

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DETERMINATION

E. TIMOTHY MERCER,

a Justice of the Athens Town Court,
Greene County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of
Counsel) for the Commission

Honorable E. Timothy Mercer, *pro se*

Respondent, E. Timothy Mercer, a Justice of the Athens Town Court,

Greene County, was served with a Formal Written Complaint (“Complaint”) dated October 13, 2022, containing one charge. The Complaint alleged, *inter alia*, that from approximately September 2020 to February 2022, in connection with the Town of Athens 2020-21 application to the Justice Court Assistance Program of the Unified Court System (“JCAP”) and the receipt of JCAP funds, respondent surreptitiously directed that a security camera system be added to the application; awarded the camera-installation contract to his own company, Mercer Associates, contrary to law; charged the Town, in his capacity as owner of Mercer Associates, \$3,329.99 for the purchase and installation of the security camera system, which included a \$1,000 installation fee and an undisclosed markup fee of \$760; signed a Town of Athens voucher in his capacity as Town Justice, authorizing payment of an invoice to his own company; invoked his judicial office in an attempt to persuade the Town to pay the invoice from Mercer Associates after being notified that payment was being withheld and continued to insist that the Town pay the invoice and charged an added interest fee for nonpayment. Respondent filed an Answer dated December 7, 2022.

By Order dated February 24, 2023, the Commission designated David M. Garber, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 16 and 17, 2023 at the Commission’s offices

in Albany. The referee filed a report dated October 4, 2023 which largely sustained the charge in the Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanction. Commission counsel argued that the referee's findings and conclusions be confirmed and recommended the sanction of removal. Respondent acknowledged that he engaged in misconduct and asked that the Commission "show leniency." The Commission heard oral argument on December 7, 2023 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Justice of the Athens Town Court, Greene County, since January 1, 2020. His term expires on December 31, 2023. Respondent is not an attorney.

2. Justices of the Athens Town Court serve part-time. In addition to his judicial position, respondent is and, at all times pertinent to the findings herein, was also the proprietor of Mercer Associates, a private contracting company.

3. The Justice Court Assistance Program of the Unified Court System provides annual grants to towns and villages for court improvements, including security enhancements, renovations, and furnishings.

4. In or about September 2020, respondent, his co-judge Athens Town Justice Constance Pazin, and Senior Court Clerk Marcia Puorro discussed

submitting a 2020-21 JCAP grant application. They agreed to include in the application a request for funds to purchase two air conditioners, window blinds, a paper shredder, and a desk chair, and a request for reimbursements related to COVID-19 expenses.

5. By letter dated September 21, 2020, Ms. Puorro asked the Athens Town Board to adopt a resolution authorizing the Athens Town Court to apply for a JCAP grant to purchase “2 Air Conditioners, new Window Blinds, a new Shredder, a Desk Chair and Reimbursements from COVID Expenses.” Ms. Puorro copied respondent and Judge Pazin on the letter.¹

6. On October 5, 2020, the Athens Town Board adopted a resolution authorizing the Athens Town Court to apply for a JCAP grant to purchase “2 new Air Conditioners; new Window Blinds; a new Shredder, a Desk Chair and Reimbursement from COVID expenses.” The Athens Town Clerk sent a letter dated October 6, 2020 memorializing the adoption of the resolution.

7. Ms. Puorro gave a copy of the Town Clerk’s October 6 letter to respondent who did not indicate to her that any item was missing from the resolution.

¹ Respondent did not indicate to Ms. Puorro that anything was missing from her September 21, 2020 letter to the Town Board.

8. Prior to Ms. Puorro submitting the grant application to the Office of Justice Court Support (“OJCS”), respondent directed her to add a security camera system into the court’s 2020-21 JCAP application, notwithstanding that the court had not sought authorization from the Athens Town Board to include that item in its application and the Town Board had not authorized the court to do so.

9. When Ms. Puorro expressed concern to respondent that Judge Pazin was unaware of his addition of a security camera system in the grant application and that the Town Board had not authorized it, respondent told her not to worry about it.

10. On or about October 7, 2020, Ms. Puorro submitted the court’s 2020-21 JCAP application to OJCS. The application included, at respondent’s direction, a request for \$3,329.99 for “Video Surveillance, alarm systems, etc.”

11. Respondent did not notify Judge Pazin, Athens Town Supervisor Robert Butler or the Town Board about the addition of the security camera system to the 2020-21 JCAP application.

