

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

E. TIMOTHY MERCER,

a Justice of the Athens Town Court,
Greene County.

**POST-HEARING MEMORANDUM TO THE
REFEREE AND PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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.

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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 Referee adopt Commission Counsel’s proposed findings of fact and conclusions of law and determine that the Honorable E. Timothy Mercer (“Respondent”) has committed judicial misconduct.

Respondent, a part-time justice of the Athens Town Court who also 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 in the process; then (C) asserted his judicial title when attempting to wrest payment from rightfully wary officials. In so doing, he violated a host of ethical rules, as charged.

Respondent’s misconduct revolved around the Justice Court Assistance Program (“JCAP”), to which town courts may apply for courthouse enhancements.

Without notifying Town officials or his co-judge, Respondent surreptitiously had a security camera system added to the court’s JCAP application, after the Town Board already had met and authorized other items to be requested from the Office of Justice Court Support (“OJCS”), the State agency responsible for processing the JCAP application.

Respondent then instructed his court clerk to submit an estimate from his own company for installation of the security camera system to OJCS. Unaware of Respondent's interest in the company and Respondent's breach of the Town's approval process, OJCS awarded the court JCAP funding for the installation of the security camera system. Had Respondent's ownership interest in the company been disclosed, the request for JCAP funding of the system would have been denied pursuant to Judiciary Law §849-h(2), which prohibits the use of JCAP funds to compensate justices.

After installing the security camera system at the courthouse, Respondent submitted an invoice to the Town requesting payment for a security camera system that was more expensive than the one that he actually installed. Acting in his official capacity as Town Justice, Respondent signed a voucher authorizing payment of the fraudulently inflated amount.

When Town officials realized Respondent's ethical conflict and breach of the law, they refused to pay the invoice. Respondent committed additional misconduct by sending an email from his judicial account seeking payment, thus lending the prestige of his judicial office to further his personal financial gain. In addition, while attempting to persuade the Town to pay his company's bill, Respondent added an interest fee – admittedly, because he was angry – despite conceding he knew at that point he had created at least an appearance of

impropriety. Respondent then failed to cooperate with Town officials by refusing to accept and sign for materials outlining the Town's ethics code and procurement policies.

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 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 his actions were “meant 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).¹ 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

¹ At the hearing, Respondent produced no evidence that any complaints of sexual harassment were made against the Town Bookkeeper.

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).

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.² Respondent called three witnesses, gave testimony in narrative format and introduced 9 exhibits. Two documents were introduced as exhibits of the Referee.

THE FACTS

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).³ 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

² 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.

³ 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).

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

B. The Justice Court Assistance Program.

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 the rules and regulations pertaining to JCAP funds (Exs 4 p2; 24). The law explicitly prohibits the use of JCAP funds to compensate justices or nonjudicial court staff (Judiciary Law §849-h[2]; 22 NYCRR §138.2; Exs 4 p2; 24; 25).

JCAP is operated and managed by OJCS (Puorro: 18; Exs 3; 4). The determination 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]). In determining whether to approve an application, the chief administrator is required to consider, *inter alia*, whether the applicant has complied with this detailed description requirement (Judiciary Law §849-i[3][a]).

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 over 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, rather than to the court, and are 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 (Puorro: 23).

D. The Athens Town Court Received Authorization to Request Certain Items in its 2020-21 JCAP Application, but a Security Camera System was not Included.

After receiving notice that the 2020-21 application process was open, Respondent, Judge Pazin, Ms. Puorro and former court clerk Vicenzina Carl discussed what to request (Puorro: 23, 25; Pazin: 229-30; Respondent: 334). They collectively agreed to seek funds for two air conditioners, window blinds, a paper

shredder, a desk chair, and reimbursements for COVID expenses (Puorro: 23-24; Pazin: 229-30). They did not discuss the purchase of a security camera system (*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's letter included only those items that the justices and the court staff agreed upon (Puorro: 25-26; Pazin: 230-31). Ms. Puorro copied Respondent and Judge Pazin on the letter (Puorro: 25; Pazin: 230-31; Ex 1; *see* Respondent: 338).

As of September 21, 2020, there had been no discussion amongst 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 onto 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 cameras, 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, 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).⁴ 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 – and with a lower priority level than other requests – at a price of \$3,329.99 (Puorro: 28-32; Ex 3, p 5).

