

**Hon. E. Timothy Mercer**  
**Justice of the Athens Town Court**  
**Greene County**

**File No. 2021A-0198**

**Response to Referee's Report and the Mater of Hon. E. Timothy Mercer**

Via Email Transmission with original via USPS

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**Commission On Judicial Conduct**  
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and

**Clerk of the Commission**  
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**Hon. E. Timothy Mercer**  
**Justice of the Athens Town Court**  
**Greene County**

**File No. 2021A-0198**

**Response to Referee's Report and the Matter of Hon. E. Timothy Mercer**

Regarding the Post-Hearing Memorandum to the Referee and Proposed Finding of Fact and Conclusion of law response.

I would like to provide and enter attached PDF file" Notice of Formal Written Complaint" dated December 7,2022 in response to the Commissions the Post-Hearing Memorandum to the Referee and Proposed Finding of Fact and Conclusion of law response.

Once again, I would like to express my heartfelt regret that I failed to uphold the highest standards of judicial ethics and failing to avoid the appearance of impropriety and failing to act in a manner that promotes public confidence in the judiciary. At all times, my interest was to protect the Court and its personnel from what I perceived as threats, be it Town employees, or altered procedures during the COVID-19 pandemic. I was confronted with a situation which I felt uniquely qualified to take care of on the Court's behalf. I know now that my overzealous actions were wrong.

As a newly elected Judge, I failed to maintain the professional competence and conduct expected of me and failed to adequately supervise the Court's staff. With my own lack of experience, I over relied upon my staff's knowledge and experience of the JCAP process without doing my due diligence and fully reading the JCAP rules and Reconciliation Report.

I also feel that it is important to point out again that I have had absolutely no personal gain, provided a \$0 invoice to the Town of Athens, and have provided my full cooperation throughout the pendency of this investigation

I strongly object to the language that I fabricated and attempted to blame Ms. Puorro. The July 8<sup>th</sup> phone call in 2021 clearly depicts the views of the Athens Town Court in 2020 that Ms. Puorro tells Mr. Pierro that the “Court does not have to tell the Town that the Court was using an outside vendor” or get approval for one, “just like they have used in past JCAP work to the Court in 2013/2014. I have said the phone call was recorded and is available. It is also on Ms. Puorro’s desk phone in the Athens Town Court Office.

If Ms. Puorro believes she doesn’t have to tell the Town what the court is looking to do, it makes me believe Ms. Puorro felt she didn’t have to submit the estimate to the town for approval. The Town didn’t get a copy of the estimate from Ms. Puorro prior to installation which has been established.

This belief would make it clear why she didn’t share the details, revise the resolution, and submit the estimate to the Town of Athens.

In conclusion, I am responding to express my heartfelt regret that I failed to uphold the highest standards of judicial ethics and failing to avoid the appearance of impropriety and failing to act in a manner that promotes public confidence in the judiciary.

Accordingly, and with the full context of my response, I respectfully request that the Commission show leniency in whatever further action it deems appropriate. I will be present on December 7<sup>th</sup> at 10:30 and hope to be able to tell my story, what happened in my court and how we got to this point before the Commission

Respectfully submitted,

Hon. E. Timothy Mercer  
Athens Town Court

December 7, 2022

State Commission on Judicial Conduct  
**ATTN: Cathleen S. Cenci, Deputy Administrator**  
Corning Tower, Suite 2301  
Albany, New York 12223

In Re: Respondent: Hon. E. Timothy Mercer  
File No. 2021/A-0198

**RESPONSE TO THE COMMISSION ON JUDICIAL CONDUCT'S WRITTEN  
COMPLAINT WITH ADDITIONAL EVIDENCE AND ARGUMENT IN SUPPORT  
OF JUSTICE E. TIMOTHY MERCER**

**A. PROCEDURAL HISTORY**

These matters come before the Commission following years of investigation, including depositions and statements gathered from both the Town of Athens Justice Court and the Athens Town Government. I would like to take this opportunity to respond to the charges and provide some context for my actions. It has become abundantly clear to me that the people involved in this matter have provided statements that are not totally truthful, and willfully omit details that would be both probative and exculpatory in nature.

