

Appendix 1

Chronology of Discovery Communications¹

By February 8, 2021 Executive Director (“ED”) William Campbell emailed Terri Morrison, Department counsel, asking for information regarding the recently publicized allegations related to the Masias contract. This is confirmed by a contemporaneous secondary source document. We have not located a response to this request.

February 23, 2021 Chair Gregory writes to Chief Justice Boatright requesting Department files related to the recently published allegations. The request was made under the 2010 MoU and CJD 08-06. The Chair also requested an explanation of the Department’s policies for ensuring that misconduct allegations get reported to the Commission in order to evaluate how well the system is working.

February 26, 2021 Chief Justice Boatright telephoned ED Campbell in response to the February 23rd letter. He stated his commitment to “getting the full perspective from the independent investigation.” He explained that he was not responding to the Commission in writing out of “concern about his response being forwarded.” This is confirmed by a contemporaneous secondary source document.

April 6, 2021 Having received no response to the request of February 23rd, Chair Gregory writes to Chief Justice asking for a response.

April 26, 2021 Chief Justice Boatright emailed ED Campbell to assure the Commission that “the Court and the rest of the judicial branch intend to provide [the Commission] full information.” However, until the investigation is complete, the Department will not know what has or has not been reported to the Commission previously. This appeared to be offered as an explanation as to why no documentation was being

¹ In mid-January of 2022, the Judicial Department began releasing the correspondence listed in this Appendix to the media. See, for example, the Denver Gazette of March 6, 2022. The Department’s publication of these records was handled independently of the Commission. The Commission understands that the Department has purported to release correspondence on the issues listed here. Thus, most of the communications listed can be confirmed by reference to the documentation released by the Department.

provided to the Commission. Both agreed that they need to assure that the MoU will be effective in the future to assure complaints are forwarded to the Commission. This is confirmed by a contemporaneous secondary source document.

April 26, 2021 Chief Justice Boatright letter to Chair Gregory stating that “we are committed to providing you with all necessary information.” He asked for “more information on what records the Commission is requesting.” No records were produced.

Approximately May 5, 2021 By this date, Andy Rottman, counsel to the Chief Justice, had delivered to the Commission offices 4 documents comprising 8 pages responsive to the Commission’s requests related to what the ILG Report calls “Allegation Four.” These documents were from the 2007-08 time frame. This is confirmed by a contemporaneous secondary source document.

May 18, 2021 Chair Gregory letter to Chief Justice Boatright. The letter responds to the April 26th request that the Commission ask detailed questions before obtaining Department records. The Chair posed document requests as best he could on the limited information then available to the Commission through media reports. The Chair asked which publicly reported allegations are disputed by the Department and which are considered accurate. The letter also addressed some of the asserted obstacles to producing records previously raised by the Chief Justice.

The Chair further asked for more information about the investigative entity the Department was proposing (meaning what would evolve into the two law firms privately hired by the Department), the authority for creating it, and discussion of how the Commission would be able to work with it. The Chair renewed a prior request that the Chief Justice authorize the other investigating agencies to coordinate and share information with the Commission. The Chair also asked for copies of the Department’s correspondence with the other investigations.

In the interest of a simple method of getting disclosures started after months of delay, the Chair asked the Chief Justice to produce the

same records that had been assembled and produced to the State Auditor.

June 11, 2021 Chief Justice letter to Chair Gregory. The Chief Justice discussed his views generally on the applicable duties to disclose information to the Discipline Commission. He advised that Mr. Vasconcellos would respond separately to the requests for information. The Chief Justice produced 2 responsive documents relating to the Masias matters, a copy of the “Memo” and one signed copy of the Masias training contract. These comprised 15 pages.

The Chief Justice also provided copies of documents related to the plan to retain the investigators the Department planned to hire privately. The handful of documents provided by the Department related to their 2021 retention of private law firm investigators are not included in the total count of file documents disclosed for the examination of the Masias issues.

June 11, 2021 Vasconcellos letter to Chair Gregory. This letter addressed the Commission’s specific requests for records. It also provided some narrative information on the judicial officer incidents listed in the “Memo.” He noted that some information/records were being withheld from the Commission but did not explain why they were being withheld, other than saying the Department was “legally obligated” to do so and that this was done under “legal obligation.”

On page 7 of the letter, Mr. Vasconcellos also noted that the Department had no ability to produce records held by other entities. Presumably, this was in response to the Chair’s request for a copy of the same records the Department had already provided to other investigators.

Mr. Vasconcellos attached another copy of the “Memo” as well as 1 responsive document of 11 pages called “Summary” but with no date, no recipient, and no author. It addressed one of the sets of reported allegations from the “Memo.”

