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Please accept this letter as a Request for Evaluation of the current members of the Colorado Supreme Court concerning its behavior surrounding the Mindy Masias contract matter and its aftermath. Should the Commission desire more detail please so advise.

The foundation of our government was built on a deep and abiding respect for the Rule of Law and the belief that no person or entity is above the law. Our judicial system is guided by long established principles, rules, processes and ethical considerations that all judges take an oath to obey. As the commission is well aware, it has jurisdiction over all Colorado state judges, including the Colorado Supreme Court. Rule 5 of the Colorado Rules of Judicial Discipline provides the grounds for judicial discipline.

The Colorado Constitution requires that any allegation of judicial misconduct must be referred to the Colorado Commission on Judicial Discipline.

Fundamental to the American commitment to the Rule of Law is that judicial disputes be decided by neutral decision-makers. Confidence in the system is severely undermined if the public believes an outcome has been determined prior to the commencement of an action or during the course of a proceeding and prior to a thorough inquiry of the contested matter. Similarly, all confidence would be lost if the public believes the guilt or innocence of an individual is determined before the presentation of evidence. The same result occurs if the court determines the credibility of witnesses prior to a court proceeding. The Colorado Supreme Court failed to respect these established principles during the Masias inquiry.

Rule 2.10(A) provides that a judge "shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might interfere with a fair trial or hearing." It was distinctly possible the Supreme Court might be called upon to review matters concerning the Masias contract through litigation involving civil, criminal or judicial misconduct proceedings.

As early as February 4, 2021, Chief Justice Boatright issued a statement concerning an article that appeared in the Denver Post alleging that the judicial department entered into a contract with Masias to keep her from divulging judicial misconduct that occurred during the tenure of Chief Justice Nathan Coats. Boatright allegedly denied in the article that Chief Justice Coats and his counsel, Andrew Rottman, would ever authorize court resources to silence a blackmailer and any statement to the contrary was "simply false". The allegation was not referred to the Judicial Discipline Commission.

The denial was issued without a full investigation and failed to follow the Constitutional requirement that any allegation of judicial misconduct be referred to the Judicial Discipline Commission. Boatright's failure to comply with the Constitution and alleged violation of Rule 2.10(A) are grounds for discipline.

Boatright violated Rule 2.10(B) which provides a "judge shall not, in connection with any cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office." Yet, Boatright announced that the court would be hiring private counsel to investigate the allegations and "clear those wrongly accused." It would be reasonable to believe that a pledge or promise was made prior to an investigation and ensured an outcome that would absolve the court of any misconduct. He referred to Coats and Rottman as "dedicated public servants." Opined that he and the other justices have "full confidence" in a judge who was alleged to have committed acts of judicial misconduct. Clearly, these statements indicate the Chief Justice and the other justices determined the credibility of witnesses prior to a thorough and fair investigation and, presumably, through the receipt of ex parte communications as prohibited by Rule 2.9.

Chief Justice Boatright violated Rule 2.10(A) and 2.10(B) of the Colorado Code of Judicial Conduct by commenting on an impending matter and making promises that could reasonably be expected to affect the outcome of the dispute and are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Rule 2.9. Ex Parte Communications (A) provides "A judge shall not initiate, permit, or consider ex parte communications made to the judge outside the presence of the other parties or their lawyers concerning a pending or impending matter...". Rule 2.9(C) provides, "A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." Boatright announced on February 16, 2021, that he would be briefed weekly on all "misconduct complaints across the department to ensure each incident is fully investigated and acted upon as appropriate without delay." If he did so, Boatright violated Rule 2.9 by presumably receiving ex parte communications. Not only did it appear he was requiring and receiving ex parte communications, but failing to require that the judicial misconduct complaints be referred to the Commission on Judicial Discipline pursuant to the Constitution. I submit this fiat placed a cloud over the person, persons, or entities that might be the subject(s) of the investigation concerning the impartiality of the court system as prohibited by Rule 2.10(B).

Rule 2.11(A) provides that a "judge shall disqualify himself or herself in any proceeding which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding;" (2)(d) "The judge knows that the judge ..is likely to be a material witness in the proceeding;" (4) "The judge... has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy;" (5)(c) "The judge was a material witness concerning the matter."

The Supreme Court must disqualify itself pursuant to Rule 2.11. I submit the Supreme Court has a personal bias against those who disagree with its position concerning the Masias controversy by vouching for the credibility of certain witnesses as previously discussed. At the very least, the Chief Justice appears to have personal knowledge of facts that are in dispute. In order to determine the

validity of the dispute it will be necessary to determine the role and knowledge of each justice as the situation unfolded which means each justice is likely to be a material witness. The Chief Justice has made public statements concerning the credibility of certain witnesses, commented on the validity of certain claims and their resolution and has indicated on at least one occasion that he and the other justices have “full confidence” in a judge who was alleged to have committed acts of judicial misconduct. Any justice who has any knowledge of this matter from within the court would be a material witness. For example, it has been reported that one justice indicated she learned about circumstances concerning Masias’ retirement and/or future job sources from others.

I strongly request that the Commission thoroughly investigate these allegations and reach the appropriate decisions including the need for the Colorado Supreme Court to recuse from further proceedings in this matter and to forthwith comply with the rules concerning judicial discipline. I would further suggest that the Commission review other reports of judicial misconduct documented in the ILG report that may have not been thoroughly investigated and may have provided misleading conclusions.

I would appreciate being informed about the progress and conclusion(s) of the request to the extent permitted by the rules.

Respectfully submitted,

Dennis Maes