

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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**REPLY MEMORANDUM TO RESPONDENT'S BRIEF**

**ROBERT H. TEMBECKJIAN, ESQ.**  
**Counsel to the State**  
**Commission on Judicial Conduct**  
**Corning Tower Suite 2301**  
**Empire State Plaza**  
**Albany, New York 12223**  
**(518) 453-4600**

**Of Counsel:**

**S. Peter Pedrotty, Esq.**  
**Cathleen S. Cenci, Esq.**  
**Edward Lindner, Esq.**  
**Denise Buckley, Esq.**  
**David P. Stromes, Esq.**

## **PRELIMINARY STATEMENT**

This memorandum by Counsel to the Commission on Judicial Conduct (“Commission”) is in reply to Respondent’s undated submission as to the Referee’s Findings of Fact and Conclusions of Law. The Referee’s Report found that Respondent’s judicial misconduct was motivated by personal profit, and that he was deliberately deceptive and exploited his judicial position to further his private business interests. As set forth here and in Commission Counsel’s prior Memorandum, Respondent should be removed from office.

## **ARGUMENT**

Respondent’s scant “Response to Referee’s Report” does nothing to counter the overwhelming evidence that he intentionally and dishonestly exploited his judicial authority in an effort to misappropriate public funds for personal gain. Instead, he resubmits his Answer to the Formal Written Complaint (“Answer”) and doubles down on claims that other town officials are to blame for his wrongdoing – claims that are unsupported by record evidence and/or rejected by the Referee.

Respondent’s disingenuous claim that his interest “[a]t all times ... was to protect the Court and its personnel from what [he] perceived as threats” (Resp Br: 2) is unsupported by the record.<sup>1</sup> Respondent produced no evidence at the hearing

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<sup>1</sup> References to “Resp Br” are to Respondent’s “Response to the Referee’s Report.” References to “Answer” are to Respondent’s Answer to the Formal Written Complaint. References to “Rep” are to the Referee’s Report. All other citations are to the hearing transcript.

to support the existence of any such threats or that his actions were motivated by an altruistic goal.

Respondent's attempt to blame Ms. Puorro for neglecting to send the Mercer Associates estimate to the Town Board (Answer: 5; Resp Br: 3; Respondent: 338, 370) is similarly without merit. The Referee explicitly rejected that assertion as "not credible," and for good reason: other documentary evidence and Respondent's own admissions contradicted it (Rep: 18). Given the strength of that finding and Respondent's explicit admissions that his actions "[a]bsolutely" had been "dishonest," (Respondent: 348-49, 409-10; Rep: 29), there is no reason to disturb it. *See Matter of Going*, 97 NY2d 121, 124 (2001) (referee's findings are entitled to deference).

Additionally, Respondent continues to maintain that town officials were "disingenuous" and "less than honest" about their knowledge of his installation of the camera system (Answer: 3, 7-8). The Referee, though, found that it was Respondent – not town officials – who was "consistently secretive and withholding" and "deliberately deceptive" (Rep: 35-36). Respondent makes matters worse for himself now, by continuing to deflect blame.

Finally, Respondent astonishingly claims he "received no personal gain" from his installation of the camera system (Resp Br: 2), which is only true, of course, because town officials adhered to their own ethical responsibilities and

resisted his exertion judicial influence to secure payment (Rep: 24-27). As the Referee found, Respondent removed the camera system and sent the town an invoice marked “PAID” at “about the time [he] learned that the Commission had commenced an investigation into his role in the JCAP grant and his furnishing and installation of the security camera system in the Court” (Rep: 26).

All told, whatever personal gripes Respondent had with the assorted town officials he blamed, those officials did not force him to create a conflict of interest by assigning a lucrative business contract to his own company, to knowingly falsify court and town records for personal profit, or to use his judicial status to bully town officials into paying him after his misconduct was unmasked. By continuing to blame others, Respondent has demonstrated he has learned nothing from this proceeding and is incapable of understanding his ethical obligations to the degree necessary to retain his judicial office.


**CONCLUSION**

For these reasons and those more fully explicated in Commission Counsel's prior memorandum, it is respectfully submitted that the Commission should render a determination that Respondent has engaged in judicial misconduct and should be removed from office.

Dated: November 7, 2023  
Albany, New York

Respectfully submitted,

**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel to the  
Commission on Judicial Conduct

By: 

S. Peter Pedrotty  
Principal Attorney  
Corning Tower, Suite 2301  
Empire State Plaza  
Albany, New York 12223  
(518) 453-4600

*Of Counsel:*  
Cathleen S. Cenci, Esq.  
Edward Lindner, Esq.  
Denise Buckley, Esq.  
David Stromes, Esq.