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). Stone Creek Electric was a company to whom Respondent had subcontracted work in the past (Respondent: 341). They did not discuss the possibility 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

⁴ 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).

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,” an “Estimator” for “Mercer Associates,” attaching an estimate dated September 2, 2020 (Puorro: 36; Ex 6).⁵ 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). Respondent claimed that he “assumed” that Ms. Puorro previously had sent the estimate to the Town Board, though he admitted at the hearing that he could not confirm that it was ever provided to the Town Board (Respondent: 338).⁶

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).

⁵ Caroll Mercer is Respondent’s wife (Colloquy: 282).

⁶ There is no documentation in the record to support a finding that the September 2, 2020, estimate was provided to Ms. Puorro or the Town at any point prior to December 1, 2020.

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, despite the fact that other items had been listed as a higher priority 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 (Puorro: 40-42; 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, without making any attempt to acknowledge or engage in a competitive bidding process (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 that Was 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 a security camera system model number that was different from the one he actually installed and cost \$760 more than the one that was 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 that actually was 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).⁷ On the same day, Respondent officially 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).

⁷ At times, Ms. Puorro seemed to confuse the Mercer Associates estimate dated September 2, 2020 (Exs 5 and 6), with the Mercer Associates invoice dated July 6, 2021 (Exs 13 and 14) (*see* Puorro: 37-39, 43-44, 47). She clarified that it was the invoice – or "bill" – dated July 6, 2021, that she sent to the Town Board, not the estimate dated September 2, 2020 (Puorro: 43-44, 47).

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 that was installed (Colloquy: 288; Respondent: 347-48, 375). Instead of contacting OJCS for further direction or reducing the cost of the security camera system in the voucher and attached invoice, Respondent intentionally charged the Town \$2,329.99 for the cost of the system, 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 his own company (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).⁸

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

⁸ Supervisor Butler and Mr. Pierro, along with Respondent’s own witness, Town Board Member Anthony Paluch, learned for the first time at the hearing that Respondent had paid significantly less for the camera system than he had charged in the invoice (Pierro: 163; Butler: 204; Paluch: 316).

██████████@nycourts.gov – his official court system email address, which contained a signature block identifying him as “Town Justice” (Ex 15). Respondent copied Mr. Pierro, Judge Pazin, Ms. Puorro, and his own email address at Mercer Associates (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 while he did not feel he had violated any town ethics policies, “the look of impropriety is enough . . .” (*id.*).

Nonetheless, in early August 2021, Respondent went to Mr. Pierro’s office and – using an “irritated” tone – requested payment of the voucher (Pierro: 152-53; Colloquy: 291; Respondent: 356, 358; Ex 21). Respondent said he would charge interest if the Town continued to refuse payment. 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).⁹ 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 considered “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

⁹ 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 not 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. Respondent Refused to Accept and Sign for the Town Handbook, Procurement Policy and Ethics Code.

In November 2021, Supervisor Butler tasked Mr. Pierro with distributing copies of the Town Employee handbook, the Town Code of Ethics, and the Town

Procurement Policies and Procedures to all Town employees and elected officials (Pierro: 154-62; Butler 205-06); Exs 22, 26, 27, 28). Respondent refused to accept and sign for copies of these materials until after he was questioned about his refusal to do so during testimony before the Commission (Pierro: 156-57; Colloquy: 281, 293).

N. 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 he 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 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). It is Respondent’s belief that Ms. Puorro forgot to include the Mercer Associates estimate in the packet to be sent to the Town Board (Respondent: 370).¹⁰ However, Respondent admitted that, even if Ms. Puorro

¹⁰ 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.

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 asking the Town Board to adopt a resolution authorizing the court to apply for a JCAP grant. 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 resolution, but he did not notify the Town Board about the omission or discuss it with Ms. Puorro (Respondent: 387-88). Yet he 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 that 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 only became aware of the JCAP rules containing that prohibition 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 that actually was 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).

It was Respondent's belief 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—through the Town attorney—was because of prior disagreements between the town and the court about budget and personnel issues (Respondent: 405-09).

