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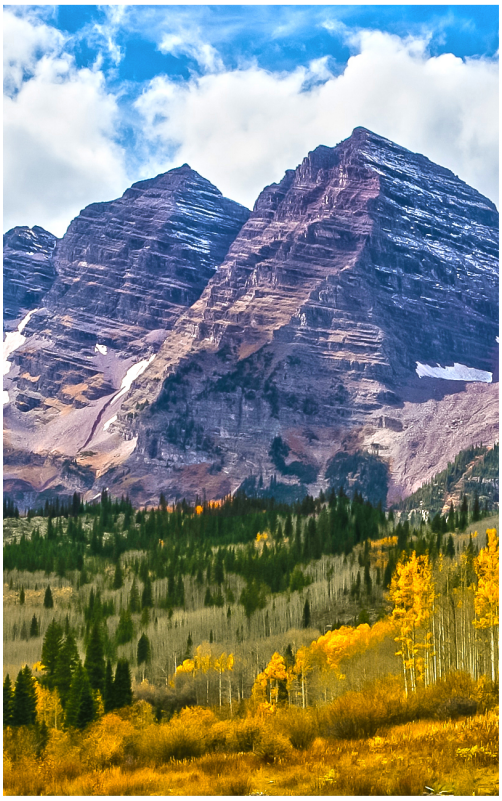
STATE COURT ADMINISTRATOR'S OFFICE



NOVEMBER 2020 PERFORMANCE AUDIT

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DIANNE E. RAY, CPA
STATE AUDITOR

November 18, 2020

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the State Court Administrator's Office. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the State Court Administrator's Office.

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REPORT HIGHLIGHTS

STATE COURT ADMINISTRATOR'S OFFICE

PERFORMANCE AUDIT, NOVEMBER 2020

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CONCERN

Overall, we found that the State Court Administrator's Office (SCAO) should improve its administrative framework to increase accountability and cultivate public trust in its operations, including improvement to controls over awarding voluntary separation incentives and sole source contracts, staff use of paid administrative leave and procurement cards, and human resources document retention.

KEY FINDINGS

- The SCAO awarded $518,000 in voluntary separation incentives to nine staff without all of the required approvals, without targeting the specific positions to receive incentives, and without knowing what the maximum payout amounts would be.
- For 3,600 of the 13,710 hours (27 percent) of administrative leave granted by delegated discretion, there were no records of the reasons the leave was granted.
- We identified 102 instances of staff who were granted, in total more than 1,060 hours of paid administrative leave above the "normal" amount that most staff received, including two staff who received more than 300 of these hours.
- The SCAO did not maintain documentation required to support decisions and actions taken in 10 Family Medical Leave Act cases and two disciplinary actions.
- We found that 6 of 10 sole source contracts awarded during the audit period, totaling up to $3.87 million, did not include sufficient documentation to support the decisions to award the contracts. One contract was awarded to a former SCAO employee who had resigned 6 days before the sole source justification was signed.
- We identified issues with the approvals for 30 of the 100 procurement card purchases (30 percent) we reviewed totaling $49,500.
- We identified problems with the SCAO's oversight of and accountability for its human resources and financial services functions that raise questions about the efficacy of the SCAO's system of internal control, including, in particular, its culture of accountability.

BACKGROUND

- The Chief Justice of the Colorado Supreme Court appoints a State Court Administrator who heads the SCAO, which had 260 FTE and about $47 million in expenditures in Fiscal Year 2020.
- The SCAO provides administrative services, including financial (e.g. budgeting, procurement), human resources, and IT management services to the Judicial Department. It also provides policy guidance on Supreme Court rules and directives to the district courts.

KEY RECOMMENDATIONS

The SCAO should implement written rules, policies, and procedures for:

- Offering voluntary separation agreements that specify who must approve the incentives, what strategic goals the incentives will serve, and what types and maximum amounts will be paid out.
- Defining the appropriate uses for paid administrative leave, requiring documentation and oversight of its usage, and establishing limits on its uses for certain purposes.
- Properly securing and storing all human resources documentation.
- Sole source contracting, including establishing required approvals and identifying required justification information, and prohibiting contracting with former employees within a specified time after resignation.
- Improving controls over the use of procurement cards, including who may serve as a "budget authority," that take into account the proper segregation of duties.

The SCAO should implement an effective system of internal control that fosters a culture of integrity, including implementing policies and monitoring activities to ensure that controls are working properly and staff adhere to Rules.

The SCAO agreed with these recommendations.

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CHAPTER 1

OVERVIEW OF THE STATE COURT ADMINISTRATOR'S OFFICE

The State Court Administrator's Office (SCAO), established in the Colorado Constitution and state statutes, provides centralized administrative support for the Colorado Judicial Department (Department), which includes more than 300 judges and 3,500 staff who work in trial courts (county, district, and water), appellate courts, and probation services. The SCAO operates directly under the Colorado Supreme Court (Supreme Court) and the Chief Justice, who is the executive head of Colorado's judicial branch of state government.

SCAO ORGANIZATION AND OPERATIONS

The SCAO consists of approximately 260 full-time equivalent (FTE) employees. These employees are overseen by the State Court Administrator, who is appointed by the justices of the Supreme Court and is ultimately responsible for ensuring that all duties, whether assigned by the Supreme Court or established in statutes, are accomplished [Section 13-3-101(1), C.R.S.]. These duties include, in general, providing administrative and technical support and centralized guidance to court staff and judges; developing and implementing operating standards and guidelines; and reporting information, statistics, and recommendations to the Supreme Court and General Assembly on operations (e.g., case management statistics for judges, court docket information, and annual operating budgets). Consistent with previous years, the current State Court Administrator, who was appointed in October 2019, has organized the SCAO into six divisions:

- **EXECUTIVE DIVISION**—headed by the State Court Administrator and includes the SCAO's legal team; oversees all SCAO operations to support the courts as well as all SCAO employees.

- **FINANCIAL SERVICES**—oversees the financial management of the Department, including developing and managing budgets; establishing fiscal rules, policies, and procedures; overseeing procurement; and executing internal audits.

- **HUMAN RESOURCES**—develops and manages the personnel system for the Department, including maintaining and interpreting judicial personnel rules and establishing related procedures; facilitating and retaining documentation for Family and Medical Leave requests, disciplinary actions, and employee settlements; overseeing the Department's record of employee timekeeping and leave, the Judicial Employee Time Recording System (JETRS); and coordinating SCAO staff benefits, trainings, and conference attendance.

- **INFORMATION TECHNOLOGY SERVICES**—provides technical support, engineers and maintains system and network infrastructure, and manages information security for all court buildings and Department offices.

- **COURT SERVICES**—oversees administrative processes and logistics for all parties who participate in court proceedings, including coordinating various services for internal and external court programs, such as assisting self-represented parties navigate court processes and scheduling; providing language access as needed; and implementing the statutory "Family Friendly" court program [Section 13-3-113(4), C.R.S.], which provides, in part, child care services as needed.

- **PROBATION SERVICES**—oversees probation policy and program development, facilitates collaboration across state departments involved with probation services, educates parties on probation as an alternative to incarceration, and coordinates trainings for and evaluations of probation staff.

Under Section 13-3-106, C.R.S., the State Court Administrator is responsible for preparing the Department's annual operating budget for approval by the Chief Justice and for disbursing funds that are appropriated by the General Assembly to administer the Department. Exhibit 1.1 shows the total annual expenditures of the SCAO, as well as the administration expenditures of the Department that the SCAO oversees.

EXHIBIT 1.1. SCAO AND JUDICIAL DEPARTMENT ADMINISTRATION EXPENDITURES (IN MILLIONS) FISCAL YEARS 2017 THROUGH 2020

	2017	2018	2019	2020
SCAO Expenditures	$41.8	$43.2	$44.5	$47.0
Department Administration Expenditures[1]	$97.0	$103.0	$104.3	$119.3
Total Administration Expenditures	$138.8	$146.2	$148.8	$166.3

SOURCE: State Court Administrator's Office analysis of state accounting system data.
[1]The SCAO has minimal oversight of approximately 50 percent of these expenditures, as certain funds in this category are distributed to judicial districts based on formulas, such as staffing models.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. The SCAO received public attention in July 2019, when media reports cited concerns with wasteful spending, excessive use of paid administrative leave, and potential fraud.

Audit work was performed from March 2020 through November 2020. We appreciate the cooperation and assistance provided by the SCAO management and staff during the audit.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a

reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to determine if the SCAO had controls in place to ensure responsible stewardship of state resources through its (1) personnel leave policies and practices and (2) purchasing policies and practices. This included evaluating the SCAO's use of paid administrative leave, Family and Medical Leave, disciplinary investigations, employee separation agreements, and administrative expenditures made through the SCAO's procurement process, purchasing cards, and staff reimbursements.

The scope of the audit did not include a review of court operations or the various independent agencies within the Judicial Branch (e.g., the Office of the Child Representative, Alternate Defense Counsel, and the Public Defender), which are not supported by the SCAO and are not subject to the Supreme Court rules implemented by the SCAO.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed applicable state and federal laws and rules, Chief Justice Directives, Department rules, and SCAO guidance. Interviewed SCAO executive management and legal, human resources, financial, and procurement staff to gain an understanding of SCAO operations and application of criteria.

- Reviewed all available documentation regarding the SCAO reorganization and voluntary separation incentive program and contracts, enacted in Fiscal Year 2019. This included a review of payroll and benefits data for each employee who received incentives to calculate total costs.

- Analyzed paid administrative leave data recorded in JETRS, and reviewed other available documentation maintained for instances when an individual employee was awarded a large

amount of leave, to assess compliance with Department requirements; compared SCAO leave usage and approval to leave provided to executive branch agencies; and identified statistically normal ranges of approved administrative leave and outliers for Fiscal Years 2017 through 2020. This included a review of all available documentation regarding disciplinary investigations (e.g., complaints, investigative work, outcomes) for employees placed on paid administrative leave during these investigations.

- Reviewed all available Family and Medical Leave Act (FMLA) documentation (e.g., medical certificates, designation notices, notice of eligibility and rights, workers compensation first report of injury) and related employee leave usage for FMLA requests approved during Fiscal Years 2017 through 2020.

- Reviewed all available documentation for the 10 sole source contracts that the SCAO awarded during Fiscal Years 2017 through 2020 (e.g., executed contracts, justification letters, records of negotiations with the vendor) to assess compliance with Department procurement rules, and compared the SCAO's practices with respect to sole source contracts to those required of executive branch agencies.

- Tested a sample of 100 procurement card (P-card) transactions from Citibank data for adherence to Department administrative accounting rules regarding required supporting documentation and authorizing signatures.

- Reviewed travel reimbursement and P-card documentation to identify and assess the reasonableness of out-of-state travel purchases (e.g., conference registration fees, flights, meals, mileage) made by executive leadership.

We relied on sampling to support our audit work. We selected a random statistical sample of 100 of the 9,975 purchases made using SCAO-issued P-cards from July 2017 through April 2020. The purpose of the sample was to determine whether the funds spent on purchases were appropriate and for the benefit of the Department.

Our sample was selected using the Monetary Unit Sampling (MUS) method. MUS focuses on the monetary units, such as individual dollars, and randomly selects individual monetary units for the sample. Because we used MUS, our sample represents the distribution of dollars spent on purchases; therefore, those purchases that had more associated dollars had a greater likelihood of being selected.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Specifically, our work related to internal control included the following components and underlying principles based on guidance issued by the U.S. Government Accountability Office:

EXHIBIT 1.2. SIGNIFICANT INTERNAL CONTROL COMPONENTS AND UNDERLYING PRINCIPLES REVIEWED DURING THE AUDIT

<table>
<tr>
<td>Control Environment
Demonstrate Commitment to Integrity and Ethical Values
Exercise Oversight Responsibility
Establish Structure, Responsibility, and Authority
Enforce Accountability</td>
<td>Control Activities
Design Control Activities
Implement Control Activities</td>
</tr>
<tr>
<td rowspan="2">Risk Assessment
Identify, Analyze, and Respond to Risks
Assess Fraud Risk</td>
<td>Information and Communication
Use Quality Information</td>
</tr>
<tr>
<td>Monitoring
Perform Monitoring Activities
Evaluate Issues and Remediate Deficiencies</td>
</tr>
</table>

SOURCE: U.S. Government Accountability Office, Standards for Internal Control in the Federal Government (Green Book).

Our conclusions on the effectiveness of those controls that were significant to our audit objectives, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in the remainder of this report.

A draft of this report was reviewed by the SCAO and the Chief Justice. We have incorporated the SCAO's and the Chief Justice's comments into the report where relevant. The written responses to the recommendations and the related implementation dates are the sole responsibility of the SCAO.

