

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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

**E. TIMOTHY MERCER,**

a Justice of the Athens Town Court,  
Greene County.

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**MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT  
OF RECOMMENDATION THAT RESPONDENT BE REMOVED FROM  
OFFICE**

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## **PRELIMINARY STATEMENT**

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of the recommendation that the Findings of Fact and Conclusions of Law in the Report of Referee David M. Garber be confirmed and that the Honorable E. Timothy Mercer (“Respondent”) should be removed from office.

## **INTRODUCTION**

Respondent, a part-time justice of the Athens Town Court who runs his own contracting business, (A) directed public funds to his own company, without bid, at an inflated price, for the unauthorized purchase and installation of a courthouse security system, (B) materially lied to Town and court administration officials in the process, and (C) asserted his judicial title when attempting to wrest payment from rightfully wary Town officials. His fraudulent conduct violated a host of ethical rules and warrants his removal.

Respondent’s misconduct revolves around an application to the Justice Court Assistance Program (“JCAP”) for a grant to purchase equipment in the Town Court.

After several meetings involving Respondent, his co-judge, a Senior Court Clerk and a Court Clerk, it was agreed to apply for funds to purchase two air

conditioners, window blinds, a shredder, a desk chair and reimbursement for certain Covid expenses.

Based on that recommendation, the Town Board adopted a resolution authorizing the court to apply for JCAP funding of the requested items. As part of the application, the Town Supervisor, Respondent and his co-judge signed a certification providing *inter alia* that none of the funds awarded pursuant to the JCAP application would be used to compensate justices.

After the Town Board voted, Respondent deviated from the court's established grant application practices by directing the Senior Court Clerk to add a security camera system to the JCAP grant application, even though he had not discussed the addition with his co-judge or court staff, it had not been included in the September 21, 2020, letter to the Town Board, and it had not been authorized by the Town Board.

When the grant was approved, Respondent assigned the security camera installation contract to his own company without disclosing his personal interest to the town or state, and contrary to the prohibition against using JCAP funds to compensate justices.

Thereafter, Respondent purchased and installed a camera system that cost approximately \$760 less than the system listed in the JCAP application, then

knowingly falsified an invoice reflecting the purchase and installation of the higher-priced system in order to pocket the difference.

Finally, Respondent used his position as town justice in an attempt to obtain approval of payment of his falsified invoice, and used his judicial email address to leverage his request for payment of his invoice after town officials uncovered his conflict of interests. Respondent continued to insist on payment of the invoice, together with an added interest fee for nonpayment, even after acknowledging to his supervising judge that his conduct created at least the appearance of impropriety. When called to account for his misconduct, Respondent blamed others for his bad acts.

Respondent's "deliberately dishonest" (Rep: 36)<sup>1</sup> conduct, and the intentional exploitation of his judicial authority to misappropriate public funds for personal gain, fatally undermine his effectiveness as a judge and compel his removal from office.

## **PROCEDURAL HISTORY**

### **A. The Formal Written Complaint**

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint, dated October 13, 2022, containing one charge. The charge alleged that, in connection with the Town of Athens 2020-21 JCAP application and

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<sup>1</sup> References to "Rep" are to the pages of the Referee's Report.



receipt of JCAP funds, Respondent: (A) surreptitiously, and without notification to the pertinent Town officials or his co-judge, directed that a security camera system be added to the application; (B) awarded the camera-installation contract to his own company, Mercer Associates, contrary to law, notwithstanding his conflict of interest and without notifying the pertinent Town officials of his conflict; (C) 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 otherwise undisclosed markup fee of \$760; (D) signed a Town of Athens voucher in his capacity as town justice, authorizing payment of an invoice to his own company, Mercer Associates, to be paid from a combination of JCAP funds and court budget funds; (E) invoked his judicial office in an attempt to persuade the Town to pay the Mercer Associates invoice after being notified that payment was being withheld; (F) continued to insist that the Town pay the invoice, and charged an added interest fee for nonpayment, even after he acknowledged to his supervising judge that his conduct created at least an appearance of impropriety; and (G) failed to cooperate with Town officials by refusing to sign for and accept copies of the Town's handbook, procurement policy and ethics code (Formal Written Complaint ¶ 7).

## **B. Respondent's Answer**

Respondent filed an Answer dated December 7, 2022. Respondent admitted most of the substantive allegations of the Formal Written Complaint but offered various excuses and blamed others for his conduct. Respondent asserted that he awarded the security camera contract to himself in order to “safeguard and protect [his] staff from elicit sexual harassment and innuendos directed at them by the Town of Athens Bookkeeper, Mr. Pierro” (Answer at 1).<sup>2</sup> Respondent also asserted that he exercised “poor judgment” by installing the cameras himself because “outside vendors” were not allowed in the building (Answer at 1). Although Respondent wrote that he was “misguided by [his] ignorance of the rules of the JCAP program,” he asserted that, as a new judge, he “relied heavily on the experienced court staff to perform their duties diligently and competently,” and whom he asserted “fail[ed] to remember when conversations were had, when documents were received or submitted, or failed to competently perform their duties” (Answer at 2). Respondent explicitly blamed Senior Court Clerk Marcia Puorro for omitting a Mercer Associates estimate in the material presented to the Town Board for passage of a resolution for the court to apply for the JCAP grant (Answer at 5).<sup>3</sup>

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<sup>2</sup> At the hearing, Respondent produced no evidence that any complaints of sexual harassment were made against the Town Bookkeeper.

<sup>3</sup> The Referee found that this assertion was “not credible” (Rep: 18).

### **C. The Hearing**

By Order dated February 24, 2023, the Commission designated David M. Garber, Esq., to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 16 and 17, 2023, at the Commission's Albany office. Counsel for the Commission called five witnesses, including Respondent, and introduced 28 exhibits.<sup>4</sup> Respondent called three witnesses, gave testimony in narrative format and introduced 9 exhibits. Two documents were introduced as exhibits of the Referee.

### **THE HEARING EVIDENCE**

#### **A. Respondent is the Sole Owner of Mercer Associates.**

Respondent has been a part-time judge of the Athens Town Court since the beginning of 2020 (Puorro: 17).<sup>5</sup> In addition to his judicial position, Respondent is the proprietor of Mercer Associates, a contracting company located in the Town of Athens (Colloquy: 281, 289; Respondent: 333; Exs 13, 21). In Respondent's own words, despite his part-time judicial work, his "full-time position" with Mercer Associates is "how I make my living" (Colloquy: 289). Mercer Associates has no

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<sup>4</sup> References to "Ex" and "Resp Ex" are to exhibits introduced into evidence by the Commission and Respondent, respectively. All other citations, unless noted, are to the hearing transcript.