However, I would like to make it abundantly clear that I now realize and acknowledge that I failed to avoid the appearance of impropriety with my actions, despite my good intentions. My actions were meant to safeguard and protect my staff from eliciting sexual harassment and innuendos directed at them by the Town of Athens Bookkeeper, Mr. Pierro. My hasty attempt to do so, by performing the work myself at a time when outside vendors were not allowed in the Town of Athens Court building, was, in hindsight, an exercise of poor judgment on my part.

Because of this, I provided the Town of Athens an invoice for \$0.00 and removed the cameras from the Court building at my own expense and instructed the Town to return the JCAP funds. To date, I have had no personal gain and have never been in possession of any remittance from the Town of Athens, or from JCAP funds.

## **B. HISTORY AND CONTEXT TO THE ALLEGATIONS MADE AGAINST ME**

From the moment I stepped foot in the Town of Athens Justice Court, it was abundantly clear that there were a number of interpersonal struggles between the Court office and other members of the Town Government. I became aware of one individual, the Town of Athens Bookkeeper, Mr. Pierro, who had repeatedly made sexual comments and innuendos towards both female clerks in the office. After witnessing this behavior firsthand, and only two months into my term, I instructed Mr. Pierro to remain outside of the Court office and not to talk to the clerks, rather, if he had business with the Court, he was to only speak to the Judges.

This was all going on during the first year of the COVID-19 pandemic. With new health and safety mandates in place it became clear that our courtroom needed some modifications for the safety of both the staff and the public who entered the Court. Due to new state department of health rules, the public was lining up in the hallway, outside of the courtroom, and out of the sight of the court staff. Because of interpersonal issues in the building, and this new challenge of the public being out of our sight, a discussion was had between the court clerks, Judge Pazin, and myself about how we could protect ourselves and monitor the hallway when the Court was in session. We all agreed that a camera system would be a good idea. This discussion occurred prior to the August-September 2020 time frame.

I later became aware of the JCAP program and believed that it would be a good opportunity to cover the costs of the camera system so that the Court did not have to bear that expense. Due to COVID protocols, no outside contractors or vendors were allowed inside the building. I believed that with my background in general contracting, I would be able to provide this service quickly and at a lower cost than an outside contractor, rather than wait until the COVID protocols had been lifted. I wholeheartedly acknowledge that this was a mistake in reasoning, a failure to maintain the high standards of judicial conduct, and against the guidelines laid out by JCAP regarding the proper usage of the funds. I had good intentions, though I was misguided by my ignorance of the rules of the JCAP program and acted in haste to protect my staff.

From reading the written complaint against me, it is apparent that many of the people involved in this situation fail to remember when conversations were had, when documents were received or submitted, or failed to competently perform their duties. As a new Judge I relied heavily on the experienced court staff to perform their duties diligently and competently. Knowing what I know now, I would have supervised their activities more closely to ensure an accurate accounting and documentation of the grant application packet and associated documents. Of note, messages and phone calls from Court offices, and at the time in question, reveal that Judge Pazin, and both clerks were well aware of our conversations and the need for

a camera system. Why they would deny this is baffling to me. I can provide these voicemails to the commission to back up this claim.

