduction, it begins midstream with an incomplete sentence defending Masias in the reimbursement dispute. Then, under headings that do not always match the contents, it purports to list past examples of standards and rules not being applied to judges and senior staff at the Department, past examples of alleged harassment at the Department, and unattributed quotes that suggest Masias was not chosen for the SCA job because she was a woman. Neither Morrison, Coats, nor Rottman ever saw a copy of Brown’s talking points until July 2019.<sup>2</sup>

### **The RFP for Leadership Training**

After this meeting, from January to April 2019, Ryan, Brown, and Morrison took steps to secure a training contract with Masias. At the end of the day on January 18, 2019, Brown

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<sup>2</sup> The assertions in Brown’s talking-points list are the subject of a separate investigation being conducted by the Investigations Law Group.

summoned the SCAO's Procurement Manager, John Kane, into Brown's office. When Kane arrived, Brown began by telling him that Coats and Ryan no longer wanted to work with the Department's current leadership training vendors and instead wanted to contract for leadership training with a retired judge. This was false; Coats had never said this. Brown also told Kane that they wanted to do a sole-source contract and that Ryan wanted Kane's approval before proceeding. Brown also instructed Kane not to tell either of his supervisors about this project. In response, Kane explained to Brown that leadership training was not appropriate for a sole-source contract.

It is important to note here that the Department is not bound by the Colorado Procurement Code (§24-101-101, *et seq.*, C.R.S.) or the state's associated Procurement Rules. The Department's own Purchasing Fiscal Rules from April 2015 (the "Purchasing Rules") were applicable in 2018 and 2019. In accordance with the Department's Purchasing Rules, the Department was not permitted to enter into a sole-source contract unless there was only one product or service to meet the Department's need and only one vendor to provide that product or service.

Kane explained that a contract for such training could only be properly entered after publicly soliciting bids through a formal Request for Proposals ("RFP") process and selecting the best vendor from the bidders. Brown pushed back, complained, and disagreed. For example, Brown asserted they could not publish an RFP because the "retired judge" was not tech savvy and would never respond. Kane explained that this was not a proper justification for circumventing the RFP requirement. Brown eventually relented and agreed to proceed with an RFP if it were open for only three to five days. When Kane informed Brown that this would require a fiscal-rule waiver from the Director of Financial Services, Brown acquiesced to posting

the RFP for the minimum period allowed without a waiver (21 days). During this discussion, Brown asked Kane to explain the Department's sole-source and RFP rules, Kane did so, and Brown appeared to understand. Kane found it unusual that Brown had instructed him to keep all this secret. Kane therefore documented the meeting and immediately informed his supervisors.

Shortly thereafter, Brown sent Kane draft language for an RFP. Morrison and Kane both reviewed Brown's draft and concluded it was far too restrictive. In particular, Brown's draft required bidders to have at least 20 years of experience with the Department. Yet, the Department's Purchasing Rules explicitly seek to foster broad-based competition, and overly restrictive qualifications in an RFP do not align with this purpose. Kane changed various parts of the draft and sent his edits to Brown. Kane was concerned that even with his changes, the RFP might still be considered too restrictive; however, he believed it would at least be similar to the RFP used in 2015 to select the existing trainers. Kane also believed that if the RFP proved too restrictive to draw bids, the Department could modify it and extend or republish it. Notably, he also knew potential bidders had the right to protest any RFP requirements they believed were unreasonable or too restrictive. (*See* Purchasing Rules §6.2.)

On January 28, 2019, Kane was summoned to a meeting about the RFP with Brown, Ryan, and Morrison in Ryan's office. During the meeting, Brown resisted Kane's advice to reduce the years-of-experience requirement in the RFP. Brown also argued to retain the requirement that a bidder's experience must be with the Colorado Judicial Department specifically. Kane explained why both of those requirements needed to be loosened. He specifically noted that the process would appear inept or even corrupt if those requirements were not relaxed. In other words, Kane made clear that those requirements would be the kind of bar to open bidding that the Department's Purchasing Rules prohibited.

At this meeting, Ryan listened to both Kane and Brown before directing that the RFP requirements be modified to require only five years of experience in any judicial setting. Notably, during this meeting with Brown, Ryan, and Morrison, Kane mentioned that he knew their intent was to contract with a retired judge, and no one corrected him. During this meeting, Ryan also asked Kane whether a sole-source contract had ever previously been awarded after a posted RFP failed to attract any bidders. Kane responded that this had occurred but only when a sole-source contract was independently justified. He emphasized to Ryan that a failed solicitation did not automatically justify awarding a sole-source contract.

Consistent with the agreements reached at this meeting, and with the Financial Services' Director's approval, on January 31, 2019, Kane publicly posted the RFP. The deadline for submitting bids was 22 days later. The RFP did not state a price, price range, or price cap for the training services it solicited. The RFP was indeed sharply more restrictive than the Department's 2015 RFP for leadership training. For example, the 2015 RFP stated a preference for judicial experience or experience with similar organizations. The 2019 RFP stated a requirement for judicial experience only. The 2019 RFP also contained requirements that likely would exclude the Department's longtime training vendors, and a former SCAO employee interested in bidding, from consideration. For example, bidders were required to submit three references in support of their proposals, but they were prohibited from using references from the Department itself. Further, the RFP sought only bidders who would "break from work of the past" vendors.

During the RFP's open period, Brown instructed one of his supervisees to check with Kane periodically to see if any bids were coming in, and he directed that she would be in charge of the review and selection group if any bids were to come in. By the RFP deadline, 24 individuals or companies had reviewed the solicitation, only 14 (not all of which were in the

training industry) had downloaded the RFP documents, and none had submitted a bid (not even the Department's longtime training contractors). Several of those who downloaded the RFP documents did not bid because the experience requirements were too restrictive and the RFP appeared to be tailored for a specific company. Another potential bidder did not bid because the Department appeared to already have a specific contract partner in mind and a number of the RFP's requirements were too restrictive. Masias herself was prohibited from bidding because, though on leave, she was still a Department employee.

### **Sole-Source Contract and Resignation Negotiations**

Ryan had informed Coats that the Department was going through the RFP process. When no bids were submitted, Ryan told Coats (contrary to what Kane had told Ryan) that the Department was now allowed to pursue a sole-source contract with Masias. Ryan also informed Coats that there was no prohibition on contracting with a former Department employee immediately after her resignation. This was true. Coats had no experience with RFPs, procurement, or sole-source contracting. No one at the Department, including Ryan, advised Coats or Rottman that they should review the RFP, the sole-source documents, or the decision to sole-source the Contract. Coats believed the review of these documents and decision were properly the purview of Ryan and Morrison.

After the RFP bidding closed, Morrison and Masias's attorney began to negotiate the terms of a Resignation and Release of Claims Agreement for Masias ("Resignation Agreement"). When Masias went on leave in November 2018, an SCAO attorney was assigned to handle the legal side of her resignation or termination. However, Ryan directed Morrison to personally handle the matter going forward. In Morrison's first contact with Masias's attorney, the latter expressly stated that Masias wanted a training contract in return for her agreement to resign.

Morrison made it clear that a contract would not and could not be the consideration for Masias's resignation. Thereafter, Masias's attorney dropped this request. Next Masias's attorney proposed that if Coats would meet with Masias to discuss a contract, she would sign the Resignation Agreement. Morrison rejected this proposal as well, reiterating that the Department would not offer Masias a contract in return for resigning or signing a release.

Morrison knew, however, that Ryan and Brown's goal was to secure a training contract with Masias. In fact, Ryan not only expressed that goal, he also told Morrison not to talk to anyone else about it. But Morrison also knew that a contract was not the consideration for the Resignation Agreement. So she and Masias's attorney agreed that as long as Masias signed the Resignation Agreement first, Masias could meet with Coats to make her pitch for a contract. On March 14, 2019, Brown expressed his excitement about this to Ryan, stating that they were "so close" to "getting this thing over the top!"

Masias signed the Resignation Agreement on March 15, 2019 (to take effect on March 19<sup>th</sup>), only after her contract-proposal meeting with Ryan and Coats had been agreed to and calendared for March 21, 2019, at 1pm. The primary consideration Masias received for signing the Resignation Agreement was six weeks of paid leave. Masias's attorney never once indicated to Morrison that she was threatening to file a lawsuit. In fact, though SCAO lawyers had requested one, Masias's attorney never sent them a demand letter setting forth legal claims. Nor did the Department itself proceed in a manner indicating it was settling a threatened lawsuit. The Department never received a demand letter, and the Legal Counsel Unit had concluded back in December 2018 that Masias had no valid legal claims. Tellingly, SCAO lawyers had already commenced work on a Resignation Agreement for Masias a month before Brown described to Coats and Rottman the alleged "dirt" Masias possessed. It was not until December 2020 that



Coats or Rottman heard, through the media, any assertion that the Contract's purpose was to suppress a lawsuit or silence Masias.