<sup>5</sup> Respondent's co-judge, Constance Pazin, has been a part-time judge of the Athens Town Court for over 38 years, and Marcia Puorro has been a Court Clerk there for 24 years. The court has no full-time judges (Puorro: 17; Pazin: 227-28; Colloquy: 289).

other employees and all profits from the company flow exclusively to Respondent (Colloquy: 282; Respondent: 335).

**B. Funds Awarded Through the Justice Court Assistance Program Cannot Be Used to Compensate Justices.**

The Justice Court Assistance Program (“JCAP”) of the Unified Court System provides annual grants to assist the operation of town and village justice courts (Judiciary Law §849-h[1]; Rules of the Chief Administrative Judge [22 NYCRR] §138.2; Puorro: 18; Pazin: 229; Exs 7; 24). JCAP funds “may be used for any purpose having as its end enhancement of the justice courts’ ability to provide suitable and sufficient services to their respective communities” (Judiciary Law §849-h[2]). This includes, but is not limited to, “automation of court operations; improvement or expansion of court facilities; provision of appropriate means for the recording of court proceedings; provision of lawbooks, treatises and related materials; and provision of appropriate training for justices and for nonjudicial court staff” (*id.*). Each town and village that receives JCAP funds must comply with all attendant rules and regulations (Exs 4 p2; 24). The law explicitly prohibits the use of JCAP funds to compensate justices or court staff (Judiciary Law §849-h[2]; 22 NYCRR 138.2; Exs 4 p2; 24; 25).

JCAP is operated and managed by the Office of Justice Court Support (“OJCS”) (Puorro: 18; Exs 3; 4). The determination of whether to approve an application for JCAP funding is made by the chief administrator of the courts

(Judiciary Law §849-i[1]). By law, applications submitted for JCAP funding are required to include the amount of funding sought and “[a] detailed description of the purpose or purposes to which the funding will be applied” (Judiciary Law §849-i[2][a], [b]).

**C. The Athens Town Court’s Standard Practices and Procedures Regarding JCAP Applications.**

In her 24 years at the Athens Town Court, Senior Court Clerk Marcia Puorro has been involved in the filing of more than 10 JCAP applications (Puorro: 16, 18). Each March, the court is notified that the application process for that year’s JCAP grant cycle is open, with applications due in the fall (Puorro: 19, 23). Soon after, the justices and court clerks begin discussing what items they would like to include (Puorro: 19). Once they agree on items to request, Ms. Puorro writes a letter to the Town Board, notifying the Board of all the items the court is requesting on its JCAP application and seeking the Board’s authorization to apply for the JCAP grant by passage of a resolution (Puorro: 19, 21-22, 24). Before submitting the letter, Ms. Puorro shows it to the justices for their approval (Puorro: 24-25).

Contemporaneously, Ms. Puorro researches item costs and begins filling out the online JCAP application at OJCS’s website, on which she lists the items the court is requesting, a quantity and price per item, and a priority level for each item (Puorro: 19-20). Upon receipt of a letter from the Town Board stating it has passed a resolution authorizing the requested items, Ms. Puorro finalizes and

submits the online JCAP application, then separately faxes to OJCS copies of the JCAP signature page (signed by the justices and the Town Supervisor), the Town Board's letter, the court's annual budget, and web printouts showing the prices of the requested items (Puorro: 19-21). Subsequently, the court receives notice from OJCS as to whether it has been awarded a JCAP grant (Puorro: 21).

Awarded JCAP funds are sent to the Town and held by the Town Bookkeeper for disbursement (Puorro: 22). Upon purchase of an authorized JCAP grant item, Ms. Puorro completes and submits a voucher to the Town Bookkeeper for payment to the court (Puorro: 23).

**D. The Town Board Did Not Authorize the Athens Town Court to Request a Security Camera in its 2020-21 JCAP Application.**

After receiving notice that the 2020-21 application process was open, Respondent, Judge Pazin, Ms. Puorro and former court clerk Vicenzina Carl collectively agreed to seek funds for two air conditioners, window blinds, a paper shredder, a desk chair, and reimbursements for COVID expenses (Puorro: 23-25; Pazin: 229-30; Respondent: 334). They did not discuss the purchase of a security camera system (*see id.*). By letter dated September 21, 2020, Ms. Puorro asked the Athens Town Board to adopt a resolution authorizing the court to apply for a JCAP grant for the agreed-upon items (Puorro: 24-25; Pazin: 230-31; Ex 1 [letter]). Ms. Puorro copied Respondent and Judge Pazin on the letter, which requested only the agreed-upon items (Puorro: 25-26; Pazin: 230-31; Ex 1; *see* Respondent: 338).

As of September 21, 2020, there had been no discussion among court staff about including a security camera system on the JCAP application (Puorro: 24-26; Pazin: 230). After receiving Ms. Puorro's letter, neither Judge Pazin nor Respondent commented that any items were missing (Puorro: 25; Pazin: 231; Respondent: 338). That same day, Respondent and Judge Pazin signed the JCAP signature page (Pazin: 231; Respondent: 334; Ex 4, p 2), which contained the following Certification to be signed by the Town Supervisor or Village Mayor:

(1) any funds (and any goods or services) awarded pursuant to this application shall be used only in accordance with the provisions of Chapter 280 of the Laws of 1999 and with all rules and regulations governing [JCAP]; (2) any goods and/or services purchased with any [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; (3) no funds awarded pursuant to this application shall be used to compensate justices or non-judicial staff or to reduce or otherwise supplant funding provided by a town or village to its justice court.

(Ex 4, p 2). When Judge Pazin signed the document, it was her understanding that the only items the court would be requesting were the ones identified in Ms. Puorro's letter (Pazin: 231-32; Ex 2). A security camera system was not included among the requested items (Puorro: 33; Pazin: 70).

On October 5, 2020, the Athens Town Board adopted a resolution authorizing the court to apply for a JCAP grant to purchase the items listed in Ms. Puorro's letter: "2 new Air Conditioners; new Window Blinds; a new Shredder, a

Desk Chair and Reimbursement from COVID expenses” (Puorro: 26; Ex 2). The Town Board did not authorize the court to apply for grant money to purchase security cameras (Colloquy: 284; Respondent: 339). By letter dated October 6, 2020, the Athens Town Clerk memorialized the adoption of the resolution (Ex 2). Ms. Puorro received that letter on or about the same date and gave Respondent a copy (Puorro: 26). Respondent made no comment to her about any omissions in the Town’s resolution or letter (Puorro: 26).