In response to the Commission’s separate requests about the policies adopted by the Department to ensure compliance with the 2010 MoU, Mr. Vasconcellos produced multiple copies of the personnel rules and

a chief justice directive. These records confirmed what the Troyer report would later note, that there were no meaningful policies adopted to implement the Department's disclosure obligations.

As to what the ILG report now calls "Allegation Three," Mr. Vasconcellos provided a short factual summary but no documentation. He stated as to this category, "I will provide documentation within two weeks of this letter."

As to what the ILG report now calls Allegation Four, Mr. Vasconcellos stated "From records only recently provided from the Commission, the Department learned that the Commission privately admonished the judge, which had not previously been disclosed despite the Department's due diligence before awarding the judge a senior judge contract. Chief Justice Boatright thereafter notified the judge of the cancellation of the contract after learning of the private admonition."

This factual history is inaccurate. The Commission advised the Department of the discipline of this judge by letter on August 27, 2018, before the Department decided to contract with this judge. The Commission provided this information consistent with established prior practices in response to the Department's letter request relating to the senior judge program. The ILG report also confirms at page 29 that the Department received the notice disavowed in this June 11, 2021 Department letter.² The Department made no request for further information in this letter.

June 25, 2021 Vasconcellos letter to Chair Gregory following up on commitment to produce records within two weeks regarding what the ILG report calls Allegation Three. Mr. Vasconcellos stated "we have determined that, absent a valid subpoena or court order, legal restrictions prevent us from disclosing all but an extremely limited and incomplete set of relevant documents." He did not further explain or identify the referenced "legal restrictions" preventing disclosure.

² While the ILG report accurately recites that the Department knew of the prior discipline when it entered the senior judge contract, the ILG report omits the Department's affirmative misrepresentation of this fact.

The Department's request for a subpoena as a prerequisite to producing documents related solely to Allegation Three. The narrow focus of the request for a subpoena was confirmed in the same letter because, as to another category from the "Memo," Mr. Vasconcellos produced 3 documents comprising 26 pages without requiring a subpoena. These documents were from the 2010 time frame.

Mr. Vasconcellos offered no explanation as to what "legal restrictions" allowed him to produce records regarding a judge outside of the Commission's authority due to expiration of time but, simultaneously, purportedly required withholding of records relating to a judge still within the Commission's authority.

Also, while Mr. Vasconcellos stated that he was permitted to produce to the Commission a "limited" number of documents on Allegation Three, the Department did not provide that permissible production.

The Department's statements of July 11, 2022 make clear that, at some point, the Department shifted its position from requiring a subpoena as a prerequisite to producing specific materials solely within Allegation Four to requiring a subpoena as a prerequisite to producing *any* further records under *all* categories related to the Masias contract. The Commission does not recall that the Department communicated this change of prerequisite.

July 23, 2021 Vice Chair Prince letter to Chief Justice Boatright. The Vice Chair responded to the objections to production of information raised by the Department in their June 11, 2021 correspondence. The Vice Chair noted that the Commission would require counsel to proceed with the discovery disputes, noted the systemic obstacles to obtaining counsel, and asked for thoughts from the Chief Justice on how to overcome these obstacles.

July 29, 2021 ED Campbell in person discussion with Chief Justice Boatright in the Ralph L. Carr Judicial Center parking garage. The Chief Justice "said, very emphatically, that he wants us to have all info we are seeking." However, the Chief Justice explained that he "doesn't want to give it easily" to the Commission so that he will have a "credible way to decline providing it" to others. This discussion is confirmed by a contemporaneous secondary source document.

August 18, 2021 Chief Justice Boatright letter to Vice Chair Prince. After continuing back and forth about not providing requested information, the Chief Justice stated “One possible approach to addressing the Commission’s concerns is for the Commission to enter into an Access Agreement with the Judicial Department.” But the Chief Justice cautioned, “An Access Agreement, however, cannot circumvent the agreements to which the Department is bound, so records may still require a subpoena.” Notably, the Chief Justice introduced a distinction between records that the Department could voluntarily disclose through this proposed “access agreement” and other records that would require a subpoena regardless of whether the Commission agreed to the proposed “access agreement.”

The “agreements” being referenced were not identified. However, the June 11th letter from Mr. Vasconcellos stated with respect to Allegation Three, “There was no settlement agreement with the ... law clerk...” (This was in response to the Chair’s May 18th specific request at page 5, bullet 3 for a copy of any settlement agreement related to this allegation.) Thus, the “agreements” did not appear in context to relate to Allegation Three, the only category of documents on which a subpoena had been requested.