12. On or about October 7, 2020, Ms. Puorro sent a fax to OJCS containing the JCAP signature page, a copy of the Town Board resolution, and supporting documents. One of the supporting documents was a printout of a listing from the website cctvsecuritypros.com for a model “CSP-4POEMX8-S” security camera system. Respondent handwrote on the document: “\$2,329.99.”

Underneath that handwritten figure appeared another handwritten notation made by Ms. Puorro: “+1,000 – Installation.”

13. On November 18, 2020, OJCS senior court analyst Erika Hanks emailed respondent, Judge Pazin and Ms. Puorro requesting an itemized breakdown of the security camera system’s cost from a vendor, not the “handwritten” estimate included in the application.

14. On November 25, 2020, Kathleen Roberts, an OJCS assistant court analyst, sent an email to Ms. Puorro asking for “a new estimate that includes a breakdown of labor and itemized cost of materials . . .” This email was copied to respondent and Judge Pazin.

15. When Judge Pazin received Ms. Roberts’ email, she learned for the first time that respondent had added a security camera system to the grant application. She later learned that respondent purchased and installed the camera system.

16. After receiving the email from Ms. Roberts, Ms. Puorro asked respondent for an estimate. On December 1, 2020, respondent’s wife emailed an estimate to Ms. Puorro. The estimate was dated September 2, 2020. The first time Ms. Puorro saw this estimate was on December 1, 2020 when respondent’s wife emailed it to her.

17. On or about December 1, 2020, Ms. Puorro emailed to Ms. Roberts the estimate from Mercer Associates dated September 2, 2020 that respondent's wife provided. The estimate listed the cost to purchase and install a "CSP-4POEMX8-S" security camera system as \$3,329.99, with an itemization of \$2,329.99 for the cost of the system plus a \$1,000 installation fee.

18. On or about January 22, 2021, Ms. Puorro was notified that the Athens Town Court had been awarded a 2020-21 JCAP grant in the amount of \$3,089.99 for the purchase of "Video Surveillance, alarm systems, etc."²

19. The January 22, 2021 award letter and enclosed reconciliation report indicated that if the amount spent purchasing the approved items was less than the amount awarded, the leftover funds could not be used to offset the cost of another grant item and the recipient was instructed to contact the OJCS for further direction. The reconciliation report also stated that all goods and services purchased with JCAP funds "shall be obtained in accordance with acceptable procurement practices established by the governing municipality including, but not limited to, competitive bidding and procurement policies and procedures."

20. There were no bids for the camera installation from any companies. Respondent arranged for his own company, Mercer Associates, to purchase and install the camera system notwithstanding that it constituted a conflict of interest,

² The Athens Town Court's request for grant funds to purchase other items was not approved.

and without publicly disclosing his interest in Mercer Associates, in writing to the Town of Athens, in violation of Section 803 of the General Municipal Law and Sections 19-3 (C) and (G) of the Town of Athens Code of Ethics.³

21. On or about June 3, 2021, respondent purchased a model “CSP-4POEMIC8” security camera system for \$1,569.99, which was \$760 less than the cost of the camera system identified in the court’s 2020-21 JCAP application, its supporting documentation and the Mercer Associates estimate.

22. In July 2021, respondent completed the installation of the security camera system at the Athens Town Court.

³ Section 803 of the General Municipal Law provides:

Any municipal officer or employee who has . . . an interest in . . . any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest.

NY CLS Gen Mun §803(1). Sections 19-3 (C) and (G) of the Town of Athens Code of Ethics provide:

(C) Representation before one’s own agency. The officer or employee shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he or she is an officer, member or employee or of any municipal agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

* * *

(G) Private employment. The officer or employee shall not engage in, solicit, negotiate for or promise to accept private employment or render service for private interests when such employment or service creates a conflict with or impairs the proper discharge of his or her official duties.

23. When Ms. Puorro observed respondent installing the security camera system, she told him that she did not think he should be performing that work through his company, Mercer Associates, because “it didn’t look good” and “that we should use someone not associated” with the Court. Respondent replied that he was going to do it.

24. Respondent did not disclose to Court or Town officials that he substituted the lower cost security camera system for the higher priced system that had been included in his estimate.

25. On or about July 6, 2021, respondent submitted to Ms. Puorro for payment his invoice for the purchase and installation of a security camera system. The invoice totaled \$3,329.99 -- \$2,329.99 for the security camera system and \$1,000 for installation. Respondent purchased and installed the less expensive (\$1,569.99) security camera system but charged the Town for the cost of the more expensive (\$2,329.99) system.