CHAPTER 2

STATE COURT ADMINISTRATOR'S OFFICE OPERATIONS

The Colorado trial and appellate courts, probation, and other services administered by the Judicial Department (Department) function, in large part, due to the administrative direction and support provided by the State Court Administrator's Office (SCAO). This includes providing all human resources, financial, and information technology services that the courts and Department staff require, as well as support for parties to court proceedings who need services such as language access, child care, and self-representation assistance. The SCAO's responsibilities vary widely, but are all overseen by the SCAO's executive head, the State Court Administrator, who is appointed by the justices of the

Colorado Supreme Court (Supreme Court) and provided broad decision-making authority. The State Court Administrator oversees the day-to-day administration of the courts and makes recommendations to the Supreme Court on rules to promulgate to effectively administer the courts, ensure that the Department operates with professionalism, and maintain public confidence and trust in the integrity of the judicial system. The State Court Administrator facilitates the establishment and implementation of the Judicial Department's Personnel, Fiscal, and Procurement Rules. This includes responsibility for establishing related policies, procedures, and other controls to, in part, set a tone for the Department that aligns with the Supreme Court's Code of Conduct, Chief Justice Directives, and the SCAO's published goal, "to cultivate public trust through the thoughtful stewardship of state resources."

Our audit work evaluated the SCAO's oversight and accountability of its human resources and financial services functions for Fiscal Years 2017 through 2020, including its practices for offering voluntary separation incentives to SCAO staff, providing SCAO staff paid administrative leave, retaining and securing personnel records, purchasing, and procurement. This chapter discusses our findings and recommendations regarding problems we identified in each of these areas. In addition, when applicable, we compared the SCAO's practices to what State Personnel Rules for executive branch agencies allow.

This chapter also discusses the overall impact of the deficiencies we found in the SCAO's system of controls and the tone the former State Court Administrator set for the organization, which, collectively, result in concerns about whether the SCAO has operated in a manner to foster a culture of integrity, ethical values, and accountability; maintain public confidence in the Department; and demonstrate good stewardship of state funds.

VOLUNTARY SEPARATION INCENTIVES

A voluntary separation incentive (VSI), often referred to as a buyout, is generally a lump-sum payment made to eligible employees who separate from employment through their voluntary resignation. According to the SCAO, although VSI programs are not explicitly addressed in the Judicial Department's Personnel Rules (Judicial Personnel Rules), the authority to enact a VSI program is included within the broader authority that the State Court Administrator has to reorganize staffing.

In Fiscal Year 2019, the former State Court Administrator, after presenting a reorganization plan to the Supreme Court, notified staff that to minimize the impact of potential layoffs because of the reorganization, a VSI Program was being established. All SCAO staff who were certified, classified employees were allowed to apply for a VSI that included receiving paid "administrative leave," which is discretionary leave the Department grants to individual staff, generally on a case-by-case basis. The former State Court Administrator approved all 10 employees who applied for the VSI Program. These employees then entered into a contract with the SCAO to voluntarily end their employment for a specified amount of paid administrative leave based on their years of service, as shown in Exhibit 2.1. One of the 10 employees received a VSI contract through a separate settlement agreement in consultation with the SCAO legal team, after the nine other contracts were executed by the former State Court Administrator.

EXHIBIT 2.1. VOLUNTARY SEPARATION INCENTIVE PROGRAM MONTHS OF PAID ADMINISTRATIVE LEAVE GRANTED BASED ON YEARS OF SERVICE

Years of Service	Months of Paid Administrative Leave	Employees
1-5 years	1	0
6-19 years	3	5
20+ years	4	5

SOURCE: State Court Administrator's Office contracts enacted under the Voluntary Separation Incentive Program.

During the paid administrative leave period, each of the 10 employees continued to occupy their position and receive compensation, but they did not report to work. For example, if an employee entered into a VSI contract in July 2019 and had been with the SCAO for 10 years, they would have received 3 months of paid administrative leave and their official date of termination would have been October 2019. During this 3-month period, the employee would have stopped reporting for work as of the July contract date, but the SCAO would have continued to list the individual as a current employee, which meant they would have received their regular monthly paycheck as well as all health, retirement, and other benefits. In addition, the employee would have continued to accrue leave hours based on their years of service, which the Department provides to all SCAO staff. In October, the SCAO would have changed the employee's status to separated and, at that point, paid out any leave the employee had accrued and did not use during their time with the SCAO.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

We reviewed the contracts executed for the VSI Program, which state [clause 16] that the agreement "shall not be valid until it has been approved by the Colorado State Court Administrator, the

Administrative Authority [generally an SCAO Division Director or the employee's supervisor], the Director of the Division of Human Resources and the Employer's Chief Financial Officer."

We also reviewed the plan for the reorganization that the former State Court Administrator presented to the Supreme Court in February 2019, which included, in part, positions to be eliminated or reclassified, a timeline for implementation, and the processes the SCAO would implement for the VSI Program. In an April 2019 email to staff, the former State Court Administrator announced the VSI Program, stating that there would be a 30-day comment period and, if approved by the Chief Justice, the VSI Program would be finalized in August 2019.

Additionally, although the SCAO does not have formal written rules, policies, or procedures for designing a VSI program or entering into VSI agreements, statute [Section 13-3-105, C.R.S.] states that "To the end that all state employees are treated generally in a similar manner, the [S]upreme [C]ourt, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments." As such, we also reviewed the requirements established for employees working in the Executive Branch, under the authority granted to the State Personnel Director by Section 24-50-208, C.R.S. Specifically, when executive branch agencies reorganize staffing using payout incentives, State Personnel Rule 4 CCR 801-1 requires them to establish a strategic plan for why staffing changes are needed and how incentives will be used. The strategic plan is defined by State Personnel Rules and, in part, must include an incentive plan with eligibility criteria, the types of incentives allowed, cash amounts or limits and payment methods, and a communication plan. These plans must be developed with the input of employees and managers.

State Personnel Rules allows for different types of financial incentive payments to be offered, including payment towards the continuation of health benefits, tuition or educational training, a portion of salary, or

placement on a reemployment list, but states that the "total post employment compensation payment and other benefits shall not exceed an amount equal to one week of an employee's salary for every year of his or her service, up to 18 weeks" [State Personnel Rules 3-51 and 52].

Additionally, the employee and department "must execute a written contract before payment of any post employment compensation" that must be provided to the state personnel director, and "must include…acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract," as well as the employee's agreement to waive any and all claims they may have or assert against the employer [State Personnel Rule 3-54].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that the SCAO cannot demonstrate that its VSI contracts received the required approvals or that the positions approved for incentives were consistent with the SCAO reorganization plan. Additionally, the total incentives the SCAO provided were not known prior to or at the time of enactment and appear to be overly generous when compared with the Executive Branch. Specifically, we found:

Lack of Required Approvals. We reviewed each of the nine VSI contracts executed by the former State Court Administrator and found that none of them had received all of the required levels of approval. In all instances, the VSI contracts had been approved by only the former State Court Administrator and were not signed by the other three parties required by the contract terms (the employee's Division Director, the Director of the Division of Human Resources, and the Chief Financial Officer). The SCAO informed us that the one other VSI contract went through a different review process because it was also part of a settlement agreement and it did not contain a requirement that other parties approve it. Additionally, each VSI contract was finalized

prior to the approval of the Chief Justice, as detailed in the announcement of the VSI Program.

THE POSITIONS APPROVED FOR INCENTIVES WERE NOT SUPPORTED BY THE SCAO REORGANIZATION PLAN. We requested and reviewed all of the documentation the SCAO maintained related to the VSIs, including planning information presented to the Supreme Court on the positions to be eliminated or reclassified and associated costs and anticipated savings. The SCAO provided planning information prepared by the former State Court Administrator that specified that two FTE positions, overall, would be eliminated. However, the former State Court Administrator did not target specific positions to receive the incentives when announcing the VSI Program to staff, but instead offered incentives to all certified, classified, non-contract staff. Had more than 10 people volunteered for the VSI Program, it is not clear how many voluntary separations the former State Court Administrator would have approved. According to current SCAO staff, they do not know the former State Court Administrator's rationale for offering the VSIs to all staff or how the 10 eliminated positions fit into the planned reorganization. Ultimately, the SCAO reorganization did not occur; however, all 10 VSI contracts were executed prior to the decision not to proceed with the reorganization.

TOTAL VOLUNTARY SEPARATION PAYOUT AMOUNTS WERE NOT KNOWN PRIOR TO ENACTMENT AND WERE MORE GENEROUS THAN WOULD HAVE BEEN PROVIDED BY THE EXECUTIVE BRANCH. We found that none of the 10 VSI contracts, including the one that was part of a separate settlement agreement, included a total or maximum incentive payout amount. Further, the executed VSI contracts did not specify any dollar amounts, either to establish a maximum or to identify salary amounts paid directly to the separating staff. SCAO staff confirmed that the SCAO did not calculate the total amounts of all payments made on behalf of any of the 10 employees prior to execution of the VSI contracts.

Although Judicial Personnel Rules are silent on the maximum payout amounts that staff may be offered under incentives, in contrast, the State Personnel Rules for executive branch agencies prohibit payouts in excess of the equivalent of 18 weeks salary, regardless of the type of financial incentive being used. As such, we compared the incentive provided by the SCAO to what executive branch agencies are authorized to offer their staff under State Personnel Rules.

We confirmed that the amount that the SCAO paid out to the 10 employees in salaries was comparable to the salary amounts that would have been paid out by executive branch agencies; however, we found that the SCAO incentives also included full benefits during the paid administrative leave period. Specifically, the SCAO paid employees between 1 and 4 months of salary, depending on years of service, as an incentive. In comparison, the State Personnel Rules allow executive branch agencies to pay an amount equal to 1 week of an employee's salary for every year of service, capped at 18 weeks. The salary amount that all but two of the employees received from the SCAO was less than the salary amount that they would have received from an executive branch agency; however, the SCAO *also* paid for each employee's full benefits for the 1- to 4-month period, including retirement and healthcare benefits. For example, during the 1- to 4-month period after each of these VSI contracts was executed by the former State Court Administrator, these employees were eligible to continue using their full medical benefits for scheduling appointments, surgeries and other procedures, and emergency care, for which the Department paid a portion of the monthly cost to retain medical insurance.

In response to concerns raised in this audit, the SCAO calculated its monthly share of employee benefits costs to be between $8,500 and $28,072 per person, based on salaries and the monthly plan premiums paid for all staff. EXHIBIT 2.2 shows benefits offered by the SCAO to employees and their associated costs to the State.

EXHIBIT 2.2. JUDICIAL DEPARTMENT EMPLOYEE BENEFITS

Benefit	State's Cost Per Employee (Monthly)
PERA[1]	21.2 percent of employee salary
Medical	$577.80 - $1,610.18 based on plan
Dental	$27.88 - $66.94 based on plan
Life & Accidental Death and Dismemberment Insurance	$7.66
Short-Term Disability	0.15 percent of employee salary
Medicare	1.45 percent of employee salary

SOURCE: State Court Administrator's Office benefits offering, based on the Division of Human Resources, within the Department of Personnel & Administration, Benefits Plan.
[1] Colorado Public Employees' Retirement Association (PERA) percentage includes the Amortization Equalization Disbursement (AED) and Supplemental Amortization Equalization Disbursement (SAED) for Judicial Department, as of Calendar Year 2019.

Further, since the SCAO delayed the separation date for the 10 employees with VSI contracts, they continued to accrue between 14 and 22 hours per month of "paid time off" that the Department provides to all staff to use for vacation and sick leave, and ultimately pays out to staff upon their separation. In comparison, for the Executive Branch, State Personnel Rules do not allow voluntary separation agreements to include delayed separation dates and continued leave accrual.

EXHIBIT 2.3 compares what the 10 separated SCAO employees received in voluntary separation incentives versus what they would have received under a similar type of agreement from an executive branch agency.