The Chief Justice assured the Commission that “Where the law allows the Department to provide the Commission with the information requested, it has done and will continue to do so.” While this statement appears to be a reassuring commitment to transparency, it was misleading. The objective facts later revealed by the Department are that, in this same time frame, the Department gathered 12,000 relevant documents that could be readily produced. As a matter of objective mathematics, the Department withheld from the Commission 99.9167% of these documents (withholding 11,990 of 12,000 assembled documents).

October 12, 2021 RCT, Ltd. Contract. The Department executes its agreement with Robert Troyer/RCT, Ltd. The agreement, in contrast to the Department’s responses to the Commission, contained express terms requiring that the Department provide access to information, material,

and personnel within its control. Specifically, the RCT, Ltd Contract provided, in relevant parts:

Exhibit A-1. Scope of Work.

7. The Judicial Department's Roles and Responsibilities:

* * *

B. Use all available authority to provide access to all documents, including but not limited to business and technical documents, and documents in the possession of current or former employees, necessary for Contractor to complete the tasks identified in this Agreement.

* * *

E. Identify and use all available authority to attempt to ensure access to, and cooperation from, individuals and subject matter experts, including current and former employees, as requested by the Contractor.

The provisions of this agreement would later be referred to by both Chief Justice Boatright and Robert Troyer in their legislative statements as the Department giving “unfettered access” to the RCT, Ltd. investigation.

In contrast to the RCT, Ltd. Contract, the “Access Agreement” later proposed by the Department to the Discipline Commission did not contain commitments to provide such document access. The “Access Agreement” finally executed between the Department and the Commission also did not contain such a provision. The Department’s various representations that the agreement it proposed to the Discipline Commission was, in material terms, the same as those entered with other investigations is simply false.

Oct.-Nov. 2021 During his hearing appearance before the Interim Committee on July 12, 2022 (at 3:19 p.m. and 3:27 p.m.), Robert Troyer testified that the Department provided his investigation with access to its “Relativity” database of over 12,000 documents with additional documents produced upon request. As of the date of drafting this

Appendix in August of 2022, the Discipline Commission has not been provided with this form or level of access to these records.

On or shortly before November 22, 2021, the Department's attorneys working with the Supreme Court justices provided an AG working with the Commission on the funding issues a draft "Access Agreement." The "Access Agreement" did not commit to providing the Commission with access to the records it sought.

The lawyers had several oral communications. Right or wrong, the Commission understood that the Department wanted an assurance that the Commission would not argue that a production of records to it would be a waiver of any claims of privilege or confidentiality. After ten months of negotiations, the Department had not explicitly identified a single actual claim of privilege or confidentiality.

In the initial discussions, the AG's representing the Department assured the Commission's counsel that no subpoena would be needed to obtain production of requested records. The Department's counsel would later reverse this position and begin asserting that a subpoena *and* an "access" agreement would be required for production of any non-public records. This was an expansion of the 2021 position of Mr. Vasconcellos that a subpoena was only needed for documents relating to Allegation Three.

In discussions among the lawyers near the turn of the year, the counsel were discussing the anticipated subpoena. The Department's lawyers discussed potential prerequisites to accepting service of process for the subpoena. Ultimately, the Department chose not to impose prerequisites to accepting service of process.

December 16, 2021 Commission counsel sends subpoena to Department counsel. The Department accepted service of process on January 5, 2022.

December 17, 2021 Regular bimonthly meeting of Commission. The Supreme Court's OARC, acting as Special Counsel in an unrelated case, announced a new interpretation of the Rules of Judicial Discipline and asserted that the Commission has no subpoena authority or other authority to compel discovery prior to the filing of formal proceedings under Rule 18.

January 11, 2022 Chief Justice Boatright telephone call to Executive Director Gregory. Chief Justice Boatright notifies ED Gregory that David Migoya and *The Denver Gazette* had submitted a records request under PAIRR2. ED Gregory confirmed that the Commission had received a similar request and had drafted a response explaining that PAIRR2 does not apply to the Commission's records. Chief Justice Boatright further explained that it believed PAIRR2 required the Department to produce a letter from the Discipline Commission as well as an email from ED Campbell.

Following a request from ED Gregory, Chief Justice Boatright directed SCAO Legal Counsel Terri Morrison to provide the Commission with the substance of the underlying PAIRR2 request and the documents actually provided. The Department's response to the PAIRR2 request included: 1. The February 22, 2021 press release published by the Commission with a cover email from ED Campbell to Chief Justice Boatright, and 2. The Commission's February 23, 2021 letter to Chief Justice Boatright (described above) also with a cover email from ED Campbell. Although additional PAIRR2 requests to the Department followed on related topics, the Department did not continue to copy the Commission with those requests or what the Department produced.