26. Respondent knew at the time he submitted the invoice that it was inaccurate.

27. On July 6, 2021, in his capacity as Town Justice, respondent approved a Town of Athens voucher in the amount of \$3,329.99 to be paid to Mercer Associates for the purchase and installation of a security camera system, by signing his name in the box on the form labeled “Department Approval.” Although the

camera system respondent purchased cost \$1,569.99, the voucher and attached invoice both falsely listed the cost of the camera system as \$2,329.99.⁴

28. Instead of contacting OJCS for further direction or reducing the cost of the security camera system by \$760, respondent knowingly charged the Town \$2,329.99 for the system. Respondent intended to retain the additional \$760, notwithstanding that Section 138.2 of the Rules of the Chief Administrative Judge and Section 849-h (2) of the Judiciary Law prohibit the use of JCAP funds to compensate justices.⁵

29. Between approximately July 6 and July 15, 2021, the Bookkeeper to the Athens Town Supervisor reviewed the voucher, noticed that it was seeking payment to respondent's company and reported the apparent conflict of interest to Athens Town Supervisor Robert Butler. As a result, Mr. Butler stopped payment of the voucher and referred the matter to the Town attorney.

30. On July 15, 2021, after being notified that the Town was refusing payment of the voucher, respondent sent an email from [REDACTED]@nycourts.gov, his official court system email account, to Mr. Butler, with copies to the Town

⁴ Because the court's JCAP grant award did not cover the entire amount respondent had requested in the voucher, in the box on the form labeled "Fund Appropriation," \$3,089.99 was requested from the court's JCAP grant and \$240 was requested from the court's annual security budget.

⁵ Section 849-h (2) of the Judiciary Law and Section 138.2 of the Rules of the Chief Administrative Judge provide that JCAP funds "shall not be used to compensate justices and nonjudicial court staff. . ."

Bookkeeper, Judge Pazin, Ms. Puorro, and his personal email address (■■■■@mercercplg.com). Respondent's email was in support of his request for payment to his company. The email's signature block identified respondent as "Town Justice."

31. By email dated July 15, 2021, Mr. Butler advised respondent that the Town was holding any payment to Mercer Associates and reviewing whether it had been a violation for respondent to use his own company.

32. On July 21, 2021, respondent sent an email to Supervising Judge David Dellehunt, noting that the Town of Athens was "looking into an ethical issue with me" for having "performed billable labor that was in our approved JCAP application for Mercer Associates, my Company." Respondent also wrote that, while he did not feel he had violated any Town ethics policies, "just the look of impropriety is enough . . ."

33. In early August 2021, respondent went to the Town Bookkeeper's office, asked for payment of the voucher and said he would charge interest if the Town continued to refuse payment.

34. On August 18, 2021, respondent submitted another invoice to the Town of Athens, noting an "Overdue Balance" of \$3,329.99 and adding a "finance charge" of \$66.59.

35. When asked during his investigative appearance why he continued to seek payment and added a finance charge after he was aware of the appearance of impropriety, respondent testified, “I was still maintaining the interests of Mercer Associates.”

36. By approximately November 18, 2021, respondent was aware that the Commission was conducting an investigation.

37. On or about December 30, 2021, respondent submitted an invoice from Mercer Associates to the Town of Athens which showed a \$0 balance due and indicated that the camera system had been removed.

38. The Town of Athens returned the JCAP grant funds to OJCS. As a result of the failure to spend the funds awarded for 2020-21, the court was disqualified from requesting a JCAP grant for 2021-22.⁶

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(A), 100.3(B)(1), 100.3(C)(1), 100.4(A)(1), (2) and (3) and 100.4(D)(1)(a) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and

⁶ Paragraphs 7(G) and 31 of the Complaint were not sustained and are dismissed.

respondent's misconduct is established.

Each judge is obligated to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) The Rules also prohibit judges from participating in business dealings that “may reasonably be perceived to exploit the judge's judicial position” and require that “[t]he judicial duties of a judge take precedence over all the judge's other activities.” (Rules, §§100.3(A) and 100.4(D)(1)(a)) Respondent violated these Rules when he used his judicial position to advance his personal business interests by directing that the security camera system be included in the JCAP grant application even though the Town Board had not approved the system for inclusion in the application. Respondent then improperly caused his company, Mercer Associates, to purchase and install the camera system at the Town Court without disclosure to the Town Board and without any bidding. Furthermore, in his role as Town Justice, respondent signed a voucher submitted to the Town for payment to Mercer Associates knowing that the invoice attached to the voucher falsely included the cost of a higher priced camera system than the system he had installed. By this conduct, respondent caused his personal business interests to improperly take precedence over his judicial duties.