EXHIBIT 2.3.
VOLUNTARY SEPARATION INCENTIVE COMPARISON
STATE COURT ADMINISTRATOR'S OFFICE COMPARED TO THE EXECUTIVE BRANCH REQUIREMENTS

	Salary-Based Incentive		Leave Accrual		Benefits Paid		Total Post-Employment Compensation and Other Benefits	
Employee	SCAO VSI Program	Executive Branch Maximum	SCAO VSI Program	Executive Branch	SCAO VSI Program	Executive Branch	SCAO VSI Program Total	Executive Branch Total Maximum
1	$57,328	$59,969	$7,330	Not Allowed	$28,072	Not Allowed	$92,730	$59,969
2	$51,512	$53,493	$6,538	Not Allowed	$24,990	Not Allowed	$83,040	$53,493
3	$35,492	$36,857	$4,505	Not Allowed	$14,284	Not Allowed	$54,281	$36,857
4	$31,251	$43,271	$3,966	Not Allowed	$14,367	Not Allowed	$49,585	$43,271
5	$29,196	$20,620	$2,721	Not Allowed	$12,523	Not Allowed	$44,439	$20,620
6	$26,062	$35,013	$3,308	Not Allowed	$13,518	Not Allowed	$42,888	$35,013
7	$26,398	$27,413	$3,350	Not Allowed	$13,015	Not Allowed	$42,763	$27,413
8	$25,235	$26,205	$3,203	Not Allowed	$11,940	Not Allowed	$40,377	$26,205
9	$25,998	$15,287	$2,550	Not Allowed	$10,697	Not Allowed	$39,245	$15,287
10	$18,463	$25,128	$2,303	Not Allowed	$8,500	Not Allowed	$29,266	$25,128
TOTAL	$326,933	$343,256	$39,774	N/A	151,906	N/A	$518,614	$343,256

SOURCE: Office of the State Auditor calculations based on SCAO Voluntary Separation Incentive Program contracts and payroll records and State Personnel Rules.

WHY DID THESE PROBLEMS OCCUR?

The SCAO has not established controls, such as formal written rules, policies, or procedures, around offering voluntary separation incentives to employees. Specifically:

THE SCAO ENTERED INTO VOLUNTARY SEPARATION AGREEMENTS PRIOR TO RECEIVING ALL APPROVALS. While the announcement provided to staff about the VSI Program stated that the former State Court Administrator would seek the input of staff and final approval from the Supreme Court with respect to the reorganization, with a finalization date of August 2019, the first VSI contract was signed in May 2019 and the last in June 2019, prior to receiving Supreme Court approval. In addition, although the terms of the VSI contracts required approval from the employees' Division Director, the Director of Human Resources, and the Chief Financial Officer, only the former State Court Administrator signed the VSI contracts. There is no documentation to show that these other individuals reviewed or approved the VSI contracts. Further, the SCAO has a legal team to review contracts for procurement purposes and states that it generally obtains legal review for all contracts. However, according to SCAO staff, the VSI contracts were not drafted or reviewed by the SCAO's legal team prior to enactment or payout.

Current SCAO staff stated that the former State Court Administrator's rationale for not obtaining any legal or other review or input on the nine VSI contracts is unknown. As mentioned previously, one VSI contract was pulled into a larger settlement agreement with a former employee and this agreement was reviewed by the SCAO legal team. In contrast, for the Executive Branch, the State Personnel Director must receive all voluntary separation agreement contracts prior to their enactment, in addition to any other reviews that occur at agency executive directors' direction.

THE SCAO DID NOT TARGET STAFF IN THE POSITIONS IDENTIFIED FOR RECLASSIFICATION OR ELIMINATION IN THE REORGANIZATION PLAN. The employees in the specific positions designated for elimination, as reported in the documentation provided by the SCAO, were not targeted for voluntary separation, and only one of these employees actually accepted a voluntary separation.

THE SCAO DID NOT APPEAR TO CONSIDER RULES ESTABLISHED FOR THE EXECUTIVE BRANCH'S VSI PROGRAM OFFERINGS AND PRACTICES. State Personnel Rules have established parameters around the use of incentive payouts to safeguard state funds (e.g., limitations on any form of payout, a requirement that agreements include a maximum payout amount, a requirement that employees separate from employment prior to receiving any benefit). However, the SCAO did not include any of these or other types of provisions when creating its own VSI Program and agreements.

WHY DO THESE PROBLEMS MATTER?

The SCAO's VSI contracts amounted to costs of more than $518,000 paid to employees, which is more than 50 percent higher than the maximum costs allowed ($343,000) for executive branch agencies. Additionally, because the employees who took the incentives were not targeted with the goals of the SCAO Reorganization Plan in mind, it is unclear whether any of the incentives paid to employees through the VSI Program were spent appropriately or were in the best interest of the State. Ultimately, because the SCAO reorganization never occurred, only three of the 10 staff positions that received voluntary separation incentives were abolished. The other vacated positions have since been staffed or are open to be filled.

Further, the SCAO identified five *Principle Strategies and Goals* in its Fiscal Year 2020 Strategic Plan, one of which is to "[c]ultivate public trust and confidence through the thoughtful stewardship of public resources." The VSI contracts we reviewed challenge this principle because they lacked reviews and approvals, are not supported by

information detailing how they would help meet reorganizational goals, hid total costs to the State in unknown benefit amounts, and did not reflect requirements established for employees in other branches of state government. As a result, it appears that the interests of the State may not have been protected and the SCAO's actions may not have encouraged public trust or demonstrated thoughtful stewardship of state resources. In particular, when senior management takes actions that are not transparent and appear contrary to established practices, they set a tone at the top and encourage an organizational culture that has disregard for establishing and adhering to controls that help ensure state funds are spent transparently and with integrity.

RECOMMENDATION 1

The State Court Administrator's Office should establish and implement formal written rules, policies, and procedures related to voluntary separation incentives that:

A Specify who has to approve voluntary incentives prior to offering them to staff and who must sign any voluntary separation agreements prior to execution.

B Ensure that separation incentives are only executed with employees whose separation would further the strategic goals of any reorganization.

C Consider the types of incentives provided in the Executive Branch, detail the types of incentives that can be offered, and specify the total and/or maximum amount that will be paid out in incentives.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

A AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and will work with the Supreme Court to develop and implement rules within the Colorado Judicial System Personnel Rules about Voluntary Separation Incentives. These Rules apply to all employees of the Judicial Department whose positions are within the job classification and compensation plan established pursuant to Section 13-3-105, C.R.S., and Section 5(3) of Article VI of the Colorado Constitution.

The rules will specify the required approvals for offering incentives, as well as the necessary approvals for individual separation incentive agreements.

B AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and will ensure that separation incentives are executed in a manner that furthers the goals of the Judicial Department.

C AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office will consider the guidance provided in the executive branch when reviewing potential new policies and procedures related to Voluntary Separation Incentives, will detail the types of incentives that can be offered, and will require that agreements include a total or maximum amount that will be paid out in incentives.

PAID ADMINISTRATIVE LEAVE

The Department provides employees with different types of paid leave as a benefit of employment. For example, the Department offers staff "paid time off" (PTO), which is paid leave that can be used for any purpose, such as vacations, illness, or any other personal reason. Staff accrue PTO at a rate ranging from 14 hours to 22 hours per month, depending on how long they have been with the State. In addition, the Department provides staff with 4 hours per month of extended sick leave that can be used for certified medical events. Finally, the Department provides staff with paid "administrative leave" on an ad hoc basis.

Under the Judicial Personnel Rules, "administrative authorities" are authorized to grant paid administrative leave to employees "for reasons determined to be for the good of the [S]tate." The State Court Administrator is the administrative authority for the SCAO, but delegates the authority to grant leave to other staff, typically division directors, some human resources staff, and supervisors. Administrative leave may also be granted in instances when an individual employee is being investigated for possible wrong-doing or poor job performance and it is in the SCAO's best interest to not have the employee present in the office while the investigation is occurring. Finally, the SCAO has also used administrative leave as part of staff separation agreements and settlements.

Administrative leave, like all time-keeping at the SCAO, is tracked in the Department's database, Judicial Employee Time Reporting System (JETRS). Staff are required to enter their time, including any leave time, into JETRS, and supervisors are responsible for overseeing their employees' timesheets and leave usage.

During Fiscal Years 2017 through 2020, SCAO staff recorded a total of 25,520 hours of paid administrative leave in JETRS. Of these 25,520 hours, the SCAO reported that 13,710 hours were approved under Judicial Personnel Rules governing administrative or delegated authority's discretion to grant paid administrative leave, 3,070 hours were approved for disciplinary investigations, and about 2,650 hours were approved as part of settlement agreements. The remaining 6,090 hours were approved as part of voluntary separation agreements, which we discuss in the first finding.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND HOW WERE THE RESULTS MEASURED?

Overall, we found that the SCAO's use of paid administrative leave is not transparent and may not demonstrate good stewardship of public funds. We reviewed all of the documentation that the SCAO maintained related to the 19,430 hours of paid administrative leave taken by SCAO staff during Fiscal Years 2017 through 2020 as a result of: (1) delegated discretion to grant leave (13,710 hours), (2) active disciplinary investigations (3,070 hours), and (3) settlement agreements (2,650 hours). We assessed the SCAO's use of leave against requirements established in the Judicial Personnel Rules and compared the SCAO's practices regarding paid administrative leave to what State Personnel Rules for executive branch agencies allow. We identified the following concerns:

DISCRETIONARY ADMINISTRATIVE LEAVE

UNKNOWN OR QUESTIONABLE REASONS FOR GRANTING LEAVE. First, for 3,600 of the 13,710 hours (26 percent) of administrative leave granted by delegated discretion, we found that there were no records of the reasons the staff members were granted the leave. Judicial Personnel Rules [Rule 26.F.] allow administrative authorities to grant paid administrative leave to employees using their discretion for "reasons determined to be for the good of the [S]tate, including, but not limited

to, participate in community volunteer activities, and to participate in official activities of employee organizations." In some cases, paid administrative leave is granted to individual employees, but the Chief Justice and State Court Administrator can also grant leave on a Department- or office-wide basis, such as for holidays. The SCAO confirmed that there was no documentation to show the reasons that these 3,600 hours of administrative leave were granted, but contended that they were allowable because of the broad discretion to grant administrative leave allowed under Judicial Personnel Rules.

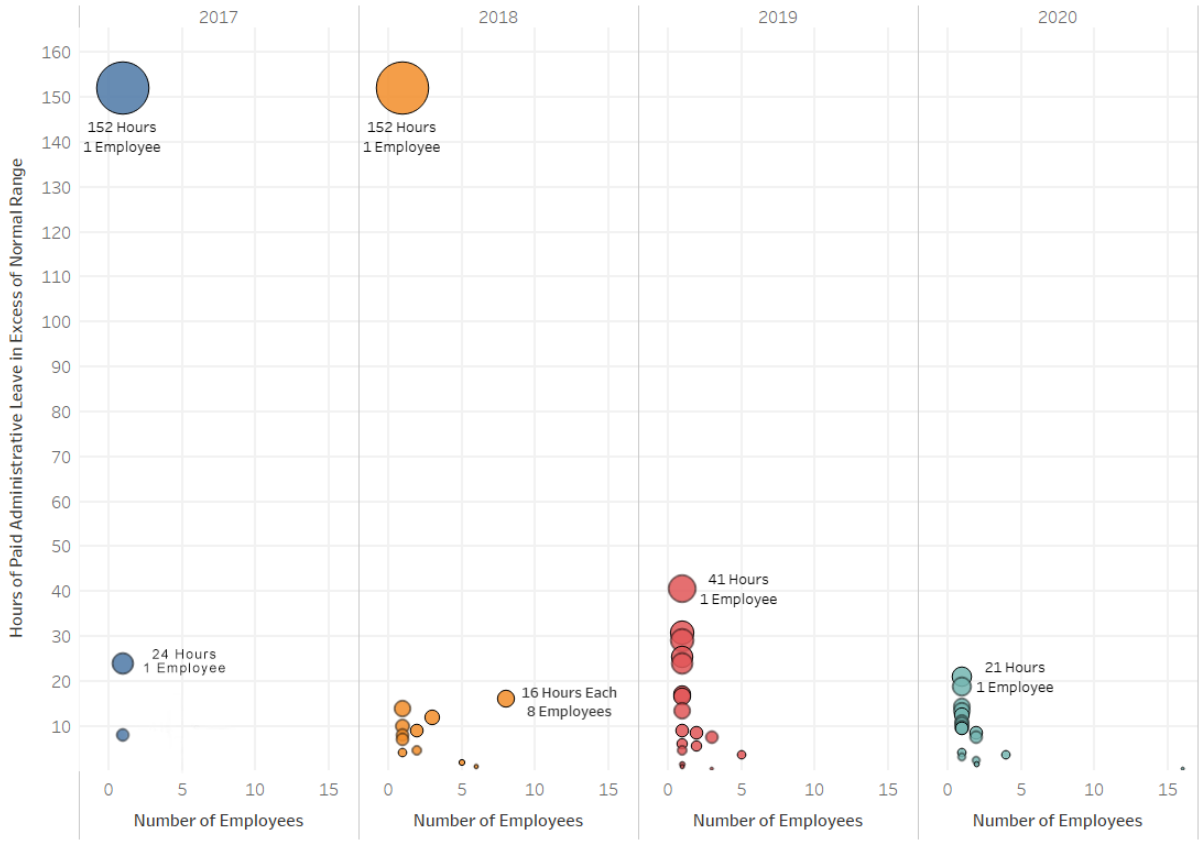
Second, for the remaining 10,100 hours (74 percent) of administrative leave recorded in JETRS that had a reason for the leave noted, we saw instances where it was not apparent how the leave would be "for the good of the State," based on the reasons provided. For example, we saw that paid administrative leave was taken for a "pre-operative appointment" and "family reunion," both of which are also examples of activities for which all staff members could reasonably be expected to use their PTO accruals. Without further information, we could not determine if administrative leave was appropriate for these purposes. The SCAO confirmed that it had no further information on the rationale used by the approvers as to how these purposes were for the good of the State, or why in the examples we pointed out, those employees were given additional leave.