Morrison included in the Resignation Agreement a term explicitly requiring Masias to "provide [to the Department] a copy of the recording she made of communication between herself and [former Chief Justice Rice]." Neither Ryan nor Morrison ever shared the Resignation Agreement with either Coats or Rottman.

On March 14th, the day before Masias signed the Resignation Agreement, Brown sent Ryan a draft Sole-Source Determination memo for Ryan's signature. That memo purported to set forth the justification for a sole-source contract with Masias and would, once Ryan signed it, constitute the Department's approval for entering a sole-source contract with her. That same day, March 14<sup>th</sup>, Masias formed a limited liability company ("The Leadership Practice LLC").

On March 18, 2019, three days after Masias signed the Resignation Agreement, Ryan signed it on behalf of the Department. The day after the Resignation Agreement became effective (March 19<sup>th</sup>), Brown sent a revised Sole-Source Determination memo to Ryan. The day after that, on March 21<sup>st</sup>, Masias met in person with Ryan, Rottman, and Coats and presented them with her training contract proposal. The proposal seemed to Coats to be consistent with what the Department would want from a training contractor, and he again asked Ryan if he thought this training contract was in the best interest of the Department. Ryan said that it was. Neither before, during, or after that meeting did Coats and Ryan discuss the specific price for the Contract. Coats simply (and repeatedly) instructed Ryan that the price must be "no more than we pay our current trainers." After the proposal meeting with Masias, and Ryan's affirmation that he believed the Contract was in the best interest of the Department, Coats directed Ryan to proceed with the Contract. Four days later, Ryan signed the Sole-Source Determination memo approving

the Contract with Masias. In the meantime, Coats advised the other Justices that Masias had resigned and informed them of her leadership training proposal.

The Sole-Source Determination memo, though, did not comply with the Department's Purchasing Rules. The statements in the memo about Masias's qualifications were not relevant to the rules' requirements for entering a sole-source contract, and no facts satisfying those requirements were included in the memo. Rather, the memo contained the irrelevant statement that no bidders had responded to an RFP, and the conclusory claim that Masias was "the most capable" vendor available. The memo did not establish that this was the only training available to meet the needs of the Department and that Masias was the only vendor who could provide it. Based on a typo in the date of the final Sole-Source Determination memo (March 25, 2018) and the date of a prior draft (November 2018), it also appears that the memo was actually drafted months earlier, soon after Masias went on leave. Notably, the Sole-Source Determination memo also asserted that the Department had "conducted a sole-source selection process" to choose Masias for the Contract. This was false; there was no such process. Nor could there have been: only one business day elapsed between Masias's proposal meeting and Ryan signing the memo.

In addition, it appears that Brown helped Masias prepare her March 21st proposal and pitch for the Contract, which violated the spirit, if not the letter, of the Purchasing Rules section on Good Faith and Ethical Conduct. Specifically, on March 9, 2019, Brown obtained Department training-budget information for 2019 and 2020. That same day he forwarded from his Department email account to his personal email account, and then on to Masias's personal email account, extensive information about the Department's future training budgets, costs paid to the Department's longtime training contractors, and the scope of work performed by those contractors. It also appears unlikely Masias prepared her lengthy, thorough, detailed proposal

and pitch for the Contract in the one business day between her resignation and the proposal meeting; therefore, it appears she prepared those materials while still a Department employee on the payroll.

### **The Signing of the Sole-Source Contract and its Key Terms**

After signing the Sole-Source Determination memo on March 25th, Ryan emailed a copy to Masias. Within a day or two, Ryan instructed one of the SCAO lawyers to draft the Contract for Masias. Ryan also instructed that SCAO attorney to keep it secret from the Financial Services Division.

Over an eight-day period from March 29 to April 5, 2019, the SCAO attorney drafted and revised the Contract, with input from Ryan, Masias, and Rottman. There was no negotiation of the Contract price; Masias presented her price and Ryan simply accepted it. Rottman thought her price seemed high. Coats's only instruction was that it be no higher than the Department's current training vendors' price. Coats told Rottman it was Ryan's budget decision, the legislature had long before approved a large training budget for the Department, and Masias undoubtedly would have to hire and pay others to perform under the Contract. Ryan assured Coats and Rottman that Masias's price was less than the current training vendors' price. That was false; Masias's price was higher. Brown had sent Masias the current trainers' pricing information, and it appears she used that as a guide for her own pricing. But the price she chose, \$532,000 per year, was slightly higher than what the Department paid its vendors in 2017 and \$148,000 higher than the Department paid them in 2018. Masias's price was also \$88,000 per year higher than the average annual price the Department had paid those trainers since 2015.

The SCAO staff attorney who drafted the Contract thought it was unusual that this would be done as a sole-source contract because the price was high and there were many leadership

training companies in the market. The Director of Financial Services noted that sole-source contracts were unusual for the Department and that one of this size and type was unprecedented. But when he asked Ryan to discuss it with him, Ryan told him not to worry about it. Morrison did not express any concerns.

On April 8, 2019, Ryan sent the Contract to Masias, and she signed it. Ryan then signed it on April 11, 2019. On that day, Ryan had an opportunity to tell Coats that the Contract had been signed by both parties, but he instead kept that information from Coats. Specifically, on April 10<sup>th</sup>, Justice Hart told Coats that she learned Masias had applied for a judicial-department job in Utah (a Utah Justice had sent her an email inquiring about Masias). Coats suggested to Hart that when responding she should stay within the bounds of the Resignation Agreement, which limited what they could say about Masias's separation from the Department. Coats also called Ryan to say that he just learned Masias had applied for a job in Utah. Ryan responded by text, telling Coats he knew Masias had applied for that job but that she was no longer interested in it. He did not tell Coats that Masias had, in fact, already signed the Contract and that Ryan had too.

The Contract required Masias to deliver leadership training and related services to the Department for a period of five years, five times longer than the Department's contracts with prior training vendors. But it only detailed the scope of work for Masias to perform in the Contract's first year. Despite providing no scope of work for years two through five, it required the Department to pay Masias "\$532,000 each year for up to 5 years." The SCAO's legal staff described it to Coats and Rottman as a "one-year contract;" however, the Contract expressly stated in its "TERM OF THE AGREEMENT" section on its first page that "the parties' respective performances under this Agreement shall commence on ... April 1, 2019 and shall

terminate on March 31, 2024.” The Contract further allowed the parties, by separate agreement, to contract for additional services at certain rates up to a total of \$550,000 per year. Finally, by further “separate written agreement,” the Department could agree to pay Masias even more than \$550,000 per year, without monetary limitation. Unlike its prior training-vendor contracts, the Department’s contract with Masias did not contain prices for each category of work to be performed; rather, it simply set an annual lump-sum price.

The Department’s Purchasing Rules required Ryan to conduct, and document in writing, negotiations with Masias “to obtain the best possible conditions for the Department with regard to [Contract] price, delivery, and terms.” (Purchasing Rules §2.3.) Ryan failed to comply with this requirement.

### **Revelation of the Secret Recording, Resignations, and the Cancellation of the Contract**

On April 15, 2019, the OSA received an anonymous letter alleging three instances of occupational fraud at the Department.<sup>3</sup> When Coats and Rottman reviewed this letter, they learned for the first time that the Department had settled with a former employee for over \$140,000. That employee had been placed on leave and investigated in 2017 for monitoring the activities of senior SCAO staff (including Brown and Masias). The employee indicated that Ryan knew about and authorized that surveillance. Ryan represented to SCAO legal staff that he had informed Coats about this settlement. This was false. Coats and Rottman first learned about it when they read the anonymous letter to the OSA in April 2019. Astonished that they had not

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<sup>3</sup> The OSA commenced its investigation of those allegations in July 2019. The investigation included the Masias Contract award. In February 2022, the OSA released an executive summary of its findings, which included its conclusion that “there is at least some evidence of occupational fraud” in the award of the Masias Contract. The OSA found that the Contract was awarded “under an apparently flawed process.” The OSA did not examine whether that process violated the Department’s procurement rules, any criminal law, or any ethics or code-of-conduct standards, but it did refer three former employees (Brown, Ryan, and Masias) to law enforcement authorities.

been informed, Coats called a meeting in April 2019 with Ryan, Brown, and Morrison and vehemently instructed them to keep him fully informed on all similar personnel matters. He also repeated this instruction to them several times after this meeting. Despite these commands, Coats was not informed about Masias's surreptitious recording of Rice until July 2019.

