

Lack of answers in Colorado Supreme Court's firing of judge unacceptable

By **THE DENVER POST EDITORIAL BOARD**

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The remarkable removal of a judge from a death-penalty appeal shortly before he was set to make a significant ruling demands public explanation. Lawyers for convicted murderer and death-row inmate Sir Mario Owens are right about that, whatever the value of the remaining claims they made in a legal filing last week with the state Supreme Court.

Judge Gerald Rafferty's dismissal from Owens' case in April may in fact have been justified. But who can tell given the secrecy surrounding the process by which the Colorado Supreme Court yanked Rafferty off the case. A press release that said Rafferty "breached the terms of the contract" as a senior judge hardly qualifies as sufficient.



RJ Sangosti, Denver Post file

Lawyers for Sir Mario Owens, one of three men on Colorado's death row, last week asked the state's highest court to put Judge Gerald Rafferty back on the bench and to release more information about why he was dismissed from the case he has presided over for a decade.

“To remove a sitting judge ... at exactly the same moment that he was issuing his final order, which would largely decide Mr. Owens’ fate and whether he lives or dies, is literally unprecedented, not only in a Colorado case of this magnitude, but in the annals of law,” Owens’ lawyers wrote.

It is also costly, since it negates much of the lengthy hearings held in Rafferty’s courtroom. Evidence will have to be presented anew and witnesses required to repeat their testimony. This may be unavoidable, but it is also extraordinary. What did Rafferty do to merit such treatment?

The public interest goes well beyond the extra price tag, too. Owens’ attorneys contend that Rafferty was poised to find major flaws in the original prosecution. The dark implication of interference is obvious, and should not be allowed to linger when a straightforward explanation for Rafferty’s departure could clear the air.

Yet on Wednesday the [high court refused to reconsider pulling Rafferty](#), and it did so with a terse, one-page order that provided no explanation for the denial.

Ironically, Owens’ appeal involves one of the first tests of what a [Denver Post article by John Ingold](#) describes as a “new process for death-penalty appeals in Colorado, which lawmakers hoped would speed up the execution process. Instead, the system has bogged down, mired for years without even clearing the first step in the process.”

But such delays are par for the course in death-penalty cases. Despite one attempt after another by diehard proponents of capital punishment to see the penalty enforced, Colorado has had only two executions in the past half century, with the most recent occurring nearly 20 years ago. Meanwhile, juries have become reluctant to mandate death even for the likes of heinous mass murderers such as James Holmes and Dexter Lewis.

Owens was convicted in 2008 for a crime that occurred 11 years ago, and his case could easily drag on for additional years. If nothing else, this latest strange saga of his appeal should provide more evidence to lawmakers that the death penalty statute is not working and cannot be made to work. It’s time that it was repealed.

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