NUMBER OF HOURS APPROVED FOR SOME STAFF APPEAR DISPROPORTIONATE. The Judicial Personnel Rules do not limit the number of paid administrative leave hours that may be granted to individuals based on delegated discretion. Therefore, we reviewed the total number of hours every employee received to determine if any employees were granted a disproportionate number of hours compared to other employees. Specifically, we calculated a statistically normal range of paid administrative leave the SCAO granted per staff person for each fiscal year we reviewed, based on the amounts of paid administrative leave recorded in JETRS. Based on this analysis, we determined that, depending on the year, between 8 and 48 hours of paid administrative leave per year, per person would be considered "normal"

for all SCAO staff. This includes time provided for events such as weather closures and extra holiday leave granted to all staff.

Through our analysis, we identified 102 instances of staff who were granted, in total, more than 1,060 hours of paid administrative leave above the "normal" amount that most staff received. Two employees accounted for more than 300 of the 1,060 hours. EXHIBIT 2.4 shows these 102 instances grouped by the number of hours of paid administrative leave granted above the normal range in each of the years we reviewed.

EXHIBIT 2.4. PAID ADMINISTRATIVE LEAVE TAKEN MORE THAN THE NORMAL RANGE[1] FISCAL YEARS 2017 THROUGH 2020



SOURCE: Office of the State Auditor analysis of SCAO paid administrative leave data for Fiscal Years 2017 through 2020.

[1] The normal ranges varied by years as follows: 2017—48 hours; 2018—8 hours; 2019—15.5 hours; 2020—27.5 hours.

As shown, two employees—one in Fiscal Year 2017 and one in Fiscal Year 2018—each received 152 hours above the normal range. According to the SCAO, there is no information to explain why these employees were granted this amount of administrative leave, and both employees are no longer with the SCAO. Other employees received between 8 and 41 hours of leave more than the normal range in each of the 4 fiscal years we reviewed.

The SCAO stated that it believes there are good reasons for many of the hours these employees received above the normal range, such as incentive awards for top performers, granting leave for individuals to do volunteer work, or weather closures that affect some employees more than others.

It would be reasonable and expected that some employees may warrant receiving additional leave awards above the normal range for reasons that the SCAO indicated. However, the SCAO could not articulate what amounts of leave would be appropriate for these types of reasons and reasonably meet the Department's requirement that discretionary leave awards must be for the good of the State. For example, it is not apparent that granting an individual 56 hours of leave to conduct volunteer work within a 6-month period, in addition to the established salary, benefits, and monthly accrued PTO that all staff receive, would be for the good of the State.

ADMINISTRATIVE LEAVE HOURS ALLOWED IN EXCESS OF STANDARD WORK DAY OR WEEK. We identified seven instances when employees used either 9 or 10 hours of administrative leave for Department holidays granted to all staff by the Chief Justice, rather than the Department's standard 8-hour working day or standard 8-hour holiday leave for statewide and national holidays (e.g., Memorial Day). According to the SCAO, it would have been appropriate for staff to take the extra hours of leave if they normally work a 9- or 10-hour day because, when the Chief Justice announces these types of holidays, the announcement states it is for the day and does not specify a limit on the number of hours granted.

We also identified five instances where employees used paid administrative leave in conjunction with time worked to accrue compensatory time, which the SCAO awards at time-and-a-half for any hours over 40 hours in a week. Specifically, five employees received a total of 9 hours of compensatory time during weeks where the paid administrative leave they recorded during the week caused them to exceed 40 hours for the week.

LEAVE USED FOR DISCIPLINARY INVESTIGATIONS

We identified nine cases in which the SCAO granted a total of about 3,070 hours of paid administrative leave to employees for disciplinary investigations. Judicial Personnel Rules [Rule 29.E.2] allow for an employee to be put on paid administrative leave during an investigation of the employee's conduct; relative to a pending disciplinary action when there is reason to believe that the employee's continued presence may endanger the safety or welfare of the public or the Department's employees, facilities, or property; or when there is reason to believe that the employee's presence may impair the investigation. The SCAO reported that these staff members had been placed on leave for disciplinary investigations; however, JETRS did not include any information on the reason for the leave, and the SCAO was not able to provide information to verify that two of the disciplinary investigations actually occurred. All of these employees did ultimately separate from the organization.

We found that the Judicial Personnel Rules do not limit the number of paid administrative leave hours that can be used for these investigations, nor do they establish any requirements for monitoring the time it takes to complete an investigation. The amount the SCAO granted for these nine cases averaged 341 hours, or 43 working days, per investigation. As shown in EXHIBIT 2.5, the nine SCAO investigations ranged from 27 days for the shortest investigation to 60 days for the longest.

EXHIBIT 2.5. HOURS OF PAID ADMINISTRATIVE LEAVE FOR INVESTIGATIONS

Case	Total Days
1	60
2	58.4
3	58
4	46
5	43.3
6	32
7	30.1
8	28.5
9	27

SOURCE: Office of the State Auditor analysis of SCAO paid administrative leave data for Fiscal Years 2017 through 2020.

For agencies within the Executive Branch, the State Personnel Rules require reporting to an agency executive director and the State Personnel Director for any paid administrative leave exceeding 20 consecutive working days (160 hours). This reporting includes the reason for the leave, start of the leave, end of the leave, and the final disposition of the case.

LEAVE GRANTED UNDER SETTLEMENT AGREEMENTS

During our review period, the SCAO also granted two staff members nearly 2,650 hours (331 working days) of paid administrative leave, as shown in Exhibit 2.6. The SCAO reported that these two staff members had been granted the leave as part of settlement agreements; however, JETRS did not include any information on the reason for the leave.

EXHIBIT 2.6. PAID ADMINISTRATIVE LEAVE GRANTED

Employee	Hours	Days
1	2,448	306
2	201	25.1
TOTAL	2,649	331.1

SOURCE: Office of the State Auditor analysis of SCAO paid administrative leave data from JETRS for Fiscal Years 2017 through 2020.

Judicial Personnel Rules are silent on the use of paid administrative leave for settlement agreements, although staff reported that it is common practice at the SCAO to use the leave for this purpose.

WHY DID THESE PROBLEMS OCCUR?

The problems we identified occurred primarily because the SCAO has minimal rules and policies governing the use of paid administrative leave.

First, Judicial Personnel Rules provide limited guidance on the appropriate uses of paid administrative leave, and the SCAO has not elaborated on the rules in policies and procedures to further define the reasons that discretionary leave can be approved, including whether it can be used for settlement agreements. According to the SCAO, the Judicial Personnel Rules provide broad discretion to the State Court Administrator and those staff delegated discretionary authority to grant paid administrative leave for any reason they determine to be for the good of the State.

Second, the SCAO does not require staff to document the reason for paid administrative leave in JETRS. For example, the reason that the two employees who were each granted 152 hours of discretionary paid administrative leave in excess of the normal range in one year was not documented in JETRS or in any other known place, and all of the individuals involved are no longer with the SCAO. As a result, the SCAO could not provide an explanation for why this leave was granted.

Third, the SCAO does not have policies or procedures for monitoring the overall use of paid administrative leave across the organization, nor does it require supervisory oversight of leave use. For example:

- The SCAO does not run routine reports from JETRS to determine how much administrative leave has been used in total and for what purpose, if certain staff members are receiving a disproportionate amount of administrative leave, or if certain delegated authorities tend to approve large amounts of leave.

- Although supervisors are responsible for overseeing staff work and leave time, they have not been given any guidance as to what they should take into account when determining how much administrative leave would be appropriate for an individual to receive.

- If an employee requests administrative leave and their request is not approved in JETRS before the month-end posting, the leave will still be processed and paid even though it has not been approved. Any leave processed in this manner will also not have a record of any approval given after the fact. We found that 119 of 352 individuals employed by the SCAO during our testing period (34 percent) entered more than 6,500 hours of administrative leave in JETRS, which were processed without an approval.

- According to SCAO staff, some divisions and supervisors monitor that employees have recorded leave type and amounts accurately in JETRS, but not all divisions and supervisors do so. The SCAO does not have procedures in place to ensure that this monitoring is performed uniformly and consistently across the organization.

Fourth, the SCAO has not established any limits on the total amount of paid administrative leave that can be (1) granted for discretionary purposes, (2) used while conducting disciplinary investigations, or (3) included in a settlement agreement, nor does the SCAO require reporting of leave over a certain amount. According to the SCAO, there

are a variety of circumstances that might lead to utilizing administrative leave for an employee, and each case is reviewed individually based on the conditions involved.

In contrast, State Personnel Rules include specific requirements and guidance governing the use of paid administrative leave, including appropriate uses, documentation, supervisory review and approval, and limits on the amount of leave that can be used for certain purposes. EXHIBIT 2.7 compares SCAO rules and practices regarding paid administrative leave and State Personnel Rules for the Executive Branch.

EXHIBIT 2.7. SCAO AND EXECUTIVE BRANCH ADMINISTRATIVE LEAVE POLICY AND RULE COMPARISON

Category of Rule	SCAO	Executive Branch
Allowable uses of paid administrative leave	Broad authority to grant leave determined to be for the good of the State.	An appointing authority[1] must consider prudent use of taxpayer and personal services dollars and the business needs of the department.
Tracking reason for leave	No requirement.	Departments must track, within time keeping systems, detailed reasons for administrative leave (e.g., community volunteer activity, incentive, investigation, parental academic leave).
Maximum hours that can be authorized	No limits.	Weather– typically no more than 2 hours National emergencies – 15 days Local emergencies – 5 days Military service – not to exceed 90 days Elections – 2 hours Transplant/bone donations – 2 days Election judge – 1 day
Paid administrative leave for investigations	No limits.	Any paid administrative leave that exceeds 20 consecutive working days must be reported to both the agency executive director and the State Personnel Director.
Use of excess hours in a workday for holidays	8-hour limit for state holidays. No limitation on taking leave for 9 or 10 hours for holidays granted by the Chief Justice.	Full-time employees may charge 8 hours of holiday time. If the employee typically works a longer day (e.g., 9- or 10-hour day), the additional hours must be worked during the week and/or personal leave or annual leave must be taken to backfill the difference.
Accrual of compensatory time	No rules prohibiting administrative leave as part of total time worked to accrue compensatory time.	Employees cannot earn compensatory time through the use of paid administrative leave.

SOURCE: Judicial Department Personnel Rules; Department of Personnel and Administration Classified Employee Handbook; Department of Personnel and Administration Technical Guidance for Time Off and Leave; State Personnel Rules.

[1] According to State Personnel Rules, appointing authorities include executive directors of the principal departments and presidents of higher education institutions, and their delegates, as appointed in writing.

WHY DO THESE PROBLEMS MATTER?

The SCAO does not demonstrate good stewardship of state funds when it (1) grants large amounts of paid administrative leave to employees, specifically costing more than $476,000 in state funds during Fiscal Years 2017 through 2020; and (2) is not always clear why the administrative leave was granted and whether it was for the benefit of the State. For example:

DISCRETIONARY LEAVE. The 3,600 hours of discretionary administrative leave where there was no record of why the leave was granted cost the State an estimated $156,300. Further, since employees were allowed to use administrative leave and not PTO for at least some activities, employees retained more PTO for other uses or retained the PTO to be paid out upon job severance. One of the employees who was granted 152 hours of administrative leave over the normal range, which amounted to $12,400 in salary during the leave, also left the SCAO while on leave. As a result, the employee was paid out nearly $34,800 for unused PTO when they left, which was the maximum allowable for employees.

DISCIPLINARY INVESTIGATIONS. The nine cases where paid administrative leave was granted for disciplinary investigations used about 3,070 hours, or 383 days, of leave, which amounted to more than $158,900 in salary costs to the SCAO. These employees also accrued PTO and received benefits during the time they were out on leave. Each of the employees separated from the organization at the end of their administrative leave and received the full payout of all PTO they had accrued.

SETTLEMENTS. The 2,650 hours of paid administrative leave granted for the two settlement agreements cost the SCAO more than $160,800 in salaries, plus $22,600 in PTO accrued during the time the staff were on leave. Using paid administrative leave instead of a lump-sum payment for settlements is not transparent and conceals the true costs of the settlements to the State. During our review of the financial records the

SCAO maintained for the audit review period, there was no indication the SCAO had made settlement payments to employees because the cost of the payments was absorbed in salaries. Only when we discovered large amounts of leave taken with no notation for why the leave was granted did the SCAO indicate that administrative leave hours were used for settlements. Therefore, within the SCAO financials, payments made for employee settlement agreements appear as normal payments, combined with other salary and leave payments to all employees. Additionally, at the time of the agreements, the full cost of the settlements was unknown because the SCAO was still paying benefits (e.g., healthcare and retirement) while the employees were on leave and the value of those benefits was not quantified in the settlement agreements.

RECOMMENDATION 2

The State Court Administrator's Office should ensure that it is using paid administrative leave responsibly and as a good steward of state funds by implementing policies and procedures that:

A Define the appropriate uses of paid administrative leave, including whether it can be used for settlement agreements.

B Require that employees record the reason that paid administrative leave was granted in the timekeeping system.

C Require oversight of paid administrative leave use, both at the organizational level and by supervisors, to verify that it is being used appropriately and the amounts used are reasonable. This may include running organization-level reports on the amount of administrative leave used to determine standards and identify outliers and providing guidelines on how to monitor that the amounts of leave approved for individual staff are appropriate.

D Establish limits on the amount of paid administrative leave that can be used for certain purposes. This could also include establishing threshold administrative leave amounts that would need to be reported to the State Court Administrator.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

A AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and will work with the Supreme Court to develop and implement rules within the Colorado Judicial System Personnel

Rules covering the use of paid administrative leave. These Rules apply to all employees of the Judicial Department whose positions are within the job classification and compensation plan established pursuant to Section 13-3-105, C.R.S., and Section 5(3) of Article VI of the Colorado Constitution.

B AGREE. IMPLEMENTATION DATE: JULY 2021.

The Judicial Department is in the process of implementing a new timekeeping and leave system that will enhance the overall functionality and reporting of time and leave for all Department employees. Some of the issues identified in the audit report are the result of the inadequacies of the legacy system used by the Department. The Department will utilize the enhanced features of the new system to require a documented reason for the use of paid administrative leave.

C AGREE. IMPLEMENTATION DATE: JULY 2021.

The Judicial Department is in the process of implementing a new timekeeping and leave system that will enhance the overall functionality and reporting of time and leave for all Department employees. Some of the issues identified in the audit report are the result of the inadequacies of the legacy system used by the Department. The Department will utilize the new timekeeping and leave system to design reports for use by Administrative Authorities and for Department-wide monitoring.

D AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and will work with the Supreme Court to develop and implement rules within the Colorado Judicial System Personnel Rules covering the use of paid administrative leave, including limits on the amount of administrative leave that can be used for certain purposes. These Rules apply to all employees of the Judicial Department whose positions are within the job classification and compensation plan established pursuant to Section 13-3-105, C.R.S., and Section 5(3) of Article VI of the Colorado Constitution.

HUMAN RESOURCES RECORDS RETENTION

Within the SCAO, the Human Resources Division is responsible for retaining and securing all personnel records. Proper maintenance and retention of personnel records helps to protect any organization, for example, in cases of wrongful termination, disgruntled employees, and other litigation threats in employment law. Some of the most important records of this regard include Family and Medical Leave (FML) case files, which include employee medical records and disciplinary investigation and action records.

Family and Medical Leave Act (FMLA). For employee FMLA requests, which allow all eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons, a variety of information must be submitted to the employer, including a completed medical certificate and medical status reports; Notice of Eligibility and Rights & Responsibilities paperwork; and a First Report of Injury for any FMLA event involving workers' compensation. Between Fiscal Years 2017 and 2020, the SCAO approved 135 of the approximately 170 FMLA requests it received from employees. The SCAO's approved FMLA requests resulted in about 24,500 hours of leave taken, of which about 21,700 hours (89 percent) were paid through employees' accrual of extended sick leave and/or PTO. The remaining 2,800 hours were taken as unpaid leave.

Disciplinary Investigations. Disciplinary investigations and actions are initiated by an employee's supervisor and can begin at any time when an employee is suspected of infringing on rules or failing to perform their duties as assigned, including, but not limited to, misconduct, violation of the law, or fraud. In instances when the employee's continued presence may endanger the safety or welfare of other staff, or impair the investigation, they can be put on paid administrative leave while their supervisor works with the Human Resources Division to conduct the investigation. In the event that

disciplinary or corrective action results, including termination, the Human Resources Division is responsible for maintaining records in the employee's personnel files, in part to defend the SCAO should the employee object to or appeal the results. For example, if an employee is terminated for cause, they can appeal the termination and a hearing officer adjudicates the matter. A final appeal to the Personnel Board of Review, consisting of eight members appointed by the Chief Justice, is allowed.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

We requested all SCAO personnel records for FMLA cases and employee disciplinary investigations and actions for Fiscal Years 2017 through 2020 and reviewed the information provided against the following document retention requirements:

- **FEDERAL LAW.** Federal law requires the retention of personnel and employment records, including FMLA files, as well as termination and separation documentation.
  - FMLA records must be kept for no less than 3 years [29 CFR 852.500 (b)].
  - Personnel and employment records shall be preserved by government agencies for 2 years [29 CFR 1602.31].

- **JUDICIAL DEPARTMENT.** The Judicial Department's Records Management Manual requires the Department to maintain certain human resources documentation for all employees, including documentation related to FMLA, for 10 years after separation. Given federal requirements for FMLA documentation, this would include documents such as:
  - Medical certificates
  - Notice of Eligibility and Rights & Responsibilities

- Designation Notice
- Workers' Compensation First Report of Injury
- Workers' Compensation Medical Status Report

For disciplinary investigations, documentation could include:

- Corrective Actions
- Disciplinary Actions
- Personnel Actions

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DO THEY MATTER?

Overall, we found that the SCAO has not maintained sufficient documentation to support decisions and actions taken in FMLA cases and disciplinary actions. Specifically, we found:

- **Family and Medical Leave.** We found that for 10 of the 135 FMLA cases (7 percent) approved during Fiscal Years 2017 through 2020, the SCAO could not demonstrate that the employees were eligible for the amount of FML approved or, in some cases, that the employees were eligible for FML at all. All 10 cases were missing at least one of the required forms, and some cases were missing multiple forms. EXHIBIT 2.8 shows the required documents missing for these 10 cases.

EXHIBIT 2.8. FMLA CASES MISSING REQUIRED DOCUMENTATION FISCAL YEARS 2017 THROUGH 2020

Required Documents	From	To	Purpose	Number of Cases Missing Document
Medical Certificate	Employee	Employer	Verifies: • the FMLA-qualifying reasons for leave from healthcare provider • the amount of leave needed	4
Notice of Eligibility and Rights & Responsibilities	Employer	Employee	Informs the employee of: • eligibility for FMLA leave or at least one reason why the employee is not eligible • the specific expectations and obligations associated with the FMLA leave request and the consequences of failure to meet those obligations	6
Designation Notice	Employer	Employee	Informs the employee: • whether the FMLA leave request is approved • the amount of leave that is designated and counted against the employee's FMLA entitlement • if medical certification is incomplete or insufficient and additional information is needed	1
Workers' Compensation Medical Status Report[1]	Employee	Employer	Verifies: • workers' compensation claim qualification • reasons for any leave/accommodation from healthcare provider • amount of leave needed	2
Workers' Compensation First Report of Injury[1]	Employee	Employer	• Notifies the employer and insurance provider of occupational injuries or illnesses that result in incapacity • Begins the workers' compensation claims process	2

SOURCE: Office of the State Auditor analysis of SCAO FMLA documents and data from Fiscal Years 2017 through 2020.

[1] Workers' compensation documentation is only required if the FMLA event also involves a workers' compensation claim.

The SCAO confirmed that it did not know what became of these required documents and, as such, cannot demonstrate whether these 10 employees qualified for their use of FML, which totaled more than 1,800 hours. These employees were paid for 935 of these 1,800 hours through extended sick leave, at a cost of about $40,500.

Further, under the Department's rules governing leave usage, the extended sick leave that employees accrue can only be used in FML cases and for medically certified events and, unlike PTO, is not paid out upon termination. If these employees were not actually eligible for FML, then this leave should not have been used. Instead, the employees would have had to use their accrued PTO, reducing any final payout or time that could be used for vacation. Thus, the SCAO may be providing an incentive for employees to request FML more frequently—accessing their accrued extended sick leave and allowing their PTO to accrue for greater payouts upon separation.

- **DISCIPLINARY INVESTIGATIONS.** We identified two of 11 cases during Fiscal Years 2017 through 2020 that the SCAO reports were disciplinary investigations, but it does not have documentation related to these cases, such as the allegations, complaints, outcomes, or any actions taken as a result of the investigations. The SCAO provided documentation to show that these two employees were placed on a total of more than 800 hours of paid administrative leave during these investigations. According to the SCAO, the human resources staff who would have conducted these investigations are no longer with the SCAO and there is no record of what occurred. Both employees resigned from the SCAO subsequent to the investigations.

  According to the U.S. Equal Employment Opportunity Commission (EEOC), when an employer takes disciplinary actions against an employee, the employer can be subject to employee claims alleging discrimination or retaliation. If the SCAO does not have documentation to support why a disciplinary investigation occurred, the outcome of the investigation, and the justification for any actions

taken, it could be difficult for the SCAO to defend itself against these types of claims, which could potentially result in a substantial monetary loss to the State.

The EEOC charges employers with the responsibility for securing and retaining sensitive employee information. Failure to do so can result in sanctions, civil monetary penalties and, in some cases, individual and criminal liabilities. In addition, employers can face sanctions and be sued for wrongful destruction of employment records. In 2019, the EEOC reported 36 recordkeeping and 237 breach of confidentiality violations nationally, resulting in charges filed against employers. Because the SCAO does not know what happened to the missing FMLA and disciplinary investigation documentation, it cannot show that personnel information was properly destroyed or secured and, therefore, could be at risk for such claims.

WHY DID THIS PROBLEM OCCUR?

SCAO policies and procedures do not require that staff maintain human resources information in a central, secure, location within the organization, or require contingency plans for retaining information in cases of sudden personnel changes. The SCAO reports that staff responsible for processing FMLA requests and maintaining the related documentation did not consistently store the documents, and there was limited oversight to ensure that the SCAO's decisions on FMLA requests were supported and complied with applicable FMLA requirements. When staff left the SCAO, remaining staff discovered that FMLA records were incomplete and there was no way to obtain the information.

Additionally, some documentation related to disciplinary investigations was not backed up to an SCAO shared drive and hard copies were not maintained. The SCAO reported that one former employee used their personal MacBook and associated Apple account and another used an SCAO MacBook, but with their personal Apple account, even after

being asked not to do so. Because these employees used their personal accounts, they were not connected to the SCAO shared drive or IT system, which stores and backs up information. The information was lost upon these employees' departure from the SCAO.

Also, according to the SCAO, an employee took records related to other employees' disciplinary investigations upon leaving the SCAO because the records were not secured. The *Standards for Internal Control in the Federal Government* (Green Book), issued by the U.S. Government Accountability Office and adopted by the Executive Branch by the State Controller, provide that employers should implement policies related to retention of records and continuity of business, including placing limitations on access to sensitive records, properly maintaining documentation, and developing a contingency plan to respond to sudden personnel changes.

The SCAO stated that it has not conducted any reviews, including through its internal audit division, of its record retention policies, practices, or controls and risks as they relate to FMLA and disciplinary investigations.

RECOMMENDATION 3

The State Court Administrator's Office (SCAO) should ensure that it properly secures and documents all human resources information by:

A Establishing policies and procedures requiring that all human resources documentation be stored in a secure shared file and training staff on these policies.

B Developing a contingency plan to respond to sudden personnel changes.

C Implementing a review process, including regular reviews by internal audit, to ensure that all required documentation is maintained in the appropriate files and the SCAO's policies and controls are adequate.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

A AGREE. IMPLEMENTATION DATE: JULY 2021

The State Court Administrator's Office agrees with the recommendation and will implement policies and procedures to require that all documentation is stored in a secure shared location and that staff are trained on those policies.

B AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office will ensure there is a contingency plan to respond to personnel changes so that personnel records and documentation are secured and accessible.

C AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and will implement processes to ensure that required human resources documentation is maintained and secured in accordance with Judicial Department policies. Furthermore, the internal audit unit will begin conducting regular reviews of the documentation requirements.

SOLE SOURCE PROCUREMENTS

Between Fiscal Years 2017 and 2020, the SCAO awarded a total of 163 contracts from a competitive solicitation process and 10 additional contracts that were established using sole source procurement. Government agencies use sole source contracting to procure goods and services from a single vendor, without competition, when only one vendor is capable of meeting the agency's needs. This method bypasses the bidding and vendor evaluation processes of competitive procurements. As such, sole source procurements present a greater risk that the agency may pay a higher price than could be obtained through competitive procurements and can create the appearance of providing preferential treatment to a contractor. Agencies often enact rules to help minimize sole source procurement risks by requiring documentation of the justifying circumstances.

The Department's Purchasing Fiscal Rules (Judicial Fiscal Rules), which the SCAO operates under, specify that the State Court Administrator is the final authority on and must authorize all procurements, including sole source procurements, but may delegate purchasing responsibilities. The State Court Administrator has delegated most purchasing responsibilities to the Purchasing Manager, who oversees day-to-day administration of the Department's purchasing program by acting as the principle contact for all staff with purchasing responsibilities; posting all solicitations; maintaining and updating the Judicial Fiscal Rules related to procurement; and establishing price agreements for products or services, where appropriate.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Judicial Code of Conduct states that employees shall "[p]erform all duties without favoritism and without improper influence by family, social or other relationships," and shall "[a]void impropriety or any activity that gives the appearance of impropriety."

Judicial Fiscal Rules establish the following requirements for all SCAO procurements, including sole source procurements:

- Every effort must be made to "assure that all persons who desire to do business with the Department…have a fair and equal opportunity to compete in fulfilling the Department's needs" [Section 1.2.1].
- Employees with purchasing responsibilities must strive to maximize the purchasing value of the Department's funds [Section 1.2.3].
- Purchasing Officials must maintain a file of purchasing records that includes all documentation related to the purchase, including contracts [Section 1.4.4.4].

Judicial Fiscal Rules also set the following requirements specifically for sole source procurements:

- All sole source procurements must be accompanied by a written justification that includes "sufficient facts, circumstances, and reasoning to substantiate that there is only one specific product or service that will meet the Department's need, that there is only one provider of that product or service, and an explanation as to why there are no other vendors suitable or acceptable to meet that need" [Section 2.3.2.1].

- The State Court Administrator must sign the written justification prior to any commitments being made (e.g., signing a contract with the vendor) [Section 2.3.2.2] and must authorize all sole source purchases [Sections 1.4.1.2–1.4.1.4].
- The Purchasing Official and/or Purchasing Manager must engage in and document negotiations with the identified sole source vendor regarding the price, delivery, and terms of the contract [Section 2.3.2.3].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

The 10 sole source contracts awarded by the SCAO between Fiscal Years 2017 and 2020 totaled $8.14 million. We reviewed all 10 sole source contracts against Judicial Fiscal Rules and identified issues with six contracts (60 percent) worth a total of up to $3.87 million, and on which $1.12 million was spent. Some contracts had multiple issues.

- In Fiscal Year 2019, the former State Court Administrator executed a sole source contract with a former employee for an internal leadership training program at an annual cost of $530,000 for up to 5 years and not to exceed a total of $2.75 million. The former employee had created their leadership training company while still employed by the SCAO. The employee submitted their resignation to the SCAO on March 15, 2019, with an effective date of March 19, 2020. On March 20, 2019, the former Director of Human Resources submitted a sole source justification to the former State Court Administrator to contract with the former employee's leadership training company. On March 25, 2019, the former State Court Administrator emailed the former employee with the signed sole source justification and indicated that the SCAO was moving forward with the contracting process. The former State Court Administrator executed the contract 11 weeks later, but at the direction of the Supreme Court, the contract was canceled 6 weeks after it was executed. The proximity of dates between when the employee resigned and when the sole source justification was

drafted and signed by the former State Court Administrator gives the appearance of impropriety and appears to be a violation of the Judicial Code of Conduct.

- For one contract worth about $244,700 for court reporting software and services, the SCAO did not maintain the executed contract, as required by Judicial Fiscal Rules.

- For four contracts, we found deficiencies in the SCAO's justification for using sole source procurement. Specifically:

  - One contract worth $44,800 for the creation of an "interactive learning exhibit" did not contain any written justification for using the sole source method. The SCAO confirmed that they did not write a justification for this contract.

  - Two contracts contained written justifications that were missing required statements to explain why there was only one service or one provider that could meet the Judicial Department's needs. In one of these contracts, worth $73,650 and for a specialized recidivism prevention program, the written justification lacked a statement to explain why other recidivism prevention programs were incapable of meeting the Department's needs. In the second contract, which was also the contract with the former SCAO employee, worth $530,000 per year for up to 5 years and not to exceed a total of $2.75 million, the written justification lacked a statement to explain why the vendor's leadership program was the only program capable of meeting the Department's needs.

  - One contract worth $54,700 for mental health, substance abuse, and domestic violence treatment services for juvenile probationers contained a written justification for the sole source procurement, but it was signed by the former State Court Administrator several weeks after the contract itself was executed. Judicial Fiscal Rules require that the State Court Administrator sign the written justification prior to any commitments being made.

- For four contracts, with a total value of up to $3.55 million, the SCAO did not negotiate the price, delivery, or terms of the contracts with the vendors. Rather, the SCAO accepted the price, delivery, and terms proposed by the vendors.

EXHIBIT 2.9 shows the distribution of issues found across the six sole source procurements.

EXHIBIT 2.9. SUMMARY OF ISSUES FOUND FISCAL YEARS 2017 THROUGH 2020

Sole Source Procurement	Contract Value	Missing Contract	Appearance of Impropriety	Missing or Incomplete Written Justification	Lack of Negotiations
A	$73,650			X	
B	$44,800			X	X
C	$244,739	X			
D	$54,726			X	X
E	$2,750,000[1]		X	X	X
F	$698,448				X

SOURCE: Office of the State Auditor analysis of procurement documentation provided by the SCAO.
[1] This contract was for $530,000 per year, for up to 5 years and not to exceed a total of $2.75 million. The SCAO canceled this contract prior to expending any funds.

WHY DID THESE PROBLEMS OCCUR?

INSUFFICIENT PROVISIONS IN JUDICIAL FISCAL RULES. The Judicial Fiscal Rules do not explicitly prohibit former employees from pursuing a contract with the Department within a specified period after their resignation. Conversely, ethics statutes that govern the General Assembly, public officers, local government officials, and state employees prohibit former employees from contracting within 6 months of separation from state employment with a state agency, involving matters with which they were directly involved during their employment [Section 24-18-201(1), C.R.S.]. The former employee awarded the contract for leadership training had been directly involved in leadership training during their employment with the SCAO.

LACK OF SCAO POLICIES AND PROCEDURES. The SCAO did not establish sufficient written policies or procedures detailing how staff should comply with the Judicial Fiscal Rules related to sole source procurements. Specifically, although the Judicial Fiscal Rules state that the State Court Administrator is the final authority on and must authorize all procurements, including sole source procurements, the SCAO did not establish a clear internal review process to ensure that these contracts are complete and meet all of the Judicial Fiscal Rules, such as through ensuring that documented reviews are completed by other key staff prior to execution (e.g., Director of the Financial Services Division, the Purchasing Manager, fiscal staff, and legal team). Without specific policies and procedures to conduct and document review, it is not clear that these key staff were involved in the review process in six of the 10 sole source procurements made between Fiscal Years 2017 and 2020.

Further, while the Judicial Fiscal Rules that were in place during the period we reviewed stated that there must be a written justification and documentation of negotiations, they did not indicate what should be included in that documentation to justify the sole source procurement and contract terms.

Additionally, the SCAO did not establish written policies for staff to use when deciding whether a sole source procurement is appropriate and in the best interest of the Department. For example, the SCAO did not require that sole source solicitations be posted publicly to identify potential competing vendors and help the SCAO determine if other vendors can provide the goods or services they are seeking or if a sole source is the only means of procurement. Statutes governing executive branch agencies require a sole source notification be posted on the State's bid notification web site for at least 3 days to identify potential competing vendors [Section 24-106-103(5), C.R.S.].

In May 2020, after our audit review period ended, the SCAO implemented revised Judicial Fiscal Rules that it states address the

deficiencies we identified in the policies and procedures that were in place during the period we reviewed (July 2017 through April 2020).

WHY DO THESE PROBLEMS MATTER?

The SCAO expended a total of $1.12 million on the six sole source procurements for which we identified issues. One of the five *Principle Strategies and Goals* the SCAO identified in its strategic plan is to "[c]ultivate public trust and confidence through the thoughtful stewardship of public resources." When the SCAO does not follow established fiscal rules when using the sole source solicitation process, it is not demonstrating "thoughtful stewardship of public resources."

RECOMMENDATION 4

The State Court Administrator's Office should establish and implement written rules, policies, and procedures related to the sole source procurement process to help ensure that it is used appropriately by:

A Updating procurement rules to prohibit former employees from contracting with the Department within a specified period after their resignation.

B Establishing internal reviews and approvals for all phases of the sole source contracting process that includes identifying all parties required to review the contract documentation.

C Identifying information required to support the written justification and negotiations for the sole source procurement and contract terms.

D Requiring public sole source notifications be posted prior to awarding sole source contracts.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

A AGREE. IMPLEMENTATION DATE: NOVEMBER 2020.

The State Court Administrator's Office agrees with the recommendation and has implemented new fiscal rules and procedures covering the use of independent contractors by the Department. These new Fiscal Rules and Procedures were approved by the Chief Justice in November 2020 and apply to all employees in the Department. The Rules include a mandatory waiting period of six months between an employee's date of separation from

employment and the date when a former employee is eligible to begin providing services as an independent contractor with the Judicial Department.

B AGREE. IMPLEMENTATION DATE: MAY 2020.

The State Court Administrator's Office agrees with the recommendation and had been working to revise the Procurement Fiscal Rules and Procedures earlier this year. The revised Rules were approved by the Chief Justice on May 1, 2020 and apply to all employees in the Department. The revised Rules, at Section 16, require all sole source procurements above the discretionary purchasing thresholds in the Rule to be coordinated by the Procurement Unit in the Financial Services Division.

The Procurement Unit is further required to provide an opinion on the sole source request to the State Court Administrator. The authority to approve or deny a sole source procurement request rests with the State Court Administrator. The revised Rules also require the State Court Administrator to report all approved sole source procurements to the Chief Justice on a quarterly basis.

C AGREE. IMPLEMENTATION DATE: MAY 2020.

The State Court Administrator's Office agrees with the recommendation and revised the Procurement Fiscal Rules and Procedures earlier this year. The revised Rules were approved by the Chief Justice with an effective date of May 1, 2020 and apply to all employees in the Department. The revised Rules, at Section 16, outline the required information that shall be required in a sole source procurement request to support the justification. The Rules further require the request to include: (1) a summary of information detailing the costs of using an alternative good or service or of not making the purchase, and (2) a cost analysis explaining why the price offered from the vendor is fair and equitable. The Rules require the Procurement Unit to negotiate the most favorable price, terms, and conditions for the sole source procurement.

D AGREE. IMPLEMENTATION DATE: MAY 2020.

The State Court Administrator's Office agrees with the recommendation and revised the Procurement Fiscal Rules and Procedures earlier this year. The revised Rules were approved by the Chief Justice with an effective date of May 1, 2020 and apply to all employees in the Department. The revised Rules, at Section 16, require the Procurement Unit to publish the sole source procurement on the electronic bid system for review by the public for 14 calendar days. The Rules further require that if one or more responses are received from qualified and responsible vendors who can meet the specifications identified in the notice, and who are not otherwise prohibited from bidding on the contract, the sole source procurement method shall not be used.

PROCUREMENT CARDS

Staff at the SCAO are allowed to use procurement cards (P-cards) to make purchases that do not require a formal procurement process (i.e., generally goods under $10,000 and services under $25,000). This can include expenses such as:

- Office supplies and equipment
- Travel expenses, such as hotels
- Registration fees for conferences and trainings
- Reserving rooms and catering services for hosting conferences and trainings

During our audit, there were a total of 90 P-cards that were active for at least part of the audit review period. Of these cards, 67 were issued to specific staff for their own individual use, while 23 were issued to a work unit (e.g., Human Resources P-card, Information Technology P-card) for use by various staff within that work unit. The SCAO reported that, in Fiscal Year 2018, it began to increase the number of P-cards issued to specific individuals, citing that this would ease administrative burdens and hold purchasers more accountable because all cards will be tied directly to one person, as opposed to a group of people or work unit. For Fiscal Years 2017 through 2020, SCAO staff made almost 10,000 P-card purchases totaling about $3.5 million, as shown in EXHIBIT 2.10.