Masias began performing work under the Contract on April 15, 2019. Though he had signed the contract on April 11th and sent the signed copy to Masias, Ryan did not tell Coats, Rottman, or Morrison that he had done so.<sup>4</sup> Instead, he indicated that he intended to wait to sign until the two Financial Services Division employees who had originally demanded Masias's termination for reimbursement misconduct left the Department. Indeed, Ryan and Brown had discussed their concern that the Financial Services Director would not approve the Contract, and their need to form a plan to get around him. Consistent with such a plan, and likely also in retaliation for his role in Masias's separation from the Department, Brown and Ryan placed the Financial Services Director on leave on March 22, 2019, the day after Masias's contract-proposal meeting with Coats. And they waited for the SCAO's Controller to retire. She did so on May 31, 2019, and one business day later, on June 3rd, Ryan signed another copy of the Contract.

Ryan did not route the Contract through the Department's required final approval process before either of his signings; neither the SCAO legal staff, nor the Human Resources or Financial Services Divisions, reviewed or provided final approval for the Contract. Ryan communicated his June 3rd signing to Coats, Rottman, and Morrison, and on June 14th Coats emailed all Department staff to announce that Masias was now under contract to provide leadership training to the Department.

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<sup>4</sup> On two other occasions, Ryan intentionally concealed the Masias Contract he had signed on April 11, 2019. In response to an open-records request in June, he did not provide the Contract he signed on April 11th, and he did not disclose it during the OSA investigation. He also lied to Morrison when he told her in late April 2019 that he had not yet signed the Contract.

One month later, after some initial media reporting and requests for information about allegations of misconduct at the Department, Ryan, Morrison, Rottman, Coats, another SCAO attorney, and the SCAO's Public Information Manager met to discuss a media request for a copy of Masias's recording of Rice. At this meeting, on July 15, 2019, Ryan directed Morrison to tell Coats and Rottman about that recording. This was the first time that Coats or Rottman were told of the recording even though Ryan, Brown, and Morrison had known about it for at least seven months. During that time, Ryan had taken numerous steps to prevent Coats and Rottman from finding out about the recording. Particularly disturbing is the fact that in May 2019, Morrison, the Department's top in-house legal counsel, prevented the Colorado Attorney General's Office from finding out about the recording. Specifically, when the Attorney General's Office requested a copy of the Resignation Agreement that expressly referred to the surreptitious recording, Morrison initially ignored the request and, when pressed, she asserted that the Resignation Agreement's confidentiality provision barred her from sharing it. That was false.

Coats and Rottman were stunned and furious that so many senior personnel had withheld this critical information from them for so long. Ryan offered to resign. After much deliberation and with the approval of the other Justices, Coats met with Ryan on July 17<sup>th</sup> and accepted his resignation (effective July 18<sup>th</sup>). At that meeting, Ryan told Coats he never mentioned the recording because he did not think Coats would want to know about it and believed it was in the best interest of the Department to withhold it from Coats. Ryan spoke with Rottman that day too. He did not tell Rottman that he thought Coats did not want to know about the surreptitious recording. Instead, Ryan told Rottman, "I really stepped in it. I made some bad decisions." Before leaving, Ryan gave his copy of Brown's talking points to Morrison, who gave it to the Attorney General's Office. On July 18, 2019, the Department terminated the Contract, and on

July 19, 2019, Brown resigned. The Department never paid Masias for any work performed under the Contract, though the damage to the Department's credibility from these events has been profound.



## Analysis

There were numerous organizational and individual failures that contributed to the decision to approve the Contract. These include a toxic Department culture under which certain senior leaders, principally Ryan, Masias, and Brown, were able to act with minimal oversight and no accountability. They also include overly permissive procurement rules adopted by the Department, as well as errors in judgment by several individuals, including Coats and Morrison. Notwithstanding these issues, the evidence establishes that the Contract was not approved to prevent the disclosure of alleged misconduct within the Department. Below we examine the issues identified during this investigation, and we make a series of recommendations aimed at enabling the Department to improve its internal culture, avoid repeating these mistakes, and begin the hard work of regaining the public trust.

### **The Judicial Department was Poorly Administered at the Time of the Masias Reimbursement Dispute**

The Judicial Department is a large and complex organization with thousands of employees spread across 24 judicial districts. It has an annual budget of over \$600 million. While each judicial district has its own judges, administrators, and support staff, the administration of the Department is centralized within the SCAO in Denver. The SCA leads the SCAO and thus has tremendous authority to direct the policies and operations of the entire Department. The SCA is chosen by the Justices of the Supreme Court. However, given the amount of power concentrated in the SCA position, as well as the diverse body of stakeholders over whom the SCA has authority, a thorough, fair, and transparent process for selecting the SCA is essential. When Ryan was appointed SCA in 2017, however, the process was anything

but thorough and transparent, which exacerbated tension and dysfunction in the Department's senior leadership.

**Ryan's Ascension to the SCA Position was not Transparent or Arms-Length, Which Created Tension Between Ryan and Masias**

The process for selecting the SCA was deficient in several ways. First, Ryan was promoted to be interim SCA despite not going through the formal selection process and never interviewing for the job. Although he had a generally positive reputation in the Department, he was never specifically evaluated to determine his suitability for the role of SCA. His prior job (Clerk of the Court of Appeals and Supreme Court) involved a much smaller scope of administrative duties and authorities. It involved docket management and activity coordination, a smaller staff, and implementation—rather than creation—of SCAO policy and culture. In that job, Ryan was responsible for two courts, not 26. Most problematic, Ryan had been on the SCA selection committee, and his promotion to SCA created an appearance of bias and illegitimacy that tainted the entire SCA selection process.

To make matters worse, the Justices promoted Ryan over Masias, who had been one of the finalists for SCA. When none of the finalists was selected, Masias was assured that a new selection process would soon commence. It never did, and Ryan was instead appointed SCA by fiat. Unsurprisingly, this compromised Ryan's working relationship with Masias, who was well-liked in many of the judicial districts. Masias was alienated by Ryan's appointment and suspicious that she was rejected because of her gender -- indeed, her later surreptitious recording of Rice was an attempt to confirm that suspicion. She also suspected that Financial Services Division leadership had backed Ryan over her for the SCA job, which fed her rage and

obstinance when those leaders discovered her reimbursement error and pressed for her termination.

The deficiencies in the process of promoting Ryan to SCA created significant tension among SCAO senior leadership. Ryan understood that Masias did not want him in the SCA position; she wanted his job herself. He believed that he could not afford to have her and Brown as enemies. He also was quiet and reserved and came from outside the SCAO, without alliances of his own there, and he was taking charge of an office that was riven by factionalism and office politics. As a result, Ryan believed he needed Masias to succeed as SCA, and he knew he had to repair his relationship with her. This gave her certain leverage over Ryan once her falsified reimbursement request came to light.

**Chief Justice Coats did not have the Support of the other Justices in Handling Administrative Matters, and he was not Trained or Equipped to Handle them Alone**

While tensions were increasing in the SCAO's senior leadership, the Justices were largely unaware of them. Many employees we interviewed explained that the Justices had little contact with SCAO employees and only provided the most cursory oversight of Department administration. As such, when Masias's defective reimbursement request came to light, the Court did not have an understanding of the fractured relationships among SCAO senior staff and did not step in to help Coats determine how the reimbursement matter should be resolved. Nor did they understand how much tension it would create within SCAO leadership to select Ryan as SCA without a transparent or fair process. Worse yet, having created the problem for him, the Justices left it to Ryan to resolve.

Coats was the only member of the Court who had administrative duties with respect to the SCAO. The other Justices focused exclusively on resolving the cases on the Court's docket

and were detached from administrative matters pursuant to the Court's long-standing practice. They did not know the SCAO culture, serve on its internal committees, or fully understand its functions. As a group, the Justices met weekly with the Chief Justice, but the Court did not function as a collaborative decision-making body on administrative and personnel matters. Members of the Court followed the Court's long-observed custom of remaining walled-off from such decisions in order to avoid potential recusal if litigation about those matters later arose. As a result, Coats was forced to act alone, or to rely only on Ryan (and to a lesser extent Rottman), when handling problematic administrative or personnel matters within the SCAO.

Further, Coats was not trained as an administrator, and managerial skill is not a selection criterion for appointment to the Colorado Supreme Court. Upon his appointment as Chief Justice, Coats received no training, orientation, or instruction on running a large, complicated organization like the Department. Nor was he given briefing materials or operational documents for the SCAO, instructional presentations from the SCA, or tutorials about the specialized functions of each SCAO Division. From the outset of his tenure, there was a wide gap between the new Chief Justice and the SCAO, which was mirrored -- and reinforced by -- the physical distance between the Court and the SCAO. Coats and other members of the Court were housed in one office tower while the administrative staff were housed in another. This prevented incidental contact between SCAO personnel and Coats, and the casual sharing of information that often happens in office environments. This further isolated Coats from the SCAO, forcing him to rely almost exclusively on Ryan (or Rottman) for information about its operations. Yet, as explained above, Ryan was actively concealing critical information from Coats and, in some cases, providing him with false information.