“The handling of official funds is one of a judge's most important responsibilities. . . . This responsibility requires strict adherence to mandated procedures in order to avoid even the appearance that court funds have been mishandled or misappropriated.” *Matter of McDermott*, 2019 Ann Rep NY Comm Jud Conduct at 161, 167. “[C]arelessness in handling public moneys is a serious violation of [a Judge’s] official responsibilities’ . . . Such breaches of public trust have frequently led to removal” *Matter of Murphy*, 82 NY2d 491, 494 (1993) (citations omitted). By engaging in self-dealing to further his own business interests in connection with the JCAP grant, respondent violated his ethical obligations and undermined confidence in the integrity of the judiciary.

Respondent also engaged in a pattern of failing to be forthright with Court and Town officials. The evidence supported the referee’s finding that “[r]espondent was deliberately deceptive.” Respondent failed to disclose to his co-judge and the Town Board that he added the security camera system to the JCAP grant application. After the grant was approved, without any bidding or other process, respondent decided that his company would purchase and install the system without disclosing that to Town officials in violation of Section 803(1) of the General Municipal Law. Exacerbating his misconduct, after he purchased and installed the less expensive system, respondent failed to reduce the price he charged the Town. Instead, through his company, respondent falsely billed the

Town for the cost of the higher priced system. Then, without regard to the conflict or any disclosure to the Town, as Town Justice, he approved the voucher for payment to Mercer Associates with the attached invoice from his company that included the inflated cost.

In additional misconduct, respondent improperly used his official court email account to send an email, which identified him as a judge, to Town officials seeking payment to his company, Mercer Associates. In this way, respondent used his judicial office to try to obtain payment to his personal business.

We find it particularly troubling that even after respondent was made aware of the ethical issues surrounding his actions, he did not take any remedial steps to mitigate his wrongdoing. When the Court Clerk observed respondent installing the cameras and indicated to him that appeared to be inappropriate given his judicial role, respondent did not contact OJCS or Town officials or seek an ethics opinion from the Advisory Committee on Judicial Ethics. Rather, he completed the installation.

Similarly, even after the Town Supervisor advised respondent that payment to Mercer Associates was being held due to the conflict and respondent acknowledged the possible appearance of impropriety in an email to his supervising judge, respondent continued to try to obtain payment of the Mercer Associates' invoice, which included the false higher price for the camera system.

Placing his business interests first, respondent told the Town Bookkeeper that he would add a finance charge if his invoice was not paid. Following that conversation, respondent submitted another invoice to the Town which continued to include the higher price and also included a finance charge for a past due balance. It was only after respondent became aware of the Commission's investigation into his conduct that he removed the cameras and issued a zero balance invoice to the Town. By continuing to insist on payment even after being made aware of the ethical issues, respondent compounded his misconduct and demonstrated a lack of understanding of the inappropriateness of his actions.

Moreover, by continuing to argue that the Court Clerk failed to submit his estimate for the camera system to the Town Board for approval, respondent does not appear to have accepted responsibility for his conduct. Notably, at the time the Court's request for Town approval was submitted without the camera system, respondent did not indicate that anything was missing from the request. Nor did he state that any item was missing from the Town Clerk's subsequent letter which identified the approved items and did not include the camera system. By blaming others, respondent ignored his responsibility for engaging in self-dealing and prioritizing his personal business interests over his judicial duties.

“[T]he purpose of judicial disciplinary proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit

incumbents’.” *Matter of Reeves*, 63 NY2d 105, 111 (1984) (citation omitted) We are mindful that “the extreme sanction of removal is warranted only in the event of ‘truly egregious circumstances’ that extend beyond the limits of ‘even extremely poor judgment’” *Matter of Putorti*, __ NY3d __, 2023 NY Slip Op 05304 at *3 (Oct. 19, 2023) (citation omitted). Given the totality of evidence, including respondent’s deceptive conduct and his continued efforts to seek payment to his company even after he was aware of the improprieties, respondent is unfit for judicial office.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

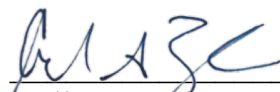
Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Doyle, Judge Falk, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Judge Miller did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: December 27, 2023



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct