

Lawyers for Colorado death row inmate called judge's firing "literally unprecedented"

Dismissal came as judge was about to issue major ruling in Sir Mario Owens case



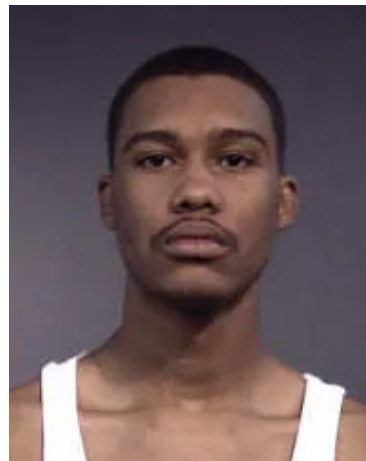
By **JOHN INGOLD** | The Denver Post

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In a bombshell new legal filing, attorneys for one of Colorado's death row inmates say that state court officials — including the chief justice of the Colorado Supreme Court — broke the law by firing the judge overseeing the inmate's appeal just as the judge was about to deliver a major ruling.

The petition, filed Thursday afternoon, asks the full state Supreme Court to overturn Judge Gerald Rafferty's dismissal and to order court officials to release more information about the decision to fire him. The document alleges that

Rafferty found serious flaws in the case against Sir Mario Owens, one of only three inmates on Colorado's death row, and that he was about to issue an order that could have dramatically altered the case — including possibly overturning the death sentence or ordering a new



Arapahoe County

Sir Mario Owens

trial. Its filing also reveals chaos behind the scenes in Colorado's death penalty system.

"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 write in the petition.

Owens was convicted in 2008 [and sentenced to death](#) for the murders of [Javad Marshall-Fields and Vivian Wolfe](#) in Aurora. Marshall-Fields had been scheduled to testify against another man, Robert Ray, in an upcoming trial in which Ray was charged with accessory to murder. Ray was also sentenced to death for Marshall-Fields' and Wolfe's murders.

Owens' and Ray's cases are the first two to test 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.

That first step is for the original trial judge — in Owens' and Ray's cases, that was Rafferty — to hear the first appeal and issue a ruling. Between 2012 and 2015, Rafferty held [37 weeks of hearings](#) on Owens' appeal. But, in January, he reached the mandatory retirement age for state court judges in Colorado and left the bench before issuing his final ruling on the appeal.

The Office of the State Court Administrator struck a deal to hire Rafferty back to finish the case, beginning in March. He was working as a senior judge in Arapahoe County District Court on a contract basis when [he was abruptly fired in April](#). State Supreme Court Chief Justice Nancy Rice signed off on the firing, issuing an order on April 13 declaring that Rafferty's appointment to the bench was "rescinded effective immediately."



Rhonda Fields, left, mother of Javad Marshall-Fields, and Christine Wolfe, mother of Vivian Wolfe, Sylvia Marshall, Javad's grandmother, and family friend gather outside the courthouse at Arapahoe County Justice Center on May 14, 2008. Sir Mario Owens was found guilty of two counts of first-degree murder.

According to time sheets Rafferty filed hours before a human resources official cut off his access to the state court server, Rafferty's final days at work were spent to, "Issue Owens' post-conviction order." But that order never surfaced and, now, state courts officials won't tell Owens' attorneys what the order would have found — or even whether it exists.

That's just part of the secrecy surrounding Rafferty's firing. Owens' lawyers say in their petition that court officials won't tell them who raised the concerns that led to Rafferty's dismissal, who made the decision to fire him, who was consulted on the decision and what procedures were followed. They say Rafferty's punishment bypassed the state's Commission on Judicial Discipline, the normal place to deal with complaints about judges.

In a news release issued to announce Rafferty's dismissal — which Owens' lawyers say was an unprecedented public humiliation of a judge — the State Court Administrator's Office says Rafferty was fired because he "breached the terms of the contract." Between January, when he left the bench, and March, when he was hired back, Rafferty did legal work at the Denver law firm Collins & Coldwell. In that stretch, he filed one brief in a federal criminal court case, and his name continued to appear in the "signature block" for filings in that case even after he re-took the bench in Arapahoe County, though another attorney appears to be the author of those later filings.

According to e-mails obtained by Owens' lawyers, state court officials were aware of Rafferty's outside work in February. In one e-mail on February 24, Mindy Masias, the chief of staff for the State Court Administrator's Office, wrote to Arapahoe County District Court Chief Judge Carlos Samour Jr. that she spoke with Rafferty about his outside work and that, "he understands he cannot work as an attorney while on contract with us and does not intend to work for a firm that would cause a conflict of interest in the future."

Owens' attorneys say they were never told of Rafferty's outside work nor — until after the judge was fired — about concerns that Rafferty's work at Collins & Coldwell may have been improper.

"[F]or reasons that remain a mystery," they write in their petition, "(court officials) made a monumentally consequential decision behind closed doors and have refused to provide even basic information that would enable the parties to accurately assess the situation."

The court's secrecy on the matter, Owens' lawyers contend, violates the state constitution and also, "call into question the reputation and integrity of Colorado's judicial branch, as well as public confidence in that institution." It is especially concerning to Owens' attorneys, though, because they argue that Rafferty was about to find major problems with Owens' prosecution.

During the appellate hearings, Owens' lawyers say they presented evidence that prosecutors didn't tell defense attorneys about a number of gifts or promises that were made to key prosecution witnesses. One witness, for instance, was promised a car, according to the new petition. Two other witnesses were given thousands of dollars in gift cards and benefits. Several others were given lenient sentences for other crimes or probation violations, according to the petition.

There were also allegations of undisclosed evidence and false testimony that Rafferty was set to rule on.

A spokesman for the State Court Administrator's Office declined to comment on the new petition.

The 18th Judicial District Attorney's office, which prosecuted Owens and Ray, has not formally responded to the petition but disputed its allegations of prosecutorial wrongdoing.

"The Rule 21 filing is merely a series of allegations about which we disagree," the office wrote in a statement, referencing the specific legal term for the petition.

The statement said the office had no role in Rafferty's removal, though prosecutors are "extremely disappointed" by the delays in the case. That feeling was echoed by Rhonda Fields, the mother of Javad Marshall-Fields, who has been waiting for justice for more than 11 years since her son's murder and now has no endpoint in sight. While calling the allegations of prosecutorial misconduct a ploy by the defense, she said she was stunned by Rafferty's dismissal — whatever the reason.

"I just can't see him doing anything that would put all of his work and other people's work in jeopardy," she said.

In a statement, one of Owens' attorneys, Jonathan Reppucci said, "We are deeply saddened and troubled by the unprecedented turn of events that has now derailed this case. Mr. Owens has waited eight years for the truth to come out concerning the systematic errors that led to his wrongful conviction."

At the least, Rafferty's firing will significantly delay Owens' appeal. The case is now assigned to [retired Jefferson County District Court Judge Christopher Munch](#), who, like Rafferty, will work on a contract basis. At a hearing on the case in April, Samour — the chief judge in Arapahoe County — told attorneys to prepare to do much of the appeal over again.

"I think we're going to have to have at least some of the evidentiary hearing again in front of the judge who presides over the case," Samour said. "...In terms of witnesses testifying, I think they're going to have to testify again."

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