## **Ryan Administered the Department with Minimal Oversight from the Court and was not Held Accountable for his Performance**

Ryan administered the Department, and its \$600 million budget and thousands of employees, with only minimal oversight from Coats. Coats met with Ryan, but while these briefings were detailed about the annual budget, they were often shallow and devoid of detail about SCAO operations. When Coats was told, for example, that the SCAO had fired hundreds of employees in 2018, or that certain employees were receiving large payouts of taxpayer dollars at the time of their separations from the Department, he was shocked.

Ryan did not report to a board of directors who could hold him accountable for his decisions, as many chief executive or chief operating officers do. Although Ryan ostensibly reported to Coats, Coats did not have consistent, independent sources of information about the SCAO's operations to use in evaluating Ryan's decision-making as SCA. Moreover, there was no process to solicit feedback from Ryan's subordinates. Nor did the Court even conduct annual performance reviews to allow for periodic and formal reflections on the quality of Ryan's work. While strong organizations routinely evaluate all employees, including senior leaders, Ryan was allowed to run the SCAO with little oversight of his decision-making.

As we make this observation, we recognize that the Chief Justice had myriad duties and only limited time and bandwidth to focus on the SCAO's operations. His primary function was judicial rather than administrative; as Chief Justice, he continued to write opinions, conference with his colleagues, and participate in the ongoing back-and-forth necessary to resolve the cases on the Court's docket. He also had managerial duties of a judicial nature -- he oversaw the distribution of cases among his colleagues. Further, he served as the face of the Department to the public, making appearances, for example, before the Colorado General Assembly and the Colorado Bar Association. He also shouldered time-consuming duties related to the 24 judicial

districts, administering the nomination and selection of all District Court Chief Judges, attending investiture ceremonies, and serving as the principal point of contact for all those chief judges.

Meanwhile, Ryan's nearly unchecked authority to run the SCAO became increasingly problematic over time, as the Court had no formal mechanisms to hold him accountable -- or even assess his performance.

### **The SCAO's Internal Culture was Toxic, Which Deterred Employees from Coming Forward with their Concerns About the Contract**

There were multiple Department employees who could have come forward to raise concerns about the Contract before it was approved. This includes Legal Counsel Unit personnel like Morrison, and others who were concerned but failed to act. They did not act because the Department's internal culture was toxic, and there was a pervasive fear of opposing Masias, Brown, or Ryan in any way. The fear-based culture deterred reliable information-sharing, rewarded silence and self-protection, led to lax enforcement of Court rules, and minimized accountability within the SCAO.

### **A Culture of Fear and Intimidation Pervaded the SCAO**

It was well-known within the SCAO that the Directors of the Human Resources and Financial Services Divisions despised one another. Financial Services Division personnel, as a result, felt defensive, fearful, and vulnerable given the extremely close relationship between Brown and Masias. It was enormously corrosive throughout the entire SCAO that the SCAO's second-in-command and the Director in charge of enforcing all Human Resources rules -- who had unilateral firing authority -- openly flaunted their inappropriate personal relationship. This relationship destroyed staff confidence in their leaders' reliability and fairness, and it undermined any trust that they would be protected if they spoke up about misconduct.

Consistent with the brazenness of that relationship, Brown was known to disregard Department rules when it suited him, and to target and retaliate against those who sought to enforce rules against him, including the Financial Services and Information Technology Directors. Masias herself was often dictatorial and vindictive toward other SCAO senior leaders. For example, she proclaimed that “heads would roll” if personnel communicated with any Justice without her permission. Similarly, she demanded that even authorized contacts with Justices had to be documented in writing and reported to her. Ironically, she also forced SCAO employees to sign a document she created barring them from surveilling or collecting compromising information about the Department. Masias’s prohibition on communicating with Justices deepened the sentiment held by many at the SCAO that the Justices were aloof, disengaged, controlled by Masias on administrative matters, and therefore also to be feared.

In addition, Masias and Brown were perceived to have unilateral discretion to receive, investigate, and resolve complaints against judges and Justices. This perpetuated the belief that the judges and Justices were themselves shielded from accountability, and that Masias and Brown had leverage over them, which strengthened the perception that it would be dangerous to come forward about the Contract.

Compounding this climate of fear, employees were frequently investigated and terminated by the Human Resources Division without that Division reporting those terminations to the Chief Justice. Unsurprisingly given this environment, employees often stayed silent about misconduct and “kept book” on the activities of others in order to acquire compromising information to use as leverage in case of potential discipline. Remarkably, this strategy seemed to work, the behavior was rewarded, such employees were often granted paid leave as compensation upon termination, and non-disclosure terms were inserted into their termination

agreements. This practice masked the financial impact of these terminations on the Department's budget, it shielded the terminations from scrutiny by the SCAO Legal Counsel Unit and the Attorney General's Office, and it rewarded silence.

In addition, fear of retaliation caused employees to disregard their duties to the Department in favor of self-protection. It caused behavior like sending anonymous tips to outside oversight agencies, or making open-records requests for documents, rather than raising concerns up-the-chain to Department leadership. Even the Judicial Legal Counsel herself (Morrison) was disempowered, disrespected, intimidated, and fearful. As a result, she did not report Ryan's misconduct, or Masias's surreptitious recording of Rice, to Coats or his counsel. Morrison advised Ryan not to pursue the Contract and pressed him to report the recording of Rice to Coats. Ryan ignored her, and she had seen him be vindictive when crossed. Thus, she was cowed into obeying the SCA, though her duty was to the Department.

### **There was a Lack of Accountability for Certain Senior Leaders**

The SCAO's culture was also tainted by the fact that rules were not always enforced against senior leadership. For example, Masias and Brown openly disregarded Department rules, especially Financial Services Division and Information Technology Division rules, without consequence. Masias failed to follow the SCAO's reimbursement rules 100% of the time. Ryan allowed Brown's open and persistent use of his personal laptop for Department business despite repeated complaints from the Information Technology Services Director that the practice compromised Court security. Moreover, the SCA had broad discretion to act without oversight. For example, Ryan had the authority under the Department's permissive procurement rules to sign sole-source contracts without consulting the Procurement Manager.



## **The Department's Purchasing Rules did not Sufficiently Protect it from Risks of Procurement Misconduct**

The Department's Purchasing Rules diverged from the state procurement code and were overly permissive in ways that contributed to the approval of the Contract. The State of Colorado has adopted a body of procurement rules, enshrined in statute, that bind executive branch agencies ("State Procurement Code"). Those rules, however, do not apply to procurements by the Department. *See* §24-101-105, C.R.S. (promulgating a procurement code that applies to all "publicly funded contracts entered into by all governmental bodies of the executive branch of this state"). Thus, the Department created its own set of purchasing and fiscal rules. At the time of the Contract, the Purchasing Rules explicitly recognized that the Department was exempted from the state's procurement code ("as a separate branch of government, the Judicial Department is not bound by the Colorado Procurement Code §24-101-101, *et seq.*, C.R.S"). Yet, there were several notable weaknesses in the Purchasing Rules at the time the Contract was signed.

First, the Purchasing Rules did not establish consequences, such as disciplinary penalties, for violations. In contrast, the State Procurement Code articulates steep penalties for any violations, including personal civil liability for employees. *See* §24-109-404, C.R.S. (if any government entity violates the State Procurement Code, "the head of such governmental body and the public employee, which for the purposes of this section includes elected officials, actually making such purchase shall be personally liable for the costs of such supplies, services, or construction"). An articulation of stiff consequences for violations might have deterred the procurement misconduct committed in this case.

Second, the Purchasing Rules did not establish a time bar on former employees seeking to do business with the Department. Many government entities impose a time bar (often called a "revolving door" rule) on former employees before they are permitted to contract with their

former employer. This helps to ensure that government employees are not using their authority in government to create new business opportunities for themselves. The Purchasing Rules were silent on this important issue, and Masias was allowed to sign the Contract just three weeks after she separated from the Department.

Third, there was neither an internal audit process, nor external audits, of the Department's purchasing activities that would have helped ensure Department employees, including the SCA, complied with relevant purchasing rules. A routine audit process is an important safeguard and deterrent to procurement misconduct, but none existed within the Department at the time of the Contract.

**The Process for Handling Complaints Against Judges was not Fair or Transparent, Which Gave Masias Additional Leverage over the Department**

Masias was perceived to have leverage over the Department because she and Brown had nearly unilateral authority to receive, investigate, and handle complaints against judges. A transparent complaint process, with clearly articulated rules and standards, protects employees, the organization, and those accused of misconduct. That is, employees and others must be made aware of how to file complaints of misconduct and the standards that will be used to investigate and resolve such complaints. This is particularly important when the accused are extremely powerful, like judges, which creates strong incentives for employees to avoid coming forward.

During our investigation, employees, including Justices, were unable to describe the complaint-handling process and relevant standards for handling complaints against judges. They often noted, generally, that "HR handled complaints against judges" or that complaints were "referred to the Judicial Discipline Commission" without being able to describe how such

complaints were received, by whom, when they would be referred, how they would be tracked, and what steps would be taken to make sure that complainants were protected against retaliation.

In fact, Masias and Brown had broad discretion (subject to a 2010 Memorandum of Understanding between the Department and Colorado's Commission on Judicial Discipline) to determine how such complaints would be handled. They kept minimal records reflecting the investigations they conducted and when complaints were referred to the Commission on Judicial Discipline (or not). There was no central complaints registry, nor a formal process for notifying complainants of the outcomes of any investigation. This created the perception for some that Masias was serving as a "fixer" for the Court who had the power to make complaints against judges disappear if it served her interests. And it further caused to employees to fear coming forward with their concerns about the Contract.

**The Contract would have been an Abuse of Taxpayer Resources, but it was not Awarded to Cover up Allegations of Judicial Misconduct**

As set forth above, we conclude that the Department's toxic culture, permissive procurement rules, and deficient oversight of the SCA contributed to an environment in which the Contract was approved. However, we do not conclude that it was a payoff to silence Masias from revealing evidence of judicial misconduct. Why not?

Of all the evidence we obtained, only one witness (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, Coats had already tentatively agreed with the proposal to contract with Masias *at least three months before 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.

In fact, Brown, Ryan, and Masias herself had been propelling the Department toward a new training vendor as far back as the Spring of 2018. Ryan and many other witnesses acknowledge this. The documentary evidence also confirms the Contract did not arise as a strategy to conceal the alleged misconduct Brown brought to Coats's attention in late December 2018/early January 2019. It was in the works long before then. Several other key facts support this conclusion:

- No one involved, including Brown and Ryan, appears to have considered the alleged misconduct genuinely threatening to the Department. Certainly no one acted as if it were, and the Department's in-house counsel (and her staff) told them explicitly that it was not. The information in the Brown talking-points list appeared to Coats and Rottman to be exaggerated, "old news" already addressed by Brown or Masias back when the incidents occurred.
- It appears from the talking-points list that Brown and Masias considered her recording of Rice to be powerful leverage. Ryan and others went to great lengths to hide this information from Coats for over seven months. Coats did not learn of it until more than three months after he had approved the Contract. Thus, he could not have been -- and was not -- motivated by it when he approved the Contract. The fact that Ryan hid this information from Coats also indicates Ryan knew Coats was not, and was not going to be, motivated to cover up damaging information. If Ryan had really thought that Coats would approve the Contract to contain political damage to the Court, he would have told Coats about the surreptitious recording.

- On numerous occasions, Coats told Rottman and Ryan that he expected the Contract to be publicly criticized because it would be with a recently-resigned, high-ranking former employee. This was why Coats instructed Ryan to do it “by the book.” This was also why Coats repeatedly asked Ryan if he believed the Contract was in the best interest of the Department. Coats thus made it clear he was willing to be criticized, if necessary, for the good of the Department. This is another indication that when he approved the Contract, Coats was not motivated by fear of criticism or damage to the Department’s reputation.
- Masias’s attorney never mentioned any legal claim, let alone one grounded in the alleged misconduct. Similarly, neither Brown, Ryan, Coats, or Rottman ever referred to this “dirt” after the one meeting in which Brown partially described it. Nor did Masias’s Resignation Agreement suggest that suppressing misconduct was a focus of any party. The Resignation Agreement contained boilerplate confidentiality language, nothing more restrictive than in any standard Department release agreement. Tellingly, the Resignation Agreement also did not try to suppress the surreptitious recording itself. Rather, the Resignation Agreement actually publicly revealed its existence and required Masias to give the Department only a copy of it (not the original, or all copies).
- Deploying “dirt,” as Brown, Masias, and Ryan did here, was typical for them and a common technique in the Department, as described above. It appears that after Coats directed Ryan to proceed “by the book” in the December 14, 2018, meeting, Brown and Masias believed they needed to further motivate Coats to move ahead with a

contract. Brown and Masias had had success with intimidation tactics in the past and, as Brown said, Masias was very angry about how she had been treated. Here, though, they misjudged. Ryan had already convinced Coats that the Contract was the right path. And Ryan had already convinced Coats that Masias was vital to his plans for improving the SCAO. Though Masias, Brown, and Ryan may have thought it would cement Coats's approval, the "dirt" did not motivate him. We found no credible evidence that Coats's attitude, conduct, or motive was influenced by a desire to hide the alleged misconduct.

- When Department and Attorney General's Office personnel were deciding whether to terminate the Contract in July 2019, Brown's talking-points list was not yet public. Nonetheless, Coats, Rottman, Steven Vasconcellos (the SCA who replaced Ryan), SCAO legal staff, and Attorney General's Office personnel did not give any consideration to whether terminating the Contract would cause the talking points to become public. This was because suppression of that information had never been Coats's reason for approving the Contract.

Masias, Brown, and Ryan, each for his or her own reasons, clearly and brazenly pursued approval of the Contract. They pulled all the levers they thought would further that goal. It is equally clear, though, that the "dirt" lever did not affect Coats as they thought it would. Coats was misled, and his judgment failed him on other fronts, but he did not approve the Contract to silence Masias.

## **If Not to Cover Up Alleged Misconduct, Why Did Coats Approve the Contract?**

The Contract was ill-advised, did not serve the interests of Coloradans, and should never have been approved. Though never paid, it resulted in real harm to the credibility of the Department. The Contract and its fallout have similarly harmed the many Department employees who perform exceptional service for Coloradans. So how could top Department officials have worked for it, supported it, and approved it? The answer lies both in the personnel and their environment.

### **Trigger Event: The Reimbursement Dispute**

Given the environment at the SCAO, the events that transpired when the Financial Services Division caught errors in Masias's reimbursement submission in July 2018 were not surprising. First, Masias helped create a culture that discouraged leaders from showing weakness. Her personal power and image of strength were essential to her. Second, she had a habit of behaving as if the rules did not apply to her, and she disdained the Financial Services Division. Third, and as a result, she could not admit her reimbursement error to a perceived enemy and instead she was steadfastly unrepentant and dishonest in her own defense when confronted. Fourth, the Department was undergoing an audit at the time, and the Financial Services Division saw this as an opportunity to vanquish Masias for good. Their bases for insisting on terminating Masias were substantially justified, though it was the culture of combat that drove them to be completely uncompromising in their insistence. Finally, as discussed above, Coats had no relevant training on administrative issues, no Counsel to the Chief Justice tasked with helping solve such problems, and no collaborative support from his colleagues. All of this meant Coats had to rely primarily on Ryan, which amplified the risk that he would

exercise poor judgement. That is precisely what happened when Coats agreed to terminate Masias and simultaneously considered entering into a contract with her.

### **Misconduct and Misjudgment**

In a different environment, experienced and collaborative leaders may have found a way to discipline Masias short of termination and in a way that assured the OSA auditors the Department still had sound financial controls. But in this environment, Ryan was at a loss as to how to solve this problem. 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 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 Contract approval. He lied about signing the Contract in April 2019. He hid Masias’s surreptitious recording of Rice from Coats and 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



Morrison so she would not interfere with his plans. Ryan thus gradually built an increasingly fragile edifice of deceptions that eventually imploded.<sup>5</sup>

Ryan also manipulated and tightly controlled the contract process. He rushed it along, violated the Purchasing Rule regarding sole-source determination, circumvented the requirement that legal staff and the Financial Services Division sign off on the Contract before execution, ignored the Purchasing Rule requiring him to show he had negotiated the best price terms possible for the Department, failed to investigate whether Masias was in fact the best available vendor and whether her pricing was justified, and accepted without any negotiation Masias's price and scope-of-work terms. As a result of all this misconduct, the Contract itself was sub-standard. Even the duration of the Contract was not clear. It bound the parties to a term of five years, but it only defined the work to be performed in the first year. It did not state the prices for each category of work. Yet it specifically defined the prices Masias could charge for additional work Ryan could approve above Masias's \$532,000 annual fee. Inexplicably, the Contract set another annual cap -- \$550,000 -- for additional work and payments and allowed Ryan to break even that higher cap without restriction.

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. Masias disrespected and ignored Ryan from the beginning. She disregarded rules, was dishonest with the SCAO's attorneys, ignored their advice, negotiated legal matters on her own, and cut them out of processes and decisions. While she was a hard and effective worker, outwardly upbeat and even

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<sup>5</sup> Ryan's SCAO reorganization plan was another example of his bad judgment. Whether due to self-interest or lack of experience, that reorganization likely was going to cost the Department more money, diminish financial oversight by placing that function under the Human Resources Division, further reduce collaboration and accountability, and exacerbate the SCAO's unhealthy culture by increasing Brown's power. In another example of his poor judgment, at least as early as 2018, Ryan had allowed an employee to surveil Brown and Masias rather than address his concerns about their personal relationship by implementing genuine performance standards and supervisory reviews for them.

motivational, she acted out of self-interest and favored employees who would do her bidding. For years as a leader in the SCAO, Masias had an inappropriately close relationship with Brown, perpetuating the perception by SCAO employees that she was guided by her own agenda and above reproach. She never accepted responsibility for mistakes and never apologized.

This all lent a certain irony to her training mantra that the most important thing for Department leaders was to set the right “tone at the top.” As set forth above, while she was one of those at the top, Masias disregarded reimbursement rules, surreptitiously recorded a conversation with Rice, shut down others’ communications with the Justices, and lied repeatedly when confronted about a reimbursement submission. She used Department budget information to secure a sole-source contract for herself while she was still a Department employee. She attempted to secure approval for that contract by threatening, through Brown, to publicly reveal allegedly damaging information about the Department. Her behavior both before and after she went on leave reveals that Masias acted in her own self-interest rather than the Department’s. Notably, her behavior pattern was one that was allowed to develop when Marroney was SCA. He was so busy with the Court’s building project and legislative relations during that process that he elevated Masias to Chief of Staff and, in essence, left the keys to the kingdom in Masias’s and Brown’s hands.

During the same period, Brown too elevated his and Masias’s interests over those of the Department. He fed Department information to Masias while she was on leave. He advocated on her behalf for a contract. He threatened disclosure of allegedly damaging information. He communicated with Masias after he was instructed not to. In the past they were overheard discussing future plans to work together as consultants, and they may have been planning to work together under the Contract. Brown directed the Procurement Manager to keep the RFP

secret from Financial Services Division leadership. He lied to the Procurement Manager repeatedly. He took action to terminate the Director of Financial Services so he would not obstruct the Contract (and also in apparent retaliation for his role in the Masias reimbursement dispute). It was well known even before she went on leave that Masias and Brown had an inappropriately close personal relationship. It was known that he could not be trusted when it came to matters involving her. It was also well known that Brown disliked rules and considered himself above them, exploited gray areas in Department personnel rules, strategically targeted enemies for retaliation, had employee emails monitored to gain advantage, bragged about how many people he fired, hired only investigators who would produce the outcomes he wanted, and ignored and diminished legal staff.

But Brown's and Masias's misconduct had less impact on approval of the Contract than did Ryan's. And it still would not have been approved if Coats himself had exercised better judgment. His first error was not meeting with Ryan immediately after taking over as Chief Justice to learn more about Ryan's role and clearly explain Coats's expectations of him – including the expectation that Ryan would keep him fully informed. Without doing so, Coats proceeded to make many pivotal decisions relying entirely on representations from Ryan. Ryan was not trustworthy, yet Coats neither detected this himself nor even suspected it enough to task Rottman with closer oversight and verification of information they were getting from Ryan. Coats's failures in this regard likely were due to his lack of understanding of SCAO functions like procurement, and the lack of advice from Morrison or Rottman that verification might be a good backstop.

Coats's failure was also due to his own lack of intuition that it was dangerous to rely so heavily on Ryan. His own intuition also should have told him that choosing a person known for

dishonesty and self-interest (Masias) as the face of the Department's leadership training program would gravely undermine trust and confidence in the Department and his own leadership. It should have told him it would erode public trust to rush a contract through with a former employee within weeks of her resignation. Finally, Coats himself could have -- but did not -- oversee or verify. He did not ask Ryan follow-up questions or do his own research as to whether the Management Representation Letter really required terminating Masias. He similarly failed to conduct his own analyses of the procurement process, Masias's reimbursement history, the Contract's pricing structure, the availability of other training vendors, or Ryan's conclusory assertion that the Contract was in the Department's best interest. Masias may have been qualified as a trainer, and her price may have been a fair market price, but Coats did not do any of his own diligence to make these determinations before approving the Contract.

The same can be said of Rottman. Coats did not instruct him to do any verifying, but Rottman also never suggested to Coats that that would be a good assignment for him. Despite signs that Ryan should be watched more closely, Rottman did not take the initiative to suggest a more active oversight role even though he knew Coats was new and untrained. As a result, Rottman missed opportunities to independently understand and assess the Management Representation Letter situation, the Contract, the sole-source determination, Masias's reimbursement history, the procurement process, and the Resignation Agreement. Like Coats, Rottman also independently failed to recognize how disastrous it would have been to have a former employee with Masias's known flaws representing the Department's leadership training program.

Morrison too made a key misjudgment. She was genuinely fearful that Ryan would fire her if she told Coats, Rottman, or the Attorney General's Office about the surreptitious

recording, so she hid it from them. Apparently out of fear of Ryan and Brown, she also stood silent while they lied to the Procurement Manager repeatedly. However, her fear that Coats and others would not protect her from termination if she “went over Ryan’s head” does not appear justified. In fact, there appears to be no basis for it other than fear itself. She knew full well that Coats, Rottman, and the Attorney General’s Office all would consider Masias surreptitiously recording a Chief Justice an outrageous breach of trust and would direct their anger at Ryan for hiding it and not at her for exposing it. Thus, her fear of Ryan does not excuse Morrison’s abdication of her duty to the Department in favor of obedience to her direct supervisor (Ryan).

### **Conclusion**

The deep cultural flaws described above bred misconduct that Coats and Rottman did not detect and that led to the Contract’s approval. Since these events, the Department has implemented a number of improvements to correct Department culture and inoculate it against individual misconduct and poor judgment. Recognizing those positive steps, we nonetheless strongly urge the Department to implement the recommendations below in order to continue advancing toward restored public trust.

## Recommendations

To address the issues discussed above, we provide 14 actionable recommendations, some of which the Department has already begun to implement. But more work remains to be done.

We have divided our recommendations into six categories: (1) Changing the SCAO's Organizational Culture, (2) Enhancing Oversight of the SCAO, (3) Properly Preparing the Chief Justice, (4) Improving the Judicial-Officer Complaint Process, (5) Procurement Reform, and (6) Ongoing Transparency and Accountability.

### Changing the SCAO's Organizational Culture

#### **1) The Court Must Commit to Ending the Culture of Fear and Intimidation in the SCAO**

We make several specific suggestions for improving the toxic organizational culture discussed above. This is not an exclusive list; we recommend that Department leaders continually and proactively consider other opportunities for the Department to create for its employees and the public a culture of collaboration and public service.

First, the Department should adopt rules that unequivocally and clearly protect employees who possess information about fraud, waste, abuse, harassment, or other forms of misconduct -- including judicial misconduct -- from retaliation if they bring that information to the attention of Department or state authorities. While the State of Colorado has enshrined various whistleblower protections in statute, *see, e.g.*, Title 24, Art. 50.5e, *et seq.*, C.R.S., specific Department rules that assure employees of the Department's commitment to these protections are critical and should be adopted immediately. The rules should be explained, supported, and easily accessible to employees on the Department's intranet site and elsewhere. The Department should also evaluate other approaches to informing employees about these protections, such as periodic trainings.

Second, Department employees must never be deterred from providing information to members of the bench. As noted in this report, Masias forbade employees from providing information to members of the Court under threat of potential discipline. That directive was improper and counter to the Department's goals of accountability and transparency. While the Court has now increased contact between the Justices and Department employees, it is essential that all employees be informed that that improper prohibition is formally denounced and rescinded.

Third, the Department must commit to holding all employees accountable no matter their status or position. Rules must be fairly and evenly applied, such that no one is above the law or exempted due to their stature within the Department.