Upon receiving the Town Board’s letter, Ms. Puorro provided the Athens Town Supervisor Robert Butler with a printout of the yet-to-be-finalized online JCAP application and the JCAP signature page, which already had been signed by Respondent and Judge Pazin (Puorro: 33). At that point, the draft online JCAP application still did not include a security camera system (Puorro: 33).

On October 7, 2020, Mr. Butler signed the certification on the JCAP signature page, at which time he believed that the court was applying for only “air conditioners, chairs, a shredder, maybe some reimbursement for COVID” (Butler: 198, 201). No one from the court notified Mr. Butler or the Board that a security camera system was going to be included on the JCAP application (Butler: 198).

**E. Respondent Privately Directed Ms. Puorro to Add a Security Camera System to the JCAP Application.**

On October 6 or 7, 2020 – after the court received the letter documenting the Town Board’s passage of the resolution but before it received the signed JCAP



signature page back from Mr. Butler – Respondent told Ms. Puorro to add a security camera system to the JCAP application (Puorro: 28-29; Respondent: 335-36). Ms. Puorro noted that the Town Board and Judge Pazin would not know that the court was requesting a camera system, to which Respondent replied, “Let’s just leave it at that. Don’t worry about it” (Puorro: 29). Ms. Puorro asked Respondent to provide her with cost estimates “because [she didn’t] even know what to look for” (Puorro: 29). Ms. Carl was present for this conversation, but Judge Pazin was not, nor was she involved in any discussion about adding a security camera system (Puorro: 28-29; Pazin: 230, 233; Respondent: 336).

On October 6, 2020, Respondent printed a listing from the website [cctvsecuritypros.com](http://cctvsecuritypros.com), for a “Model: CSP-4POEMX8-S” security camera system and provided it to Ms. Puorro (Puorro: 31-32, 34, 71-73; Colloquy: 282-83; Respondent: 391; Ex 4, pp 16-18). Respondent handwrote on the document: “2,329.99” (Puorro: 34; Colloquy: 283; Ex 4, p 16).<sup>6</sup> Underneath that figure, Ms. Puorro made the notation, “+1,000 – Installation,” based on an installation amount Respondent had told her (Puorro: 34-35; Colloquy: 283; Ex 4, p 16).

At Respondent’s direction and based on information he provided, Ms. Puorro added a security camera system as the last item on the JCAP application, at

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<sup>6</sup> The only indication of the camera system’s cost comes from Respondent’s handwritten notation. The CCTV Security Pros website printout does not show a price (Ex 4, pp 16-18).

a price of \$3,329.99 (Puorro: 28-32; Ex 3, p 5). Ms. Puorro made the camera system a lower priority level than other requests (*id.*).

Contemporaneously, Respondent, Ms. Puorro and Ms. Carl discussed who would install the camera system, and Respondent said they would have a company by the name of Stone Creek Electric do the work (Puorro: 30-31; Respondent: 341-42). Respondent had subcontracted work to that company in the past (Respondent: 341). There was no discussion at that time of Respondent's company, Mercer Associates, performing the installation (Puorro: 31).

On October 7, 2020, Ms. Puorro formally submitted the court's 2020-21 JCAP application, which included the security camera system at a cost of \$3,329.99 (Puorro: 27; Ex 3). That same day, she sent a fax to OJCS containing the JCAP signature page, the Town Board resolution, and supporting documents regarding the items requested, including the cctvsecuritypros.com printout Respondent had provided (Puorro: 32; Ex 4).

Respondent did not notify Judge Pazin or Supervisor Butler that a security system had been added to the JCAP application (Butler: 198; Pazin: 233-34).

**F. When OJCS Requested Additional Information, Respondent's Wife Provided a Mercer Associates Estimate, Which Did Not Identify Respondent as Having an Interest in the Company.**

By email dated November 18, 2020, OJCS informed Respondent and Judge Pazin that, in connection with the outstanding JCAP application, it needed "an

itemized breakdown of the cost for the Surveillance Cameras” along with an “estimate from the vendor” that was not “handwritten” (Resp Ex K). Judge Pazin first learned that a security system had been added to the JCAP application when she received this email, and at that point she was still unaware that Respondent intended to install the system and charge the town for the work (Pazin: 234-36).

By email dated November 25, 2020, OJCS further asked Ms. Puorro to provide “a new estimate that includes a breakdown of labor and itemized cost of materials as well as the exact location of where each camera will be placed” (Puorro: 35; Ex 5). At that time, Respondent told Ms. Puorro that he had decided to install the cameras himself, so she asked him for the information (Puorro: 36).

On December 1, 2020, Ms. Puorro received an email from “Carrol Mercer,” a so-called “Estimator” for “Mercer Associates,” attaching an estimate dated September 2, 2020 (Puorro: 36; Ex 6).<sup>7</sup> The estimate listed the cost to purchase and install a “CSP-4POEMX8-S” camera security system at the court as \$3,329.99, with an itemization of \$2,329.99 for the cost of the system plus a \$1,000 installation fee (Ex 6, p 2). Nowhere on the estimate or email is Respondent’s name listed, and those documents do not identify him as having any ownership or financial interest in “Mercer Associates” (Respondent: 339-40; Exs 5 and 6).

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<sup>7</sup> Carrol Mercer is Respondent’s wife (Colloquy: 282).

On December 1, 2020, Ms. Puorro emailed the estimate to OJCS (Puorro: 38; Ex 5). Ms. Puorro did not copy Judge Pazin on the email or provide her with a copy of the estimate (Puorro: 38). Respondent never notified OJCS that he had any financial interest in Mercer Associates (Respondent: 339-40).

**G. The Athens Town Court Received a Grant to Purchase a Security Camera System.**

By letter dated January 22, 2021 (“Award Letter”), and an enclosed Reconciliation Report, JCAP notified the Athens Town Court that it had been awarded a JCAP grant for the purchase of a video surveillance system in the amount of \$3,089.99 (Ex 7). The court’s request for the other items was not granted, even though some had been listed as higher priorities than the surveillance system (Ex 7; Puorro: 32). The Reconciliation Report stated, *inter alia*, “. . . as required by law, funds received hereunder may not be used for purposes other than the purchase of the item(s) set forth on the enclosed award form,” and anything 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” (Ex 7).

In late February 2021, the Town of Athens received a JCAP grant check, dated February 19, 2021, in the amount of \$3,089.99 (Exs 8, 21).

**H. Respondent Purchased and Installed a Less Expensive Security Camera System.**

On June 3, 2021, Respondent purchased a “Model: CSP-4POEMIC8” security camera system from cctvsecuritypros.com for \$1,569.99, which was \$760 cheaper than the “CSP-4POEMX8-S” model identified in the materials provided to OJCS, and in the Mercer Associates estimate (Exs 3, 4, 5, 6, 9, 10, 11, 12; Colloquy: 285; Respondent: 345-47; 394-99). In July 2021, Respondent installed that less expensive system at the Athens Town Court, without engaging in a competitive bidding process (Puorro: 40-423 Respondent: 335, 347, 395; Ex 21).