### **C. Response to the Formal Written Complaint**

#### **I. CHARGE I:**

- 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
  - a. I had multiple conversations with court staff and Judge Pazin for months regarding the need for a security camera system because of the numerous incidents with town personnel and COVID-19 issues with security in the halls of the Court building.
- B. Awarded the camera-installation contract to his own company, Mercer Associates, contrary to law, notwithstanding his conflict of interest and without notifying pertinent Town officials of his conflict.
  - a. I concede that the installation contract was self-awarded, however, through the submission of an estimate for the JCAP grant which clearly identified myself and Mercer Associates as the potential contractor I felt it was very clear that I would be the contracted entity to perform this work. I never withheld that information. Ms. Puorro, our JCAP administrator was aware of this, and stated that vendor information was not required for the initial application. I relied upon this advice due her extensive experience from over two decades and being the first JCAP application process that I had ever been involved with. From many discussions between myself and members of the Town government, I believe it is disingenuous for them to claim they did not know. At no time did I attempt to obfuscate my ownership of the company or involvement in the installation.
- 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.
  - a. I concede that I charged the Town the disclosed amount for the purchase and installation of the security camera system. The estimated cost and final invoice included a \$1000 installation fee. It is common business practice to include labor as a line item for any project, and was specifically required under the JCAP application process. The total time required to install the camera system far

exceeded the billed charges, which represents a reduced rate and not the fair market labor rate for our area and for the trades involved. To give some context to the \$760 “markup,” due to the COVID-19 pandemic and related supply chain issues, I got in contact with the supplier who offered a similar product that is normally the same price, for a reduced rate. This was because of the availability of the original camera system and the long delays and the only difference was in the shape of the cameras. I was unaware at the time of the JCAP rules requiring an amended application if the model was changed.

- 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.
  - a. I concede that I did in fact sign a Town of Athens voucher authorizing payment. However, in the common business practice of our Court, Ms. Puorro presented me with the invoice for my signature, and as the JCAP administrator suggested that gap between the awarded JCAP funds and the estimate could be made up by the Court’s budgeted security 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.
  - a. Upon notification that the Town was refusing payment of the voucher, I did in fact send an email from official court system email account. This was an honest mistake. I had just had a conversation in the Town building and had gone to my office to send an email and failed to change the account. There was no intention to intimidate or invoke my judicial office to persuade the town to pay the invoice. I do not believe that my signature line implies the intent to intimidate the Town officials into rendering payment. The email, Exhibit J shows that I discussed the process in which the work had been approved and offered to supply any more information needed and to sit down and discuss it with the Town supervisor.
- 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.
  - a. The August 18, 2021 invoice Exhibit M, was auto generated using my accounting software which, due to the passage of time, considered the account past due because no payment had been posted, and considered this account to be

overdue. The software added a finance charge based off of my normal business usage. This function on my accounting software has since been disabled. There was no intent to force the Town to render payment.

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.

- a. After being elected, I took part in the "Taking the Bench" program for newly elected judges. During that program we were instructed that we were "not to sign Town handbooks and sexual harassment policy" as "elected judges for the towns as we are not municipal employees." In an email from July 12-13, 2021 between Judge Pazin, Marcia Puorro, and myself, this exact issue came up and we discussed whether we fall under the Town's supervision and Judge Pazin bluntly stated that we are not part of the Town. I have a copy of this email and am providing it with this response.

#### **D. SPECIFICATIONS TO CHARGE I:**

I would like to take this opportunity to respond to the specifications to Charge I in more detail than is found above where needed.

- Line 8: This discussion did occur, however, at this time and in discussions prior to September 2020, all of those present were aware of the need for cameras in the Court and that we would include this as an item to include in the JCAP application.
- Lines 9-11: Between the meeting discussed in Line 8, and Ms. Puorro's letter to the Athens Town Board to adopt the resolution, I provided an estimate dated September 2<sup>nd</sup>, 2020 for the work to be performed, including the security camera system. Why this was not included in the initial packet to the Board is not known to me. Ms. Puorro was the JCAP administrator for our Court and I relied on her experience in filing for JCAP funds. It is my belief that Ms. Puorro did not give the complete packet to the Board as discussed in prior conversations, realized this, and submitted the completed packet to the Office of Justice Court Support without the proper authorization from the Town Board for all of the listed items in the JCAP application. I did not go out of my way to direct Ms. Puorro to include the camera system into the application between the Town Boards adopted resolution on the night of October 5<sup>th</sup> 2020, and the submitted JCAP application on October 7<sup>th</sup>, 2020 which included my estimate. This is a simple matter of a court clerk making an error by not including the information in our submission to the Board