## **2) The Court Must Infuse Ethics into the Department's Culture and Decision-Making**

The Department is served by thousands of hard-working public servants who have the best interests of Coloradans in mind. Yet, outliers, like some of the individuals discussed above, make it necessary for the Court to take steps to further infuse ethics and public service into the culture of the Department. That is, the Court must ensure that the culture of warring fiefdoms within the SCAO is ended and replaced with a shared commitment to collaboration, public service and ethical conduct. Specifically:

First, we recommend that the Court establish a code of conduct and ethics that governs the behavior of employees in the Department. While the Colorado Constitution sets forth ethical rules for state employees generally, more specific rules should be adopted for the Department. Just as judicial officers must adhere to the Colorado Code of Judicial Conduct, non-judicial Department employees should similarly adhere to a code of conduct and ethics.

Second, we recommend that the Court establish a Department-wide Ethics Officer who is an expert on the rules of conduct and ethics, and with whom Department employees can consult (confidentially, if requested) when in need of advice. The Ethics Officer should conduct annual and mandatory Department-wide trainings on the rules of conduct and ethics. Just as judicial officers may submit ethics inquiries to the Judicial Ethics Advisory Board, Department employees should have similar access to a Department official who can respond to their ethics questions. The Ethics Officer must have the authority to assure employees of confidentiality and protection from retaliation.

**3) The Court Should Adopt a Two-Year Revolving Door Prohibition on Former Employees Doing Business with the Department**

Many government agencies have “revolving door” rules that prohibit individuals from doing business with their former employers for a prescribed period after their separation. Had such a rule been in place during the events described in this report, the Contract could not have been awarded to Masias. We recommend that the Court establish a two-year revolving door prohibition for its former employees to ensure that Department personnel cannot create contracting opportunities for themselves while they are in government service. Moreover, the rule should permanently bar former employees from working under any contracts that they were personally involved in securing during their tenure with the Department.

**Enhancing Oversight of the SCAO**

**4) The Court Must Require Annual Performance Evaluations for All Key Department Leaders, including the SCA**

It is incomprehensible that the SCA administered the Department, a large organization -- and a co-equal branch of our state government -- without sitting for regular reviews or being held accountable for his performance. The Court must correct this significant gap by requiring that



detailed, annual performance evaluations be completed for individuals in key supervisory positions, including but not limited to the SCA, Counsel to the Chief Justice, the Chief of Staff, the Judicial Legal Counsel, and the Directors of the Human Resources, Financial Services, Information Technology Services, Probation Services, and Court Services Divisions. Such evaluations, if detailed and comprehensive, will aid in holding key personnel accountable. Had there been such performance evaluations, the improper relationship between Masias and Brown, and the toxic work environment they created, would have come to light far sooner or, perhaps, would not have developed at all.

These evaluations should include not only assessments from supervisors, but also candid 360-degree feedback from subordinates. Subordinates should be encouraged to respond to questions about these leaders anonymously with assurance that there will be no retaliation for participating in the reviews. Further, these performance reviews should be grounded in specific performance standards and expectations set for each employee annually with input and agreement from both employee and supervisor.

#### **5) The Court Should Codify the Selection Process for the SCA**

One of the events that significantly contributed to approval of the Contract was the woefully deficient selection process used to appoint Ryan as SCA. The process was not fair or transparent and caused considerable tension in the SCAO's leadership ranks. To ensure that this is never repeated, the Court should clearly articulate the hiring process for its senior leaders, including the SCA, and ensure that the process is followed for future SCA appointments.

**6) The Court Should Clarify the Roles, Domains, and Obligations of Each of the Three Sources of Legal Advice to the Department**

The Court and SCAO draw upon three separate sources for legal advice. The Judicial Legal Counsel administers the Legal Counsel Unit and advises the Department. The Attorney General's Office provides legal advice to the Department, particularly on matters that are likely to result, or have resulted, in litigation. The Counsel to the Chief Justice also provides legal advice, but to the Chief Justice alone. The roles, domains, and purviews of each source have not been clearly articulated by the Department.

As noted in this report, the Judicial Legal Counsel (Morrison) was, at best, unclear about what duty she owed to whom. Specifically, when Coats was Chief Justice, Morrison withheld from him that Masias had secretly recorded former Chief Justice Rice. She discussed this critical fact with Ryan, head of the SCAO, but not with Coats, head of the entire Department. As a result, Coats was left unaware of the recording, which placed the Department in an untenable position. We recommend that the Department clearly delineate for its employees the roles and authorities of each of the three sources of legal advice, and clarify the circumstances under which one source, but not the others, will be used. Most importantly, we recommend the Department make plain that the Judicial Legal Counsel's duty is owed to the entire Department rather than any one administrator or subcomponent. *See* Colorado Rules of Professional Conduct Rule 1.13. The anti-retaliation reforms described above also should expressly empower the SCAO's entire Legal Counsel Unit to exercise that duty without fear of potential retaliation from SCAO leadership.

**7) The Court Should Enact an Effective Leadership Training Program for the Department**

It is somewhat ironic that we are recommending a leadership training program given the subject matter of the Contract we have investigated. Yet we are recommending it just the same because of the errors and failings displayed in this case. The Department must invest in preparing its leaders with the skills, ethics, and courage necessary to do their important work. Needless to say, any outside vendor sought to provide such training should be selected through a fair and competitive bidding process.

**Properly Preparing the Chief Justice**

**8) The Court Must Properly Prepare and Equip Chief Justices for the Substantial Management Obligations of that Position**

Coats was not well prepared to handle the crises concerning Masias' falsified reimbursement request and subsequent Contract with the Department. He was untrained as an administrator and did not have the active support of his colleagues, which he sorely needed. We make several recommendations to ensure that Chief Justices are never again placed into such a vulnerable position.

First, the Court must develop a formal training program for incoming Chief Justices. Coats described his preparation for the position as "learning on the job" that included attending a number of meetings with the departing Chief Justice. He was not informed about personnel problems in the SCAO administration and, as a result, was unprepared when those problems eventually spiraled out of control. He was given no briefing materials, performance metrics for the Divisions of the SCAO, or detailed explanations of its human resources, budget, or procurement processes. He was neither briefed by each division director nor given opportunities to inquire about their operations. In short, he was forced to learn all of the SCAO's operations

on-the-fly as issues arose during his tenure. The Court must invest in equipping Chief Justices to handle such issues by providing formal training and orientation, in advance, before problems arise.

Second, the Court has now implemented what it calls a “Shadow Chief” system (perhaps, more aptly, a “Chief-in-Waiting” system). The Shadow Chief follows the current Chief Justice for a prescribed period to help enable an orderly transition. During our interviews, we learned that while the Shadow Chief system is in use now, it may or may not be used again in the future. Given our findings in this investigation, we recommend that the system be codified as an essential component of the transition between Chief Justices now and in the future.

Third, the Court has long observed a custom of walling Justices off from administrative matters in the SCAO to avoid potential recusals should litigation later arise. While we understand this rationale, our interviews with the Court suggest that the actual risks of recusal are low. Moreover, we are certain that any Chief Justice will need the support of his or her colleagues in handling sensitive administrative issues in the Department. We therefore recommend that the Court identify the very limited circumstances in which a wall between the Chief Justice and the other Justices is necessary and otherwise enroll at least a Justice or two on a case-by-case basis to assist the Chief Justice with challenging issues when necessary.

Fourth, the Court should reduce the number of opinions assigned to the Chief Justice in an amount that offsets the substantial administrative and political duties of that position. The Chief Justice has various important responsibilities, including oversight of the SCA and serving as the face of the Department to the public. Given Coats’s judicial duties, he did not have sufficient time to both handle his caseload and provide meaningful oversight of the SCA. The

Court must change that to enable the Chief Justice to effectively handle the administrative duties of the position.

**9) The Court Should Establish a Specific Term for the Chief Justice**

There is no specific term for a sitting Chief Justice; rather, the Chief's tenure is left to the preference of members of the Court or the passage of time and operation of the Department's mandatory retirement rules. In recent decades, Chief Justices have served for terms ranging from just a few of years to more than a decade.

Improving the ability of the Chief Justice to oversee the SCA and SCAO will require establishing a specific term of years to ensure certainty and an orderly transition between administrations. According to Coats, it took a year for him to learn the varied and important responsibilities of the position, and we therefore recommend that the term be set for no fewer than three years—and possibly more. Should the Chief Justice wish to serve an additional term, they could seek reappointment by a vote of the majority of the members of the Court.

**Improving the Judicial-Officer Complaint Process**

**10) The Court Must Improve the Legitimacy of the Process for Handling Complaints Against Judicial Officers**

It was clear that Masias was perceived as a “fixer” by some Department employees, due, in part, to her broad discretion to determine how complaints of misconduct against judicial officers would be handled. Record-keeping regarding complaints was poor, and the rules by which Masias (and later Brown) processed and investigated them were unclear. While the Court now has internal rules that address judicial-officer complaint handling, they are vague, and to this day, insufficiently specific about how complaints are received, triaged, investigated, tracked,

and referred (or not) to other investigative entities. The internal rules must be precise about these processes, and also clearly state the evidentiary standards that will govern complaint resolution.