When Ms. Puorro and Ms. Carl saw Respondent performing the installation work, they warned him that “it didn’t look good that he was doing it through his business” (Puorro: 42). Respondent insisted upon completing the installation anyway (Puorro: 42-43; Respondent: 335). Judge Pazin did not know that Respondent was installing the camera system until after he had finished (Pazin: 236).

**I. Respondent Falsely Charged the Town for a More Expensive Security Camera System than the One He Installed.**

On July 6, 2021, Respondent gave a Mercer Associates invoice to Ms. Puorro in the amount of \$3,329.99, for the purchase and installation of a “CSP-4POEMICX8-S” security camera system (Ex 13) – which was neither the “CSP-4POEMX8-S” system on the JCAP application estimate (Ex 6), nor the “CSP-

4POEMIC8” system he actually installed (Ex 9). The invoice included a \$1,000 installation fee, and the model number of the system on the invoice was both different from and \$760 more expensive than the one Respondent actually installed (Respondent: 345-47; Exs 9; 13). Respondent directed Ms. Puorro to complete and submit a voucher to the town for payment to Mercer Associates based solely on the information in the invoice (Puorro: 40, 43; Exs 13, 21; *see* Respondent: 347-48). Respondent did not provide Ms. Puorro with any documentation showing the price he actually paid for the camera system, nor did he disclose that it cost him only \$1,569.99 rather than the \$2,329.99 listed on the invoice (Puorro: 40; Respondent: 352). Had Respondent’s invoice listed the price of the security camera system he installed, the JCAP grant would have covered the entire cost of the security camera system and a \$1,000 installation fee, with \$520 remaining in surplus JCAP funds. Because the court’s JCAP award did not cover the entire amount listed on Respondent’s invoice and voucher, Ms. Puorro had to request that an additional \$240 be paid from the court’s own budget (Puorro: 44; Respondent: 341).

On the same day, Respondent – acting in his capacity as town justice – approved the voucher prepared by Ms. Puorro – in the amount of \$3,329.99, to be paid to Mercer Associates – by signing his name in the box on the form labeled “Departmental Approval” (Puorro: 44; Colloquy: 287-88; Respondent: 347-48, 368-69; Exs 13, 14). In so doing, Respondent falsely certified that “[t]he above

services or materials [i.e., the security camera system and its installation] were rendered or furnished to the [Court] on the dates stated and the charges are correct” (Exs 13, 14).

Respondent knew when he submitted the invoice and approved the voucher that both documents falsely listed a different and more expensive camera system than the one he purchased and installed (Colloquy: 288; Respondent: 347-48, 375). Instead of contacting OJCS for further direction or reducing the cost of the security camera system on the voucher and invoice, Respondent intentionally charged the Town \$2,329.99 for the cost of the more expensive system in order to retain the additional undisclosed \$760 as “personal[ ] profit from this transaction,” while also seeking a \$1,000 installation fee (Colloquy: 286, 288-89; Respondent: 351, 353, 368, 374-75, 398-99).

**J. When the Town Rejected Respondent’s Invoice, Respondent Used His Official Judicial Email Account to Seek Payment.**

During the Town’s review of the voucher between July 6 and 15, 2021, Town officials – including Don Pierro and Robert Butler – realized that Respondent was seeking payment to a company he owned (Pierro: 150-51; Butler: 199, 202). As a result, Mr. Butler halted payment and referred the matter to the Town Attorney (Pierro: 150; Butler: 199-202).

On July 15, 2021, upon learning the Town was refusing payment, Respondent sent an email to Mr. Butler in support of his request for payment from

██████████@nycourts.gov – his official court system email address, which contained a signature block identifying him as “Town Justice” (Ex 15). Respondent cc’d Mr. Pierro, Judge Pazin, Ms. Puorro, and his own private email address (██████████@mercerplg.com) (Butler: 202; Colloquy: 290-92; Respondent: 354-55; Ex 15). That same day, Mr. Butler replied to Respondent’s email, saying that the Town was holding payment to Mercer Associates and reviewing whether Respondent had committed a violation by awarding the contract to his own firm (Butler: 202; Ex 15).

**K. Respondent Insisted on Payment and Charged the Town Interest, Despite Knowing that His Installation of the Security Camera System Raised Ethical Concerns.**

On July 21, 2021, Respondent sent an email to his supervising judge indicating 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” (Colloquy: 292-93; Ex 16). Respondent wrote that he did not feel he had violated any town ethics policies but acknowledged that “the look of impropriety is enough . . .” (*id.*).

Nonetheless, in early August 2021, Respondent went to Mr. Pierro’s office, requested payment of the voucher, and said he would charge interest if the Town continued to refuse payment (Pierro: 152-53; Colloquy: 291; Respondent: 356, 358; Ex 21). Around the same time, Supervisor Butler had a telephone



conversation with Respondent during which Mr. Butler attempted to work out a compromise whereby the Town would pay Respondent for the cost of the cameras, but without the installation fee, “because it was [Respondent’s] business, and [he] didn’t think that looked good” (Butler: 203).<sup>8</sup> Respondent did not follow up on that offer, but instead – on August 18, 2021 – submitted another invoice to the Town of Athens, noting an “Overdue Balance” of \$3,329.99 and adding a “finance charge” of \$66.59 (Pierro: 153-54; Colloquy: 291; Respondent: 356, 358; Exs 17, 21). Contemporaneously, Respondent told Ms. Puorro that he had charged the Town an interest fee (Puorro: 45-46). Respondent admitted that he continued to seek payment and levied an interest fee even after acknowledging the appearance of impropriety, because he “was still maintaining the interests of Mercer Associates,” which he felt “took precedence” over his judicial duties (Colloquy: 292-93).

On November 18, 2021, Respondent again emailed his supervising judge and advised him that the “Ethics Committee” had contacted Ms. Puorro with questions about the court’s JCAP grant (Ex 19). He received a reply that same day saying that it was likely a Commission investigator who had contacted Ms. Puorro (Ex 19). Respondent understood that the Commission likely was investigating his

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<sup>8</sup> Upon learning at the hearing that Respondent had paid \$760 less for the camera system than he charged the Town, Mr. Butler clarified that he would have agreed to pay Respondent only what he actually paid for the camera system, with proof of receipt, and no more (Butler: 204-05).

conduct (Respondent: 360). His reply email to his supervising judge stated that he would be “watching for emails and or calls from the Commission” and expressed his belief the entire situation had been a “retaliation” against him by Mr. Pierro for Respondent’s “questioning many practices he used in dealing with Our Court!” (Respondent: 362; Ex 19).