EXHIBIT 2.10. SCAO PROCUREMENT CARD PURCHASE TOTALS FISCAL YEARS 2017 THROUGH 2020[1]

Fiscal Year	Number of Purchases	Amount
2017	2,075	$630,000
2018	2,510	$848,000
2019	2,760	$1,134,000
2020[1]	2,630	$897,000
Total	9,975	$3,509,000

SOURCE: Office of the State Auditor analysis of report pulled from the Citibank Citi® Card reporting system.

[1] Through April 2020, when the data was pulled for testing.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Green Book [Principle 10.12-14] states that management should consider segregation of duties as part of its internal control design to prevent fraud, waste, and abuse. Segregation of duties involves the separation of activities including authority, custody, and accounting operations. Practically, this means that separate positions should be responsible for making, approving, and recording purchases. Although the SCAO is not governed by the Green Book, it is considered to be a best practice for establishing internal controls and has been adopted by the Executive Branch at the state level.

Section 2.2 of the Judicial Fiscal Rules requires staff, including SCAO staff, to maintain a detailed receipt or merchant/vendor invoice for each purchase on the credit card statement. The budget authority, a position that varies by division or budget, from the administrative assistant to the division director, is required by rules to review, date, and sign the

disbursement documentation (i.e., credit card statement) for compliance with Judicial Fiscal Rules, Chief Justice Directives, contractual agreements, invoice terms, budgetary guidelines, and applicable statutes.

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY AND WHY DOES IT MATTER?

We tested a statistically valid random sample of 100 SCAO P-card purchases made during Fiscal Years 2017 through 2020 and totaling almost $405,000 (12 percent of the total amount spent on P-cards during this period) to determine if these purchases complied with Judicial Fiscal Rules and were consistent with best practices related to internal control.

Overall, we identified issues with the approvals for 30 of the 100 purchases (30 percent) we reviewed; these 30 purchases totaled more than $49,500. Specifically, we found:

- 23 P-card purchases (23 percent) totaling more than $45,600 were approved by the same individuals whose cards were used for the purchases. Although these individuals were "Budget Authorities" who, under Judicial Fiscal Rules are authorized to approve purchases, approving one's own purchase is not consistent with best practices or an appropriate segregation of duties. Based on the information from our sample, we can estimate with 95 percent confidence with the most likely statistical projection that the total amount of purchases approved by the same individual who made them is about $807,100.

- 5 P-card purchases (5 percent) totaling more than $3,200 where it was not clear whether the purchases had been approved. For all five purchases, the SCAO pointed to markings on one of the related documents, such as a receipt, and stated the markings were the approving signature. However, these markings were not legible and there was no date on four of them to indicate that the markings were

intended to be an approval signature. Based on the information from our sample, we can estimate with 95 percent confidence with the most likely statistical projection that the total amount of purchases made without a legible indication of approval is about $175,500.

- 2 P-card purchases (2 percent) totaling about $600 that did not include any signature from the budget authority. Therefore, it appears these purchases were not reviewed and approved for appropriateness. Based on the information from our sample, we can estimate with 95 percent confidence with the most likely statistical projection that the total amount of purchases made without indication of approval is about $70,200.

In total, we estimate using the most likely error rate, with 95 percent confidence, that about $1,052,700 in purchases made during our audit period were both made and approved by the same individual, or the documentation to indicate approval was neither legible nor present. When there is no segregation of duties or when review procedures are not followed, we cannot be certain that the controls the SCAO has put in place are functioning as intended and lowering the risk of unnecessary or unreasonable purchases.

WHY DID THESE PROBLEMS OCCUR?

Although Judicial Fiscal Rules require that all P-card purchases be approved by the budget authority, which is demonstrated by a signature and date on the monthly credit card statement, the SCAO has not established written policies or provided consistent direction to staff for how this rule should be implemented within the office. Specifically, although the accounting and budget teams maintain a list of budgetary authorities, the SCAO has not specified which positions across the organization should be considered "budget authorities" and, therefore, are responsible for approving purchases, nor has it specified that an individual cannot approve their own purchases. In addition, the SCAO has not provided guidance on how and where approvals should be documented to ensure consistency across the organization. Instead, each

division and unit within the SCAO has different practices for reviewing and approving purchases made on P-cards. For example, in one division, the administrative assistant makes purchases and the division director reviews and approves the P-card statement. However, in another division, the administrative assistant has been told by the division director to make purchases, but the administrative assistant is also responsible for reviewing and approving the P-card purchases.

RECOMMENDATION 5

The State Court Administrator's Office should improve controls over the use of procurement cards by establishing written policies on which positions can serve as a "budget authority" and are authorized to approve procurement card purchases, taking into consideration the appropriate segregation of duties and how and where approvals should be documented.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office agrees with the recommendation and has developed Fiscal Rules and Procedures covering Commercial Cards that were approved by the Chief Justice in November 2020 and apply to all employees in the Department. The Rules, at Section 4, require the Administrative Authority (Division Directors at the State Court Administrator's Office) to review, sign, and date the statement for each cardholder and card custodian indicating approval of transactions.

Furthermore, the State Court Administrator's Office will develop clear guidance regarding budget management to include who can serve as a budget authority.

SCAO ADMINISTRATIVE FRAMEWORK

The Colorado Constitution establishes the Supreme Court, led by the Chief Justice, as the executive head of Colorado's judicial system and provides it with the authority to appoint a court administrator and any other personnel necessary to administer the courts [Colorado Const., Art. VI, Sec. 5(2 and 3)]. To assist in administering the operations of the courts, the Supreme Court has established, within the Department, the SCAO, headed by a State Court Administrator [Section 13-3-101, C.R.S].

The SCAO operates within a governance framework established in rules promulgated by the Supreme Court, including Judicial Department Personnel Rules and Judicial Fiscal Rules, as well as written Chief Justice Directives, such as a Code of Conduct that all Department employees must follow.

The SCAO, under the authority of the State Court Administrator, is responsible for providing centralized policy guidance to courts on Supreme Court requirements and developing and implementing standards and guidelines for Department staff to facilitate operations under those requirements. In particular, Chief Justice Directive 04-02 (effective as of September 2007) states that, generally, all Department personnel shall comply with the fiscal policies and procedures established by the State Court Administrator.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Code of Conduct implemented by the Supreme Court for the Department states, "It is essential to the proper functioning of the State that all employees of the Judicial Department observe high standards of conduct to maintain professionalism in the workplace and public confidence in the integrity and independence of the judicial system" and

"[a]void impropriety or any activity that gives the appearance of impropriety." In addition, the Code of Conduct provides that staff should demonstrate high standards of integrity and honesty, and should always use state resources, time, property, and funds prudently.

Judicial Fiscal Rules state that, "All parties involved in the negotiation, performance, or administration of the Judicial Department's purchases, acquisitions, and contracts shall act in good faith and in accordance with the Colorado Judicial Branch Code of Conduct" [Section 1.1] and that employees shall not "[u]se state time, property, equipment, or resources for private gain, monetary or otherwise" [Section 1.1.2.3].

The Green Book defines internal control, in part, as a process implemented by an agency's management to provide reasonable assurance that the objectives of the agency will be achieved, including the objectives of operating efficiently and effectively and with accountability. Although the SCAO is not required to follow the standards established in the Green Book, they are considered a best practice for establishing internal controls and include principles and components that, if enacted by an entity's oversight body, management, and other personnel, provide "reasonable assurance that the objectives of an entity will be achieved" [OV1.01]. The Green Book notes that an entity's internal controls comprise "the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity," serve as "the first line of defense in safeguarding assets," and help the entity "achieve desired results through effective stewardship of public resources" [OV1.03]. Key Green Book principles relevant to the issues identified in this audit include:

- **Demonstrate Commitment to Integrity and Ethical Values (Principle 1).** "The oversight body and management should demonstrate a commitment to integrity and ethical values" [1.01]. This includes setting a tone at the top and throughout the organization that stresses the importance of these values through management's directives, attitudes, and behavior [1.02], and

establishing and adhering to standards of conduct that communicate expectations for all levels of the organization [1.06 and 1.09].

- **Establish Structure, Responsibility, and Authority (Principle 3).** "Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives" [3.01]. This includes developing and assigning responsibilities in a manner that addresses risks [3.02] and ensuring that lines of authority are defined and communication flows down, across, and up all levels of authority [3.04].

- **Design and Implement Control Activities (Principles 10 and 12).** Management should "design control activities to achieve objectives and respond to risks" [10.01], and "implement control activities through policies" [12.01]. This includes assigning control activities at the proper levels [10.07], as well as establishing adequate segregation of duties [10.13]. Responsibilities should also be documented [12.02], and the organization should conduct periodic reviews of control activities [12.05].

Statute [Section 13-3-105(4), C.R.S.] states that, "To the end that all state employees are treated generally in a similar manner, the [S]upreme [C]ourt, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments."

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Throughout this audit, we identified problems with the SCAO's oversight of and accountability for its human resources and financial services functions that raise questions about the efficacy of the SCAO's system of internal control, including, in particular, its culture of accountability. These problems also raise questions as to whether the SCAO has acted in a way to maintain public confidence in the Department and demonstrate good stewardship of state funds. We applied relevant provisions of the Judicial Code of Conduct, Department rules, and the Green Book's Principles of Internal Control to actions taken by the SCAO during our audit review period and identified numerous instances where the SCAO's actions were not consistent with these provisions. Specifically, we found:

Appearance of Impropriety. The former State Court Administrator began the process of entering into a sole source contract with a former SCAO employee within days of the former employee's resignation. The contract, worth $530,000 per year for up to 5 years and not to exceed a total of $2.75 million, was to provide internal leadership training for the Department. This former employee created their leadership training company while still employed by the SCAO. Further, at the time this employee tendered their resignation, the SCAO had paid at least $21,800 during Fiscal Years 2017 and 2019 to send this individual to four leadership conferences and trainings, which provided the former employee with knowledge valuable to their company, using state funds. Contracting with an employee who had recently resigned to provide services developed by training paid for by the SCAO has the appearance of impropriety, which is prohibited by the Judicial Code of Conduct. This matter is discussed further in the fourth finding.

FAILURE TO ESTABLISH STRUCTURE, RESPONSIBILITY, AND AUTHORITY. We identified several areas during the audit where SCAO management had not assigned responsibility or delegated authority in a manner that appeared appropriate to achieve its objectives. Specifically:

- **CONTRACTS.** Judicial Fiscal Rules require the State Court Administrator to be the signature authority for all SCAO contracts [Section 1.4.1.3]. However, we found that the former SCAO Chief of Staff signed on behalf of the State Court Administrator for nearly half of the contracts we sampled. Specifically, the former SCAO Chief of Staff signed five contracts on behalf of the State Court Administrator between April 2017 and February 2018. Judicial Fiscal Rules permit the State Court Administrator to delegate the authority to sign contracts "in limited circumstances" [Section 1.4.1.5]; however, the SCAO has not established those circumstances when such delegation would be appropriate.

- **APPROVALS.** First, although Judicial Fiscal Rules require the "budget authority" to review, date, and sign disbursement documentation, the SCAO has not defined which positions should be considered a "budget authority." As a result, we found wide variation between divisions as to which staff had been designated as the "budget authority." For example, in one division, the Division Director was considered the budget authority. However, in another division, an administrative assistant had been appointed as the budget authority, and was tasked with approving the purchases for that division, including purchases made by their supervisor.

  Second, during Fiscal Years 2017 through 2020, the SCAO granted 25,520 hours of paid administrative leave to employees. Of this amount, 6,090 hours were approved as part of VSI contracts the SCAO entered into with 10 employees as part of a staffing reorganization announced by the former State Court Administrator. These agreements cost the SCAO more than $518,000 in salaries and benefits paid out to these individuals. We found, however, that these agreements were not prepared or reviewed by the SCAO's legal

team or other members of SCAO senior management who were listed as required signatories on the contracts. The VSI contracts were signed only by the former State Court Administrator. Ultimately, the SCAO refilled seven of the 10 positions when the reorganization did not occur, indicating the money spent on these VSI contracts may not have been a prudent use of state funds. This matter is discussed further in the first finding.

Finally, the SCAO has not established any limits or guidelines for approving staff use of paid administrative leave, and administrative authorities or delegates at all levels of the organization are allowed to grant administrative leave with limited oversight. This matter is discussed further in the second finding.