ARGUMENT

POINT I

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY (1) ATTEMPTING TO SECURE PAYMENT OF JCAP FUNDS TO HIS OWN COMPANY, (2) SEEKING REIMBURSEMENT FOR A CAMERA SYSTEM THAT WAS NOT INSTALLED, (3) USING HIS JUDICIAL OFFICE TO EXERT PRESSURE ON TOWN OFFICIALS TO PAY HIS INVOICE, AND (4) REFUSING TO ACCEPT RECEIPT OF THE TOWN'S PROCUREMENT POLICY AND ETHICS CODE.

The Commission has explicitly held that a judge's use of JCAP funds to purchase unauthorized items for the court violates the judge's ethical obligations regarding judicial administration, even without evidence that the judge sought to personally benefit from the expenditure of such funds. *See Matter of Knab*, 2022 Ann Rep of NY Commn on Jud Conduct at 112. "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 Governing Judicial Conduct ("Rules") §§100.1, 100.2(A), 100.3(C)(1). The Court of Appeals has found 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).

Respondent violated that fundamental precept when he: (1) arranged for a security camera system to be added to the court's JCAP application, without notification to the Town Board or his co-judge, after the Town Board already had adopted a resolution authorizing a JCAP grant request; (2) sought to funnel JCAP funds to himself by arranging for an estimate from his company to be submitted to OJCS without disclosing his relationship; (3) installed a security camera system that was less expensive than the system described in the estimate and then knowingly submitted and approved a voucher for payment to his company that included the higher fee for the security camera system on the estimate rather than the lower fee for the system that was actually installed; (4) sent an email from his official judicial email account seeking payment of the invoice after being notified that the Town was refusing payment; and (5) sought to impose a \$66.59 finance charge when the invoice became past due. Respondent aggravated his misconduct by refusing to sign for and accept copies of the Town's newly revised Procurement Policies and Procedures and Town's Code of Ethics, following the discovery of his own wrongdoing.

A. Respondent Committed Misconduct When He Unilaterally Directed a Court Clerk to Add a Security Camera System to the Court's JCAP Application After the Town Board Voted.

Respondent committed misconduct when he circumvented the Town of Athens' established process for JCAP requests for personal gain and directed the

court clerk to add a security camera to the JCAP application after the Town Board had voted for other items.

Multiple witnesses testified about the Town's process for making a JCAP application. As a first step, the town judges and clerks would agree upon items to request (Puorro: 19; Pazin: 229-30). The Senior Court Clerk then would submit a written request to the Town Board for authority to seek JCAP funding for the agreed-upon items (Puorro: 19, 21-22, 24; Butler: 195). The Town Board would consider the request and adopt a resolution authorizing the court to apply for a JCAP grant for specific items (Puorro: 19-21; Pazin: 235; Butler: 195). Finally, the Town Court would complete a JCAP grant application seeking funding for the specific items and submit it to OJCS (Puorro: 19-21; Pazin: 232-33). Respondent circumvented that process by unilaterally directing Senior Court Clerk Puorro to add a security camera system to the JCAP application, despite knowing that his co-judge had not agreed to the system and that the Town Board's resolution did not include one.

Ms. Puorro provided uncontroverted testimony that Respondent asked her to add the security camera system after she provided Respondent with a copy of the Town Board's letter memorializing its resolution, and that Respondent insisted she add the system even after she reminded him that neither Judge Pazin nor the Town Board had any knowledge of the addition (Puorro: 26, 28-29). Far from disputing

that testimony, Respondent acknowledged that the Town Board never authorized his court to include a security camera system on its JCAP application (Respondent: 339) and Judge Pazin had no involvement in the addition of the security system to the JCAP grant application (Respondent: 334-36, 391).

Although Respondent ultimately produced a Mercer Associates estimate for the security system and installation dated September 2, 2020, and claimed that he “assumed” that Ms. Puorro had sent that estimate to the Town Board with her letter dated September 21, 2020 (Respondent: 338, 370), Ms. Puorro unequivocally testified that she first saw the estimate on December 1, 2020, when she received it via email from Carrol Mercer (Puorro: 36-37; Ex 6).

Respondent never produced documentation showing that the September 2, 2020, invoice was forwarded to Ms. Puorro or other Town officials at any point prior to December 1, 2020. Respondent had no reason to “assume” that Ms. Puorro would have sent the Town Board an estimate for the security system when he knew that the system was not listed in her letter outlining the JCAP requests (*see* Respondent: 338).