- Line 12: The completed application clearly states our reasoning for requesting the camera system being due to COVID and clients waiting in the hallway and no security in the courtroom itself.
- Line 13: It is my belief that Judge Pazin was well aware of the camera discussions prior to submission to the Board, and JCAP. I was of the belief that all parties were already aware of the cameras and did not know that the camera system was “added” to the application at a later date.
- Line 16: The estimate dated September 2<sup>nd</sup>, 2020, was signed by my wife. She acts as the bookkeeper for my company and frequently signs documents, including estimates that I generate.
- Line 18: Notwithstanding the Judicial ethics implications and JCAP rules, it is my belief that the goods and services purchased with the JCAP funds were obtained in accordance with acceptable procurement practices established by the Town of Athens as they were written and in effect at the time that the work was performed and my initial invoice was submitted. The version of the Town manual which was in effect at that time was from 2017. Section 222 of that manual required only those contracts for goods and services which exceeded \$25,000 to be put out for bid. Under this guidance, my estimate, work performed, and invoice would all be well under the Towns applicable and available guidance at the time that the work was performed. Therefore, the acceptable procurement practices established by the governing municipality at the time would have allowed this contract to proceed.

Furthermore, the Town’s Handbook in effect at that time contained no such guidance and was only revised to contain guidance on this issue after my invoice was submitted. This revision was approved by the Town Board on August 2, 2021

- Line 19: I have been consistently told that I am not an employee of the Town. I am elected by the people. While I am paid by the Town of Athens, there is a separation of powers within the three branches of governments. Town Justices, while funded and operated by the locality for which it is established, are a separate and coequal branch of government in the Town. It is my understanding that the Town of Athens Code of ethics would not apply in this case, only the applicable judicial ethics, which I have acknowledged above and accept full responsibility for the violation thereof.
- Lines 20-24: Due to supply chain constraints and delays, I was able to get in touch with the supplier who offered a discount on a comparable system that was available to ship immediately. I misunderstood the provisions from the JCAP Reconciliation report regarding actions to take if the cost for purchase was less than the amount awarded. It was only after the JCAP funds had been approved that the supply constraints became apparent and I did

not realize that there was a process for this. I believed that leftover funds were not to be used to offset the costs of other grant items, but since this was the same item, I did not believe I was using the funds to offset any other item. I'd like to also take this time to mention again that I have provided the Town of Athens with an invoice with a \$0 balance, and have at not time been in possession of Town, or JCAP funds for this work. As this situation evolved over time, I felt that it was best to do so.

I concede that the voucher did contain the model number CSP-4POEMICX8-S, the original model number, and \$2,329.99, the original model cost. I had bid the job like so many others in my career, where the installation is considered a package deal, and not a materials and labor bid. This has been common practice for decades and I approached this bid in the same way. Because the JCAP administrator requested an itemized estimate, I provided one. However, the award letter stated that the Athens Town Court had been awarded a JCAP grant for the purchase of "video surveillance, alarm systems, etc." which I did not interpret to limit the funds for use on a specific model of camera system. At the time, I was unaware that the Judiciary Law prohibited the use of JCAP funds in this way, but when I did become aware of this, it weighed heavily in my decision to provide a \$0 invoice.

- Line 25: I contend that Mr. Pierro was aware of my involvement with the installation of the camera system well before this time. When Mr. Pierro reviewed the voucher, he called up to the Court office and spoke with Ms. Puorro and asked for my Federal EIN or my Social Security Number so that he could set me up as a vendor in the system. Ms. Puorro stated at that time that she was recording the call (due to the issues between Court staff and Mr. Pierro). She continued to advise Mr. Pierro that she had never provided this information before as the JCAP Court Administrator and that it was her belief that it was required that she do so and did not send down the packet of information to Mr. Pierro's office. This phone call occurred on July 8<sup>th</sup>, 2021 and can be made available to the Commission for review.
- Line 26: As stated above, I had just had a conversation in the Town building and went back in to my office to write an email. I didn't switch to my private account. The only information identifying myself as a Town Justice was my signature line. I did not use this email address to influence members of the Town government, I just sat down at my computer in my office and it was the default email account on that computer. I realize that I should have been more careful with my email reply to the Town Supervisor and waited to respond until I was back at my home office and on my home computer.
- Line 29: As you enter the Town building, you walk past Mr. Pierro's office. As I walked into the building and saw that his door was open. Because of the recent email from the Town