FAILURE TO DESIGN AND IMPLEMENT CONTROL ACTIVITIES. We identified several areas during the audit where the SCAO had not designed or implemented sufficient control activities (i.e., the policies, procedures, and mechanisms that enforce management's directives and mitigate risks) that are commonly established as part of an effective control system. Specifically:

- **SEGREGATION OF DUTIES.** We found that 23 of the 100 purchases (23 percent) in our sample totaling over $45,600 were approved by the same individual who made the purchase. The SCAO had not established policies or procedures requiring that purchases be approved by someone other than the individual making the purchases. This matter is discussed further in the fifth finding.

- **DOCUMENT RETENTION.** We found that the SCAO did not retain documentation regarding personnel records and paid administrative leave awards. Specifically:

  - For four employees who had been granted a large amount of administrative leave, the SCAO had to change how it had categorized the reason for the leave after they were unable to locate documentation to support the original categorization. That is, the SCAO had originally reported that the leave was

granted for employee settlements, but later changed its response and said that, instead, the leave was granted for either disciplinary investigations (2 instances) or discretionary reasons (2 instances).

- For 10 cases where large amounts of leave were granted, the SCAO could not clearly categorize the leave without more research. For instance, two cases initially listed as "Workers' Compensation" cases, were subsequently re-labeled as "medical leave" and leave taken under the Families First Coronavirus Response Act, but not certified FMLA cases.

- For two disciplinary investigation cases, the SCAO does not have any documentation related to these cases, such as the allegations, complaints, outcomes, or any actions taken as a result of the investigations. This matter is discussed further in the third finding.

- During Fiscal Years 2017 through 2020, the SCAO granted 25,520 hours of paid administrative leave. Of this paid leave:

    - 2,650 hours were approved as part of settlement agreements with two former SCAO employees. The SCAO lacked transparency in the documentation of these settlements because the contracts did not contain the dollar amounts for the settlement (i.e., pay and benefits received for this leave), and Judicial Personnel Rules are silent on the use of paid administrative leave for settlements. These 2,650 hours equated to $160,000 in salaries and $22,600 in paid time off. This matter is discussed further in the second finding.

    - 13,710 hours were approved under Judicial Personnel Rules governing discretion to grant paid administrative leave. For 3,600 of these hours (26 percent), there were no records of the reasons the staff members were awarded the leave. More than 100 instances occurred where employees received 1,060 hours above the calculated normal amount granted to staff.

This included one employee who received a total of 200 hours of paid administrative leave in Fiscal Year 2017 and another who received 160 hours in Fiscal Year 2018—there was no documentation to explain why these employees were granted the large amounts of leave. This matter is discussed further in the second finding.

- 3,070 hours were approved for disciplinary investigations related to nine employees. For two of the nine employees, the SCAO could not provide any documentation to verify that the more than 800 hours of paid administrative leave granted to these employees was due to investigations, although the SCAO did have documentation indicating that these employees separated from the SCAO to forego disciplinary proceedings. Therefore, we could not determine if these hours were spent appropriately. This matter is discussed further in the second finding.

- At least two SCAO employees used computers for work that were not approved by the IT division and were not connected to the SCAO network, after being asked not to do so. One of the individuals continued to use a MacBook that was not connected to the network, even though it was the property of the SCAO. When this employee left the SCAO, their MacBook hard drive was wiped clean and the SCAO no longer had the records that had been on it. The other employee used a personal MacBook that was also not connected to the SCAO network. When this employee left the SCAO, they took their MacBook and all of the information that it contained with them. As a result, information related to settlements and disciplinary investigations may have been lost.

- Employees responsible for the retention of documents related to Family and Medical Leave cases stored documents on their local drives that were not backed up to the SCAO network. As a result, for 10 of the 135 FMLA cases (7 percent) approved during Fiscal Years 2017 through 2020, the SCAO could not

demonstrate that the employees were eligible for the 1,800 hours of FML approved, or in some cases, that the employees were eligible for FML at all. These employees were allowed to use extended sick leave, rather than PTO, for the time they were out. Extended sick leave can only be used in FML cases and if these employees were not actually eligible for FML, then it should not have been used. Instead, the employees would have had to use their accrued PTO rather than allowing them to retain the PTO for other uses or have it paid out upon separation. This matter is discussed further in the third finding.

- For 12 FMLA cases, the SCAO was eventually able to provide all required supporting documentation that we requested. However, it took the SCAO 6 weeks to locate the necessary information because it was not maintained in a central location and the employees who knew where the documents could be found no longer worked at the SCAO.

- The SCAO spent about $91,900 on leadership trainings during Fiscal Years 2017 through 2020, but did not have sufficient documentation to indicate how these expenses benefitted the SCAO or to show that they were reasonable or an appropriate use of state resources. Further, only two of the employees who were identified as having attended these trainings were still with the SCAO as of September 2020. Specifically, the SCAO spent:

    - $55,000 for seven employees on the executive team to attend a leadership course at the University of Virginia. The only documentation the SCAO had related to this course were emails between staff and the course administrator clarifying details on amenities. There was no documentation justifying how this leadership course would benefit the SCAO.

    - $27,700 for two employees to attend three leadership conferences in New York City over three consecutive years. The only documentation the SCAO had related to these charges was the receipt for the conference registration.

- $5,000 for a 1-day leadership training session for the "executive team." Neither the receipt for the registration nor the statement detail indicate exactly what the training was for or how many people attended.

- $4,200 for an employee to receive leadership coaching. The only documentation the SCAO had related to this charge was a credit card receipt for the registration.

In total, all of these examples show a lack consistency with internal control principles related to the importance of management demonstrating a commitment to integrity and ethical values and setting a tone at the top and throughout the organization that stresses the importance of these values.

WHY DID THESE PROBLEMS OCCUR?

Judicial Personnel Rules [Rule 6.A.3] provides the State Court Administrator with broad decision-making authority for the SCAO, which includes the responsibility for setting the tone for the organization. During this audit, we identified multiple actions taken by the former State Court Administrator that were problematic. They were able to take those actions, in part, because of a lack of an effective system of controls governing SCAO operations, including:

JUDICIAL RULES, POLICIES, AND PROCEDURES. Although there are Judicial rules related to human resources and financial services, these rules are generally broad and as of October 2020, the SCAO had not developed sufficient policies and procedures detailing how to implement these rules within the organization. For example, Judicial rules allow "administrative authorities" to grant paid administrative leave to employees "for reasons determined to be for the good of the [S]tate." However, the rules do not specify, and the SCAO has not established any policies and procedures to provide additional guidance to staff on which employees are considered "administrative authorities" and,

therefore, who would be authorized to grant administrative leave. In addition, rules do not specify, and the SCAO has not established any guidelines on, appropriate reasons for granting administrative leave or limits on the amount that can be granted.

Similarly, Judicial Fiscal Rules require that a "budget authority" must approve purchases, but they do not define, and the SCAO has not specified, which positions should be considered a "budget authority." SCAO staff informed us that the position responsible for these approvals can vary from the division director to an administrative assistant. Further, the Judicial Fiscal Rules do not indicate the manner in which purchases should be approved by the budget authority; some purchases have initials and dates on each receipt, some on the P-Card statement, and there is not always an indication that the signature is granting approval.

Either providing more detail in Judicial rules, or developing policies and procedures with guidance on how to implement the rules would help provide the SCAO with reasonable assurance that the objectives of the agency will be achieved. This includes the objectives of operating efficiently and effectively, with accountability, and helping ensure consistent application of the rules across the organization. The Executive Branch has established State Fiscal and Personnel Rules that all state agencies must follow. State agencies are also responsible for establishing their own policies and procedures to provide guidance to staff on how to implement the rules. In Fiscal Year 2020, the SCAO began updating Judicial rules and establishing procedures related to procurement, travel, and P-cards. Our review of the revised Judicial Procurement Rules showed changes that would improve controls for sole source procurements. These changes included detailing what information must be provided in the written justification (e.g., price-cost analysis), requiring review by the procurement unit before a sole source request is reviewed by the State Court Administrator, and publishing the sole source request on a public website for 14 days. As of May 2020, the revised Judicial Procurement Rules had been finalized,

while as of October 2020, revisions to the Judicial Fiscal Rules related to P-cards were still awaiting final approval by the Chief Justice.

MONITORING ACTIVITIES. The SCAO has not implemented sufficient monitoring activities to ensure that controls within the organization are working properly. Specifically, the SCAO has not established clear expectations for staff related to supervisory review of key administrative functions, such as expenditures and administrative leave use. For example, the SCAO does not have a process for periodically reviewing expenditures to ensure that all of the necessary information and approvals related to the expenditure have been documented. In addition, the SCAO does not track the amount of administrative leave that is being used within each division and across the organization, nor does it review personnel files to ensure that required documentation has been properly retained. Principle 16 in the Green Book states that "[m]anagement should establish and operate monitoring activities to monitor the internal control system and evaluate the results" [16.01]. This includes establishing a baseline from the current state of the system, continuously monitoring, and then evaluating results. Because the SCAO has not implemented key controls discussed previously, it does not have a baseline from which to monitor how it is operating.

Additionally, the SCAO has not routinely used its internal audit function to help monitor control activities within the SCAO. Instead, the internal audit division primarily conducts audits at the judicial districts and only looks at SCAO functions if directed by management. According to the SCAO, the only internal audits conducted on SCAO operations within the past 4 years were specific to the travel and spending of a single employee that were called into question.

WHY DO THESE PROBLEMS MATTER?

Because the SCAO has not established an effective system of internal controls, it has not been transparent in some of its activities and cannot always demonstrate good stewardship of public funds. For example:

- By approving the justification for a sole source contract that could be worth as much as $2.75 million for an employee who had resigned only days before the approval, the SCAO degrades the public trust in an open and equitable solicitation process.

- By granting large amounts of administrative leave for employees, the SCAO is not demonstrating good stewardship in its use of public funds. Employees are being paid for not working while still accruing the leave they receive as an employment benefit. Further, this is compounded by the fact that Department employees accrue, on average, 25 percent more PTO and extended sick leave each month than leave accrued by employees in the Executive Branch. On average, Department employees are authorized to retain a maximum accrual amount that is 14 percent higher than the Executive Branch allows. In an effort to treat all state employees in a similar manner, statute requires the Chief Justice to take into consideration what the Executive and Legislative Branches offer their employees with respect to compensation and leave.

- Leaving administrative leave to the discretion of the State Court Administrator or delegated authorities without any limitations on the amount of leave that can be approved or for what purposes can lead to excessive use of administrative leave across the organization. In addition, employees who use administrative leave in place of their accrued PTO will receive a larger payout for their unused PTO upon separation.

- There is a lack of transparency when the SCAO uses administrative leave to compensate employees under voluntary separations and settlements, which can lessen the public trust. The cost of these agreements is hidden to the public, as there is no dollar value directly stated in these agreements. In our audit work, in order to calculate the cost of these agreements, we had to request and review payroll and benefit information that would not be accessible to the public.

- A lack of segregation of duties results in staff approving their own purchases, which creates a risk of purchases not being made for the benefit of the organization and possibly for personal gain.

RECOMMENDATION 6

The State Court Administrator's Office (SCAO) should implement an effective system of internal control that fosters a culture of integrity, ethical values, and accountability by:

A Implementing policies and procedures and continuing to update Judicial Rules as necessary, to ensure that collectively, they provide sufficient direction to staff on the human resources and financial services functions discussed throughout this report, and detail how staff are to implement Judicial rules within the organization.

B Implementing monitoring activities to ensure that controls within the organization are working properly, which should include conducting routine supervisory reviews of key administrative functions, such as expenditures and administrative leave use, and routinely using its internal audit function to monitor controls within the SCAO itself.

RESPONSE

STATE COURT ADMINISTRATOR'S OFFICE

A AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office acknowledges the issues identified in the audit regarding the prior internal control environment. The current State Court Administrator fully understands and accepts the fiduciary responsibility associated with administering the Office. To this end, and with the support of the Supreme Court, the Office is operating within a set of core values to demonstrate integrity and ethical administration and use of public funds.

The Office has continued the work on implementing and updating rules and policies to strengthen internal controls to mitigate risks and ensure the appropriate use of public funds. These actions include the ongoing effort to develop, update and improve policy and procedure guidance related to financial and personnel issues necessary for the Department.

B AGREE. IMPLEMENTATION DATE: JULY 2021.

The State Court Administrator's Office believes the internal audit function serves an important role in the overall internal control environment and agrees with the recommendation. The Office will implement monitoring activities to ensure the internal control environment is appropriate and effective.