**L. After Learning of the Commission’s Investigation, Respondent Removed the Camera System and Retracted His Invoice.**

On December 30, 2021, Respondent submitted an invoice to the Town of Athens showing a \$0 balance due and indicating that the camera system had been removed (Respondent: 361; Ex 20). The invoice also stated “JCAP Terminated. Town to Return all Funds to NY State” (Ex 20).

On May 23, 2022, Judge Pazin completed a Reconciliation Report noting that no JCAP money had been spent, and that all JCAP funds had been returned (Ex 23). The Town of Athens returned the JCAP funds to OJCS (Pazin: 242-43). Because the JCAP funds awarded for 2020-21 went unspent, the Athens Town Court was disqualified from requesting a JCAP grant for the 2021-22 application period (Pazin: 243).

**M. Additional Admissions by Respondent.**

Commission Counsel called Respondent as a witness after he declined to testify in his own defense (Colloquy: 331). After an examination by Commission

Counsel, Respondent testified in narrative form and answered questions posed by the Referee (Colloquy: 365).

i. Direct examination by Commission Counsel.

In addition to corroborating much of the testimony given by the other hearing witnesses, set forth above, Respondent made the following admissions:

- The Town Board never authorized his court to include a security camera system on its JCAP application (Respondent: 339);
- The “Mercer Associates” estimate his wife sent Ms. Puorro did not include his name or indicate that he had a financial interest in the company (Respondent: 339-40);
- Respondent declined to notify the Town Board or anyone at OJCS that he had a financial interest in Mercer Associates, despite a responsibility to do so (Respondent: 337-40, 344);
- Respondent included the inflated amounts listed in his invoice because he “wanted to make money” (Respondent: 342-43);
- Respondent’s “judgeship allowed [him] an opportunity” to take advantage of his role as a judge to try to make money (Respondent: 344);
- The only reason Mercer Associates was hired to install the camera system was because Respondent used his authority “as Judge” to award the job to himself (Respondent: 344);
- Respondent essentially hired himself to install a security camera system at the court (Respondent: 354);
- Respondent considered that his private company took priority over his judgeship (Respondent: 343);

- Respondent engaged in self-dealing and created a conflict of interest (Respondent: 344);
- Respondent purchased and installed a security camera system that was different – and \$760 cheaper – than the one he had itemized on the Mercer Associates estimate provided to OJCS (Respondent: 345-47);
- Respondent signed and approved – in his capacity as Town Justice – a voucher for payment of \$3,329.99 to his own company, knowing that it falsely inflated the cost of the camera system by \$760 (Respondent: 347-48);
- Respondent did not reduce the cost of the cameras on the voucher to reflect the actual price he paid because he believed he was entitled to a “business or profit markup” (Respondent: 351);
- It had been “dishonest” for Respondent to try to benefit financially from submitting a voucher stating that the system he installed cost over \$2,300 when it actually cost under \$1,600 (Respondent: 348-49);
- In using his judicial email to send an email to the Town Supervisor concerning payment of the invoice, Respondent lent the prestige of judicial office to advance his private financial interests (Respondent: 355);
- Respondent understood that his conduct created an appearance of impropriety (Respondent: 355-56).

Although Respondent acknowledged that Supervisor Butler acted properly in halting payment of the voucher to Mercer Associates, Respondent blamed Mr. Butler for not being “more honest” with him (Respondent: 362). Respondent also testified that he “still [felt] 100 percent” that this entire situation was somehow “instigated” by Mr. Pierro and constituted “retaliation” (Respondent: 362). Yet, he admitted that Mr. Pierro acted properly by bringing his conflict of interest to Mr.

Butler’s attention (Respondent: 362). Respondent ultimately accepted that it was not the responsibility of court staff or Town officials to prevent him from committing misconduct; that responsibility was his alone (Respondent: 362).

ii. Respondent’s narrative testimony and responses to the Referee’s questions.

Respondent testified that he had “multiple conversations with court staff for months regarding the need for a security system because of numerous incidents with town personnel and COVID-19 issues with security in the halls of the court building” (Respondent: 367). Respondent believed that Ms. Puorro forgot to include the Mercer Associates estimate in the packet to be sent to the Town Board (Respondent: 370).<sup>9</sup> Respondent admitted that, even if Ms. Puorro made an error, that did not “exempt [him] from any of the ethics violations” (Respondent: 371).

Respondent gave conflicting testimony about when he noticed the omission of security cameras from Ms. Puorro’s September 21, 2020, letter to the Town Board. Respondent could not recall whether he saw Ms. Puorro’s letter before it was submitted to the Town Board (Respondent: 387). He testified that he “probably” noticed the omission of the security cameras when he saw the Town’s letter documenting the JCAP resolution, but he did not notify the Town Board about the omission or discuss it with Ms. Puorro (Respondent: 387-88). Yet he

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<sup>9</sup> Respondent never produced any documentation showing that the September 2, 2020, estimate from his company was provided to Ms. Puorro at any point prior to December 1, 2020.

also testified that he did not become aware of the omission until he received an OJCS email with inquiries about the camera system (Respondent: 389). Either way, Respondent claimed that he did not realize that the Town Board was unaware that Mercer Associates was going to install a security camera system until after he submitted his voucher for payment (Respondent: 390).

Respondent stated that he believed that by submitting the Mercer Associates estimate with the JCAP application, he would have an opportunity to do the installation (Respondent: 367-68). Respondent did not try to hide from court staff “who Mercer Associates was,” and he “relied” on Ms. Puorro’s advice and experience as the court’s “JCAP administrator” (Respondent: 368).

Respondent admitted that the JCAP signature page he signed on September 21, 2020, warned that “funds available pursuant to this article shall not be used to compensate justices and nonjudicial staff, nor shall they be used as a means of reducing funding by a town or village justice court” (Respondent: 401-03). However, he claimed that he did not notice that language when he signed the document and became aware of the JCAP rules containing that prohibition only at some unspecified later time (Respondent: 401-02).

Respondent provided the printout from CCTV Security Pros, dated October 6, 2020, to Ms. Puorro for her inclusion in the JCAP application (Respondent: 391; Ex 4), and he admitted that the system listed on this printout and on the Mercer

Associates estimate is a different model from the system that he ultimately purchased and installed (Respondent: 391-93, 395-98; Exs 4-6).

With respect to the \$1,000 installation fee, Respondent testified that it is a common practice to include labor as a line item on an invoice (Respondent: 368).