Supervisor on August 6<sup>th</sup>, 2021, saying that the payment was being held and was under review, I inquired with Mr. Pierro as to the status of the review and if he knew whether they were going to release the payment or not. He angrily responded “no.” I handed him a copy of the invoice for his records and walked away. This was just one instance of an ongoing issue between this Court, and Mr. Pierro. At one point he made to apologize to me by the Town Supervisor and Town’s attorney for making rude statements and calling me a “fucking asshole” in the hallway of the Town building. Informing the commission of this is not meant to excuse the mishandling of JCAP funds, but it is meant to shed some light on the environment that we are operating in and that Mr. Pierro’s past actions lead me to believe that he is being less than honest in his recounting of events.

Around this time, I spoke with the Towns attorney and he told me that he had recommended against any proceedings and that this could all be handled internally given the issues between the Court and Mr. Pierro.

- Line 30: I did in fact provide a new statement on August 18, 2021. This invoice was automatically generated by my accounting software, which included an interest statement. This was an auto function which I have since disabled and occurred because payment had not been received within a set time period.
- Line 31: As indicated in my testimony and earlier in this response, I did not initially sign the Town’s handbook because we had been explicitly informed that we should not sign a Town handbook during the “Taking the Bench” because we were not employees of the municipality. I had never been given or issued a copy of the handbook to sign since I was elected. The handbook has gone through a revision process and the most recent update is from November 2021, at which time I did not sign it due to the discussion during “Taking the Bar.”

As stated above, revisions had been made to the handbook during the course of 2021 to add provisions related to procurement policy and procedures, and the ethics code, which until this most recent revision would not have encompassed the work/contract for the installation of the camera system. The person in charge of these updates was Mr. Pierro. During my testimony before the Commission on February 7, 2022, Commission’s Counsel asked about my reasoning for not signing the handbook and suggested that I do so and I did.

- Line 32: In an effort to rectify the situation, I submitted an invoice to the Town of Athens showing \$0 balance due and removed the cameras from the Court. However, the infrastructure that I installed to handle the camera system is still in place and cameras would just have to be plugged in and connected to a server. I installed over 800 feet of Category 6 cable through the walls, ceiling, and attic which is still there and ready to be utilized at a later date.

## **E. CONCLUSION**

Once again, I would like to express my heartfelt regret that I failed to uphold the highest standards of judicial ethics and failing to avoid the appearance of impropriety and failing to act in a manner that promotes public confidence in the judiciary. At all times, my interest was to protect the Court and its personnel from what I perceived as threats, be it Town employees, or altered procedures during the COVID-19 pandemic. I was confronted with a situation which I felt uniquely qualified to take care of on the Court's behalf. I know now that my overzealous actions were wrong.

As a newly elected Judge, I failed to maintain the professional competence and conduct expected of me and failed to adequately supervise the Court's staff. With my own lack of experience, I over relied upon my staff's knowledge and experience of the JCAP process without doing my due diligence and fully reading the JCAP rules and Reconciliation Report. I also feel that it is important to point out again that I have had absolutely no personal gain, provided a \$0 invoice to the Town of Athens, and have provided my full cooperation throughout the pendency of this investigation

Accordingly, and with the full context of my response above, I respectfully request that the Commission show leniency in whatever further action it deems appropriate.

Respectfully submitted this the 7th day of December, 2022.

Very Respectfully,

Hon. E. Timothy Mercer  
Justice of the Athens Town Court

Attachments:  
A. Exhibit I, Mercer