Regarding complaint intake, since these events the SCAO has developed a portal on the Department intranet site through which employees can submit complaints (including those against judicial officers). While the SCAO provided us with statistics showing that employees have visited that portal hundreds of times, it was unable to tell us how often the portal has actually been used to file complaints or provide overall statistics about aggregate outcomes of any investigations conducted into those complaints. The Department should enhance its data collection about the complaints portal, ensure that complaints can truly be filed anonymously, and identify ways to seek employee feedback to determine whether or not the complaints portal is working as intended.

Finally, the judicial-officer complaint process is not transparent to the public. While there may be reasons for confidentiality about individual cases and open investigations, aggregate information could be provided to the public by the Department. For example, the Department's last available Annual Statistical Report for fiscal year 2021 includes various metrics about the Department's overall caseload, staffing, budget, and case dispositions, but no equivalent information about the number of complaints against judicial officers, the number referred to the Colorado Commission on Judicial Discipline, aggregate complaint outcomes, or even the process by which complaints against judicial officers are handled. We urge the Department to include this information in its annual statistical reports for public review.

## **Procurement Reform**

### **11) The Department Should Consent to be Bound by the State Procurement Code, Which Includes Civil Penalties for Violations**

Pursuant to state statute, the judicial and legislative branches of government are exempt from the State Procurement Code, which applies only to executive branch agencies. The Department has adopted its own set of purchasing and fiscal rules that differ from the state code in important ways. Elected officials are also exempt from the Code but have consented, through a purchasing delegation, to comply with it. We recommend that the Department consent to be bound by the Colorado Procurement Code and associated procurement rules. This would align the Department with the rest of state government and create official oversight by the State Purchasing and Contract Office, which would help prevent the kinds of procurement misconduct demonstrated in this case.

### **12) The SCAO Should Regularly Engage in Self-Assessments of its Purchasing Activities and Solicit Periodic Independent Audits**

We recommend that the SCAO enhance the compliance and transparency of its procurement functions by regularly assessing all purchases and procurements and evaluating whether or not they are in compliance with relevant procurement rules. This assessment and evaluation should include, but not be limited to, assessing the RFP and vendor selection process used, the adequacy and specificity of contract terms, the workflow and necessary approval processes employed, and the amounts invoiced and paid against these contracts. It should also specifically focus on sole-source contracts to determine if they were, in fact, properly entered into without competitive bidding. Moreover, the SCAO should periodically solicit an independent audit of its procurements, which will create additional accountability for, and public trust in, the Department's purchasing activities.

**13) The SCAO Should Train all Employees Involved in Purchasing About Ethical Standards for Procurement Activities**

Both the State Procurement Code (that did not apply to the Department at the time of the Contract) and the Department's Purchasing Rules (that did apply) include ethical standards for procurement. There were several significant ethical violations by Brown and Ryan in steering the Contract to a former employee with whom they were associated. While this Contract resulted in obvious violations, there may be other violations in the Department's purchases that could also raise significant ethical issues.

The Department must provide training about procurement ethics to all Department employees who engage in procurement activities. This training should be mandatory and documented before employees are permitted to work on procurements on behalf of the Department.

**Ongoing Transparency and Accountability**

**14) The Chief Justice Should Commit to Regularly Reporting to the Governor, the Legislature, and the Public on the Steps Taken to Implement these Recommendations**

Finally, the Department is an independent and co-equal branch of government -- and it is also accountable to the citizenry, as are all public entities. We commend the Court for commissioning this independent investigation and demonstrating openness and cooperation with us. To ensure continued momentum towards reform and transparency about the improvements implemented after these events, we urge the Department to: (1) publicly post this report on its web homepage; (2) post its public response to this report including an explanation of whether the recommendations above will be implemented and, if so, how and by when; and (3) commit to



annually updating the Governor, General Assembly, and the public on the status of the Department's efforts to implement these recommendations.

## APPENDIX A

### **List of Involved Individuals**

1. Eric Brown – Director of the SCAO’s Human Resources Division.
2. Nathan “Ben” Coats – Colorado Supreme Court Chief Justice, July 1, 2018, to December 31, 2020.
3. John Kane – SCAO Procurement Manager.
4. Jerry Marroney, State Court Administrator who preceded Ryan.
5. Mindy Masias – Chief of Staff to the State Court Administrator, 2014 to 2019.
6. Terri Morrison – Judicial Counsel to the Judicial Department.
7. Nancy Rice – Colorado Supreme Court Chief Justice who preceded Chief Coats.
8. Andrew Rottman – Counsel to the Chief Justice.
9. Christopher Ryan – Interim State Court Administrator, July 2017 to September 2017; State Court Administrator, September 2017 to July 2019.
10. Steven Vasconcellos – State Court Administrator who succeeded Ryan.

## APPENDIX B

### **Chronology**

**May 2017:** Search conducted to select new State Court Administrator (SCA); Masias applied and was not selected; Justices appointed Ryan interim SCA.

**September 2017:** Justices appointed Ryan permanent SCA.

**July 1, 2018:** Coats appointed Chief Justice.

**July 15, 2018:** Masias reimbursement dispute commenced.

**August 2018:** Ryan informed Coats about Masias reimbursement dispute; investigation into Masias reimbursement dispute commenced.

**October 2018:** Reimbursement dispute investigation concluded; Coats, Rottman, and Ryan agreed that Masias engaged in reimbursement misconduct and dishonesty, and they began to discuss their options for disciplining her including the possibility she could resign and enter a contract with the Department to conduct leadership training; Financial Services Division leadership refused to sign Management Representation Letter required by the Office of State Auditor unless Masias was terminated.

**November 7, 2018:** Masias notified that she will be terminated on November 15, 2018, unless she resigns before that date.

**November 12, 2018:** Ryan granted Masias's request for Family Medical Leave until February 2019.

**December 14, 2018:** Coats, Rottman, Brown, and Ryan again discussed the possibility of contracting with Masias for leadership training services if she resigned.

**December 22, 2018:** Brown informed Ryan that Masias was angry and upset, that she was threatening to sue the Department for gender discrimination, and intended to make public compromising information she had about the Department.

**December 26, 2018:** Ryan convened meeting with Brown and Morrison. Brown described Masias's alleged threat to sue and release compromising information. Brown informed them Masias possessed a surreptitious recording of a conversation she had with Rice in which Rice allegedly implied the Justices did not select Masias as SCA because of her gender. Brown and Ryan informed Morrison their proposed solution was a leadership training contract with Masias. Morrison objected to that proposed solution and informed Ryan Masias did not have a valid legal claim.

**Late December 2018/Early January 2019:** Coats, Rottman, Brown, and Ryan met. Brown began reading from a talking-points list of past alleged misconduct by judges and Department staff. Coats asked Ryan if he needed to hear more. Ryan shrugged and may have said, "Up to

you, Chief.” Coats directed Brown to stop reading, asked about Masias’s health, and where they stood on the Masias contract idea they began discussing in October.

**January 2019:** Ryan, Morrison, Brown, and Kane drafted and posted a Request for Proposals (RFP) for leadership training services.

**February 2019:** RFP closed. No one submitted a bid.

**February - March 18, 2019:** Morrison negotiated a resignation and release agreement with Masias’s attorney. Masias signed it on March 15th. Ryan signed it on March 18th.

**March 19, 2019:** Masias’s resignation became effective per her resignation and release agreement.

**March 21, 2019:** Masias met with Ryan, Coats, and Rottman and pitched her proposal for a leadership training contract with the Department.

**March 22, 2019:** Ryan placed the SCAO’s Director of Financial Services on administrative leave.

**March 25, 2019:** Ryan signed the Sole-Source Determination memo approving a contract with Masias.

**March 29 - April 5, 2019:** Ryan, Masias, and SCAO legal staff drafted a contract for Masias.

**April 8, 2019:** Ryan sent contract to Masias. Masias signed it.

**April 11, 2019:** Ryan signed the Masias contract on behalf of the Department.

**April 19, 2019:** Anonymous letter received by the Department and the Office of State Auditor alleging occupational fraud at the Department.

**May 31, 2019:** The SCAO Controller retired.

**June 3, 2019:** Ryan signed the Masias contract a second time.

**July 15, 2019:** Coats and Rottman were told for the first time that in May 2017 Masias surreptitiously recorded a conversation with Rice.

**July 17, 2019:** The Department terminated the Masias contract.

**July 18, 2019:** Ryan resigned.

**July 19, 2019:** Brown resigned.