With respect to the \$760 differential between the amount of the model listed on the invoice and the amount of the model he actually installed, Respondent testified that this was due to “COVID-19 pandemic and related supply chain[ ]” problems, but conceded he “should have taken the \$760 and applied that back to the JCAP” (Respondent: 368, 374, 398-99). Respondent admitted that he was “fully aware of what he paid for [the cameras]” when he “presented the bill” to Ms. Puorro (Respondent: 375). Respondent admitted it was “[a]bsolutely” an act of “dishonesty” to charge \$760 more for the system than he actually paid (Respondent: 409-10).

Respondent initially testified that he signed the Town of Athens voucher authorizing payment of his company’s invoice because it was common practice in the court for Ms. Puorro to present him with invoices for his signature (Respondent: 369). When the Referee asked Respondent about his earlier admission in Exhibit 21 that he “directed” Ms. Puorro to submit the voucher in the amount of \$3,329.99 to the Town, Respondent apparently recanted his prior

admission, characterizing “direction” as “a little forceful,” and testifying that he merely had a “conversation with her” (Respondent: 399-400).

Immediately after Supervisor Butler told Respondent that the Town would not pay the voucher, Respondent claimed that he went to his office and “mistakenly” used his judicial email account to send the email concerning payment, rather than his personal account (Respondent: 369). He maintained that he did not intend or invoke his judicial office to intimidate or persuade the Town to pay his invoice (Respondent: 369).

With regard to adding an interest fee to his invoice, Respondent testified that the fee was automatically generated by his QuickBooks program (Respondent: 379). He did not disengage the program’s auto-generate function until later because he was angry with “how the Town was proceeding” (Respondent: 369).

Respondent removed the cameras because it was “the right thing to do, however it might look” (Respondent: 380). He ultimately had “no personal gain” from the transaction (Respondent: 380).

Respondent testified that he refused to sign for and accept the materials from the Town because he was advised during his training for new judges not to sign Town handbooks and sexual harassment policies (Respondent: 369). Respondent believed that “Mr. Pierro was aggressive” in having the handbook revised, seemingly in response to his receipt of Respondent’s voucher (Respondent: 370).



Respondent believed that Supervisor Butler and Mr. Pierro retaliated against him (Respondent: 376-77). Respondent alternately denied that they retaliated against him by filing a complaint against him with the Commission and claimed that they retaliated by filing a complaint against him instead of giving him an opportunity to resolve the situation (Respondent: 377-78, 383, 404-09). Respondent implied that the reason Supervisor Butler and Mr. Pierro were so quick to file a complaint against him was because of prior disagreements between the town and the court about budget and personnel issues (Respondent: 405-09).

### **THE REFEREE’S REPORT**

On October 4, 2023, the Referee issued a 52-page report sustaining nearly all the allegations in the Formal Written Complaint.<sup>10</sup> The Referee found that Respondent “involved himself in the preparation of the Court’s JCAP Application notwithstanding his interest in performing the security camera work” and acting in his capacity as “town justice,” “directed Court Clerk Puorro to add a system to the Application without informing his co-judge (Judge Pazin), the Board or any other town official, much less discussing his addition with them” (Rep: 35, 37). Once that addition had been made and OJCS requested a detailed estimate of the costs of

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<sup>10</sup> The only allegations not sustained were those in paragraphs 7(G) and 31, which alleged that Respondent failed to cooperate with town officials by refusing to accept and sign for the Town Handbook, Procurement Policy and Ethics Code until after his investigative testimony. Commission Counsel accepts the Referee’s assessment. Specifications 7(G) and 31 of the Formal Written Complaint should not be sustained.

furnishing and installing the security camera system, Respondent provided OJCS with a Mercer Associates estimate form “without disclosing that he was the sole owner of Mercer Associates” (Rep: 35, 37).

Respondent – acting “as town justice” – “hired himself to furnish and to install the security system” (Rep: 19, 20, 35, 37). Respondent purchased a less expensive (\$1,569.99) “IC8” model instead of the more expensive (\$2,329.99) “X8-S” model listed on the Mercer Associates estimate and JCAP Application, and he “knowingly charged the Town \$2,329.99 for the IC8 system which cost only \$1,569.99, a \$760 differential which Respondent intended to retain as profit” in order “to make money” (Rep: 21, 35, 37-38).

The work having been completed, Respondent – again in his “capacity as town justice” – “signed and approved the Voucher authorizing payment of his own Invoice which he knew falsely charged the Town \$2,329.99 for the security camera system which cost only \$1,569.99” (Rep 23, 35, 38). In so doing, he “falsely certified that his charge for the system was ‘correct’” (Rep 38, quoting Ex 14). When the town subsequently learned of Respondent’s association with Mercer Associates and refused to pay the voucher, he intentionally used his judicial email

account to seek payment of his company's invoice, thus lending the prestige of his judicial office to his payment request (Rep 41).<sup>11</sup>

The Referee concluded that Respondent was “consistently secretive and withholding,” and that “[a]t every juncture where Respondent could (and should) have shared information with Judge Pazin, Court staff, the Board, Town officials or OJCS [*sic*] he failed to do so” (Rep: 35-36, emphasis added). The Referee likewise found that Respondent “was deliberately deceptive” in his actions surrounding the JCAP grant and surveillance camera system (*id.*, emphasis added). Moreover, the Referee determined, “Respondent not only prioritized his personal interests as a full-time contractor and owner of Mercer Associates over his responsibilities as a part-time town justice but he exploited his judicial position to further his private business interests” (Rep: 36-37, emphasis added). And, the Referee concluded, although Respondent “took full responsibility for his improper conduct” and was “contrite and remorseful” (Rep: 32), his assertion that he gave Ms. Puorro the Mercer Associates estimate to include with her September 21 letter was “not credible” (Rep: 18).

All told, the Referee determined that Respondent violated Sections 100.1, 100.2, 100.2(A), 100.2(C), 100.3(A), 100.3(B)(1), 100.3(C)(1), 100.4(A)(1-3) and

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<sup>11</sup> In so finding, the Referee explicitly rejected Respondent's claim that this use of his judicial email account had been a mistake, as Respondent claimed (Rep: 24-25; *see* Respondent: 369).

100.4(D)(1)(a) of the Rules Governing Judicial Conduct (“Rules”) (Rep: 33). In addition, the Referee found, Respondent’s judicial misconduct violated numerous statutory, regulatory and code provisions, including Judiciary Law §849-h(2), 22 NYCRR 138.2, Sections 801 and 803 of the General Municipal Law and two sections of the Town of Athens Code of Ethics (Rep: 42-46).