January 28, 2022 Pursuant to a request by Chief Justice Boatright, the Commission assembled in the Ralph L. Carr Judicial Center and met with Department leadership (including Chief Justice Boatright, Associate Justice Monica Marquez, Colorado Supreme Court Attorney Regulation Counsel Jessica Yates, State Court Administrator Steven Vasconcellos, and Chief Justice's Counsel Andy Rottman). The stated purpose of the meeting was to address renegotiating the 2010 MoU. However, Chief Justice Boatright raised the Department's request for a case-specific "Access Agreement" and the lack of progress in document production related to the Masias issues. He stated that the Court needed an assurance that production of records to the Commission would not waive any claim of privilege of confidentiality. A Commission member advised the Chief Justice that the Commission had already given this assurance in writing and that Colorado law also already provided this assurance through the state

constitution, through statute, and by rule. The Chief Justice said that this was not enough and that it had to be done through an agreement but gave no further explanation. The Commission assured the Chief Justice that its prior non-waiver commitment could also be provided in the form of an agreement between the parties.

During the meeting, the Chief Justice represented to the Commission members that the Department was in full compliance with the 2010 MoU and that no case had been identified where the required reporting did not occur. This assertion was erroneous. Even the limited information that the Department had disclosed related to the “Memo” confirmed that the two instances involving still active judges had not been timely disclosed. And this observation is limited to just those unreported cases listed in the “Memo.”

Three witnesses confirm these events. Additionally, these material facts are supported by a contemporaneous secondary source document.

Early 2022 The lawyers continued to negotiate the “Access Agreement” but made little progress. The Department lawyers included material terms beyond those described by the Chief Justice that were not acceptable to the Commission. The Commission requested terms assuring full disclosure which were not acceptable to the Department. These points can be identified by reviewing the negotiating correspondence if needed.

February 7, 2022 Chief Justice Boatright under cover of the Supreme Court of Colorado publishes a statement addressed to all “Justices, Judges, and Judicial Department Personnel” commenting on findings made in a concurrently published “Executive Summary of Fraud Hotline Investigation Report” produced by the Office of the State Auditor dated February 4, 2022. The Executive Summary describes the Office of the State Auditor having “obtained and reviewed more than 16,000 Judicial Branch Documents.”

February 24, 2022 at 1 p.m., Commission Special Counsel met with the Department’s attorneys to discuss ongoing discovery issues. The Department’s counsel asserted that the Commission did not have subpoena authority until Rule 18 formal proceedings are pending.

The Department's counsel advised that if the parties could not reach agreement on the "access" terms proposed by the Department, the Department would seek to quash the Commission's subpoena and expressed confidence that the Supreme Court would sustain their objection.

March 10, 2022 ED Gregory letter to Chief Justice Boatright. ED Gregory describes parts of the January 28th meeting and forwarded a draft "Access Agreement" reciting the terms that Chief Justice Boatright had requested.

The Chief Justice's stated terms, however, were not accepted. More rounds of negotiation letters followed and continued until the General Assembly enacted new legislation, SB 22-201, defining the issues to be addressed in such an agreement.

May 20, 2022 Governor signs into law SB 22-201, which became effective immediately and imposed a statutory duty of disclosure on Department.

June 22, 2022 Chief Justice Boatright published the report of RCT, Ltd. with commentary through his "Statement from Chief Justice Brian D. Boatright Regarding Investigation into Leadership Services Contract."

June 29, 2022 The Department and the Commission execute an "Access Agreement." The terms of the agreement were those defined by SB 22-201. The result was that the terms to which the Commission had objected, and some terms to which it had previously acquiesced, were removed. However, the term assuring full disclosure by the Department that the Commission had requested was also removed.

July 11, 2022 Chief Justice Boatright, again under cover of the Supreme Court of Colorado, publishes the ILG, LLC report with commentary through his accompanying "Statement from Chief Justice Brian D. Boatright regarding ILG investigation and assessment of Colorado Judicial Branch workplace culture."

Summer, 2022 Early communications with the leadership of the Department implied that the Department would release the material records to the Commission only after the Department released publicly the results of its privately conducted investigations. This was not stated explicitly

but, with hindsight, was suggested. As the events unfolded, the Department did not produce the material records until after legislation was enacted requiring them to do so and, even then, not until after the public release of reports from the investigations that the Department commissioned.

August, 2022 As of this writing, the document database (reportedly containing 12,000 documents) provided to Mr. Troyer in November of 2021 has not been provided to the Discipline Commission. The Department has produced to the Commission just under 4,000 of the documents requested. Approximately two-thirds of the documents provided to Mr. Troyer continue to be withheld from the Discipline Commission.