## ARGUMENT

### POINT I

#### **RESPONDENT’S DELIBERATELY DISHONEST CONDUCT AND INTENTIONAL EXPLOITATION OF HIS JUDICIAL OFFICE IN AN EFFORT TO MISAPPROPRIATE PUBLIC FUNDS FOR PERSONAL GAIN CONSTITUTE SERIOUS MISCONDUCT.**

“The handling of official funds is one of a judge’s most important [administrative] responsibilities . . . [and] 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 of NY Commn on Jud Conduct at 161, 167; *see* Rules §§100.1, 100.2(A), 100.3(C)(1). Consistent with those principles, the Commission has explicitly held that a judge’s use of JCAP funds to purchase unauthorized items violates the Rules, even where the judge acted in good faith for the benefit of his court, and without any indication that the judge sought to personally benefit from the JCAP expenditure. *See Matter of Knab*, 2022 Ann Rep of NY Commn on Jud Conduct at 112.

Additionally, every judge has a duty to refrain from lending the prestige of judicial office to advance his own private interests, which “is prohibited by well-established ethical standards (Rules § 100.2[C]), even in the absence of a specific request for special consideration or an overt assertion of judicial status and authority.” *Matter of Sullivan*, 2016 Ann Rep of NY Commn on Jud Conduct at 209, 213. As the Commission has held, a judge may violate that Rule by providing his judicial email address in connection with a private matter, which implicitly places the weight of his judicial office behind his personal agenda. *Matter of Persons*, 2024 Ann Rep of NY Commn on Jud Conduct at \_\_\_, \*2<sup>12</sup>; cf *Matter of Tyler*, 1990 Ann Rep of NY Commn on Jud Conduct at 168, 173 (judge lent the prestige of judicial office to advance her private interests by using court letterhead in instances involving personal disputes).

Here, as the Referee found, Respondent violated that precedent – acting in bad faith and exploiting the power of his office to line his own pockets – when he: (1) unilaterally arranged for a security camera system to be added to his court’s JCAP application, without notification to the Town Board or his co-judge (Rep: 35, 37); (2) sought to funnel JCAP funds to himself by using his authority as town justice to “hire[ ] himself to furnish and install the security camera system” (Rep: 19-20, 35, 37); (3) caused an estimate from his company to be submitted to OJCS

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<sup>12</sup> Available at <https://cjc.ny.gov/Determinations/P/Persons.Jeremy.L.2023.02.23.DET.pdf>.

“without disclosing that he was the sole owner of Mercer Associates” (Rep: 35, 37); (4) installed a security camera system that was \$760 less expensive than the one described in the estimate in order to retain the \$760 difference as personal profit (Rep: 21, 35, 37-38); (5) knowingly falsified a court voucher for payment to his company in the amount of the more expensive system, which he neither purchased nor installed, in which he “falsely certified that his charge for the system was correct” (Rep 38, quotation marks omitted) notwithstanding that the Town would have unknowingly violated the law prohibiting the use of JCAP grant funds to compensate justices had the Town paid the invoice (Rep 27); and (6) approved that payment voucher in his “capacity as town justice,” then sent an email from his official judicial email account seeking payment of the invoice after being notified that the Town was refusing payment (Rep: 23, 25, 38, 41).

Respondent unquestionably committed misconduct of a type but far worse than what led to censure in *Knab* and removal in *Persons*. As the Referee correctly determined, that misconduct violated Sections 100.1, 100.2, 100.2(A), 100.2(C), 100.3(A), 100.3(B)(1), 100.3(C)(1), 100.4(A)(1-3) and 100.4(D)(1)(a) of the Rules (Rep: 33) (Rep: 38-39).<sup>13</sup>

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<sup>13</sup> The Referee also properly found that Respondent violated Section 100.2(A) of the Rules, which provides that a judge shall respect and comply with the law, by violating numerous statutory, regulatory and code provisions, including Judiciary Law §849-h(2), 22 NYCRR 138.2, Section 803 of the General Municipal Law and two sections of the Town of Athens Code of Ethics, as alleged in the Formal Written Complaint (Rep: 42-46). The Commission should confirm that finding for the reasons found in the Referee’s Report. Paragraph 19 of the Formal

## POINT II

### **RESPONDENT SHOULD BE REMOVED FROM JUDICIAL OFFICE.**

Respondent's admitted exploitation of his judicial office for personal financial gain, combined with his deceptive, dishonest and downright fraudulent misappropriation of public funds, requires his removal. Respondent aggravated this already egregious misconduct by continuing to seek payment even after he was made aware of his ethical transgressions, adding an interest fee when the town refused payment, and disclaiming responsibility for his wrongdoing by making excuses and blaming others. In sum, Respondent's conduct demonstrates that he is insensitive to his ethical obligations and routinely places his own interests over the special obligations as a judge.

As the Referee put it: "Respondent not only prioritized his personal interests as a full-time contractor and owner of Mercer Associates over his responsibilities

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Written Complaint also alleged that Respondent violated Section 801(1) of the General Municipal Law, which strictly prohibits a municipal officer who has the has "the power or duty to . . . negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder" from having any interest in a contract with his municipality, regardless of disclosure of the interest. Although the Referee correctly noted that Commission Counsel withdrew this particular allegation in their post-hearing brief on the basis that the record is unclear whether Respondent, in his official capacity, had any of these powers and duties, the Referee nevertheless found that "Respondent's improper conduct was inconsistent with §801 and the policy underlying it: the elimination of conflicts of interest by municipal officers and employees and the promotion of public confidence in their integrity – the same policy underlying the Rules. *See e.g.*, §100.2(A) ('A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary')" (Rep: 44-45). Because Commission Counsel withdrew this specification, the Commission should disregard the Referee's finding as to GML 801(1).

as a part-time town justice but he exploited his judicial position to further his private business interests” in a manner that was “consistently secretive and withholding” and “deliberately deceptive” (Rep: 35-37, emphasis added).

The Court of Appeals has held that the “mishandling of public money by a Judge is ‘serious misconduct’ even when not done for personal profit.” *Matter of Murphy*, 82 NY2d 491, 494 (1993) (emphasis added). Accordingly, such serious misconduct is significantly aggravated – and compels removal – where, as here, it is done for personal profit, and carried out through means of dishonesty and deception. *See Matter of Moore*, 1984 Ann Rep of NY Commn on Jud Conduct at 131, 133 (removing judge for falsifying court records to conceal the misappropriation of court funds).

In a blatant, intentional attempt to misappropriate public funds, Respondent provided OJCS with an estimate for a camera system for his court costing \$2,329.99, then clandestinely purchased a cheaper system for \$1,569.99, installed that system without disclosing the change, and attempted to pocket the \$760 difference (Rep: 28-29, 35, 38; Respondent: 345-47, 351-53). Respondent admitted that he falsely charged \$760 more than he paid for “profit” and “personal gain” and conceded that he “[a]bsolutely” engaged in “dishonesty” in this regard (Colloquy: 286, 288-89; Respondent: 350-51, 368, 374-75, 398-99, 409-10). Indeed, given that Respondent tried to realize that profit by knowingly preparing a



falsified invoice and town voucher indicating that he paid \$760 more than he actually did (Respondent: 348), he arguably committed a crime.<sup>14</sup> Those actions alone warrant Respondent's removal from office.

Making matters worse, Respondent repeatedly sought to use the weight of his judicial office to perpetrate this fraud. First, he used the power and access afforded by his judgeship to surreptitiously insert his security camera system into the JCAP application in the first place, by secretly directing a court clerk to do so after the Town Board had approved a JCAP application that did not include the cameras (Rep: 37). Next, after the camera system had been approved under those dubious circumstances, and in flagrant disregard of the law's ban on the use of JCAP funds to compensate justices, Respondent misused his administrative authority as town justice to assign the camera contract to himself, again without involving his co-judge or the Town Board in the decision-making process (Rep: 28, 37, 43) and without disclosing to OJCS his ownership interest in the company that was to install the security cameras. Following the installation, Respondent abused that same administrative authority by directing the clerk to prepare a

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<sup>14</sup> Under Penal Law §§170.05 and 170.10, a person commits Forgery in the Third Degree when, "when, with the intent to defraud, deceive or injure another he or she falsely makes, completes, or alters a written instrument," and Forgery in the Second Degree when the written instrument in question is a "public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant." Under Penal Law §175.05(1), a person commits Falsifying Business Records in the Second Degree by "mak[ing] or caus[ing] a false entry in the business records of an enterprise."

voucher in the amount of \$3,329.99 – again, a number inflated by \$760, plus an unexplained \$1,000 labor fee – and signing his own name in the box labeled “Department Approval” (Rep: 23). Then when the town discovered his malfeasance and refused to pay the voucher, Respondent sought payment via an email sent from his official judicial email account (Rep: 30), lest the Town Supervisor forget that it was the Town Justice who was owed money.<sup>15</sup>

Individually and collectively, those actions portray a judge who is all too ready to misuse the prestige of his office for personal gain. As the Referee found, Respondent admitted at the hearing that “that he used his judicial position ‘to make money’” (Rep: 29). These actions, permeated by Respondent’s fraudulent conduct, likewise warrant removal.

*Matter of Knab* is instructive. There, a town justice was censured for purchasing with unspent JCAP money – in good faith and for court use – audio-visual equipment that had not been authorized in the award, and falsely reporting to OJCS that he had spent the entire grant amount on approved items. *See Knab*, 2022 Ann Rep of NY Commn on Jud Conduct at 114-17. Although the Commission found that the judge “did not personally benefit financially from any

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<sup>15</sup> The Referee appropriately rejected Respondent’s testimony that his use of his judicial email account to secure payment had been “a mistake,” in light of the fact that Respondent used his judicial account to send the request for payment and simultaneously “‘CC’d’ himself” at a personal email address (Rep: 24-25; see Respondent: 369).

of the transactions” and that the judge’s sole purpose was to assist the court, it nonetheless held that the judge’s conduct constituted a breach of his administrative duties. *Id.* at 119-20.

Like Judge Knab, Respondent used JCAP funds to purchase an unapproved item (a security camera system that was different from the one identified in the application) and dishonestly reported the expenditure of his court’s JCAP funds. But there the similarities end. The differences between *Knab* and the instant matter compel removal:

- Unlike *Knab*, Respondent was motivated by “personal profit,” which makes his misconduct “more serious than that of the *Knab* judge” (Rep: 35) Indeed, whereas all the funds expended by Judge Knab furthered the sole purpose of enhancing his court, here Respondent deliberately assigned the camera contract to himself, created a false invoice as to the JCAP expenditure for personal gain, and added a hefty “installation fee” to line his own pocket;
- Unlike Judge Knab, Respondent was “deliberately deceptive” with court staff and the town “[a]t every juncture” (Rep: 35-36), in that he clandestinely added the camera system to the application, concealed his relationship with Mercer Associates, and purchased a cheaper camera system than the one he promised to maximize his profit;
- Unlike Judge Knab, Respondent effectuated his JCAP malfeasance by leveraging on the weight of his judicial office in the way he directed Court Clerk Puorro to covertly submit his preferred application materials at his behest, despite her misgivings.

These significant aggravating factors warrant the more serious sanction of removal.

Respondent further compounded his misconduct and demonstrated disrespect for his ethical obligations when he inappropriately continued to seek

payment of the voucher even after he (1) was notified by Supervisor Butler that he may have committed an ethical violation, (2) acknowledged to his supervising judge that his conduct created at least an appearance of impropriety, and (3) became concerned that he might be subject to scrutiny by the Commission (Respondent: 358; Exs 15-16). Despite that knowledge, Respondent went to Mr. Pierro's office to continue to insist that he be paid, and he even threatened to charge an interest fee if the Town continued to refuse (Ex 21). A short while later, he followed through on his threat by sending the Town a new invoice that included a "finance charge" of \$66.59 (Ex 17), admittedly because he was angry with "how the Town was proceeding" (Respondent: 369). Respondent testified that even at that late juncture, he still felt that "maintaining the interests of Mercer Associates" took precedence over his judicial obligations (Colloquy: 292-93; Respondent: 369; Rep: 29-30). By doubling down in this fashion, Respondent demonstrated a contempt for his ethical duties that is unacceptable in a member of the judiciary and suggests that, if he is not removed, the Commission can expect "more of the same" going forward. *Matter of Bauer*, 3 NY3d 158, 165 (2004); *see Matter of Ayres*, 30 NY3d 59, 66 (2017).

Respondent's belated expression of contrition at the hearing, even if reiterated in his argument to the Commission, neither vitiates his repeated blame of

others nor mitigates the removable nature of his egregious misconduct. *See Bauer*, 3 NY3d at 165; *Matter of Restaino*, 10 NY3d 577 (2008).

Individually and in the aggregate, Respondent's dishonest and deceitful practices, and the greedy prioritization of his personal finances over the ethical obligations and integrity of his office, compel his removal from the bench.


### **CONCLUSION**

Counsel to the Commission respectfully requests that the Commission should confirm the Referee's findings of fact and conclusions of law as set forth above, and render a determination that Respondent has engaged in judicial misconduct and should be removed from office.

Dated:           October 24, 2023  
                    Albany, New York

Respectfully submitted,

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