Indeed, had Respondent provided Ms. Puorro with a copy of the estimate in September, there would have been no need for Respondent to give it to her again months later, let alone have his wife send it via email to mask his own connection to Mercer Associates. Respondent’s self-serving testimony should be rejected as a

fabrication and an attempt to blame Ms. Puorro for Respondent's own admitted failure to disclose his association with Mercer Associates.

Given the fact that the Town Board authorized a JCAP application for specific items, Respondent's directive to Ms. Puorro to add the security system as an additional item without the knowledge of the Town Board and after the Board had voted greatly compounded his misconduct. Especially when viewed in light of his subsequent actions, Respondent's last-minute directive that the security system be added to the JCAP application created the appearance that he did so with the intent of concealing his bid for personal profit.

In doing so, Respondent violated his obligations to safeguard the integrity of the judiciary, and to avoid impropriety and the appearance of impropriety. *See* Rules §§100.1, 100.2.

B. Respondent Exploited His Judicial Office for Pecuniary Gain.

Respondent admitted that his "judgeship allowed [him] an opportunity" to make some money and that the only reason Mercer Associates was hired to install the camera system was because he used his authority "as Judge" to award the job to himself (Respondent: 344).

Respondent also admitted to charging the town an inflated fee, listing a more expensive camera system on his invoice than the one he actually installed, again because he "wanted to make money" (Colloquy: 289; Respondent: 342-44).

Respondent acknowledged that Mercer Associates was his primary source of income and that it “took precedence” over his judgeship (Respondent: 343). He admitted that he “took advantage of [his] role as a judge to try to make money” (Respondent: 344).

In doing so, Respondent violated Rules §§100.3(A) (judicial duties “take precedence” over all judge’s other activities), 100.4(A)(3) (prohibiting extra-judicial activities “incompatible with judicial office”), and 100.4(D)(1)(a) (prohibiting business dealings that may be perceived to “exploit the judge’s judicial position). *See also Matter of Aison*, 2010 Ann Rep of NY Commn on Jud Conduct at 62, 67-68 (part-time attorney-judge improperly put his private law practice above his judicial obligations for pecuniary gain by arranging to have a charge against his client filed in a different court to circumvent the prohibition against practicing law in his own court); *Matter of Redmond*, 1998 Ann Rep of NY Commn on Jud Conduct at 151, 152-53 (judge’s hiring of a defendant with an unexpired term of conditional discharge pending in his court to paint the judge’s house violated the prohibition against engaging in financial and business dealings that could reasonably be perceived as exploiting the judge’s position).

C. In Addition to Violating the Rules, Respondent Violated the Judiciary Law, the Rules of the Chief Administrative Judge, the General Municipal Law and the Town Ethics Code.

In addition to violating the Rules, Respondent violated multiple laws, rules and regulations pertaining to the expenditure of JCAP funds.

Section 849-h(2) of the Judiciary Law and Section 138.2 of the Rules of the Chief Administrative Judge both explicitly prohibit the use of JCAP funds to compensate justices. Thus, the payment to Mercer Associates of a \$1,000 installation fee would be an impermissible payment of compensation to Respondent, as the company's owner and the sole recipient of its profits (Respondent: 335). Respondent was on notice of these Rules, inasmuch as the JCAP signature page he signed on September 21, 2020, specifically warned that "no funds awarded pursuant to this application shall be used to compensate justices" and that "any funds (and any goods or services) awarded pursuant to this application shall be used only in accordance with . . . all rules and regulations governing the Justice Court Assistance Program" (Respondent: 401; Comm Ex 4, p 2).

Additionally, Respondent violated Section 803(1) of the General Municipal Law by failing to disclose his financial interest in the installation contract to the Town Board. Although the General Municipal Law does not prohibit a municipal

officer from creating a conflict of interest,¹¹ it does require prompt public disclosure of any “interest in . . . any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he . . . is an officer or employee . . . as soon as he . . . has knowledge of such actual or prospective interest.” General Municipal Law §803(1). Because Respondent is a “town officer” (*see* Town Law §20[1][a] and [b]; *Cunningham v Aetna Casualty & Surety Co.*, 125 AD2d 950 [4th Dept 1986]),¹² this provision applies to him.

As the owner of Mercer Associates, Respondent had an obvious and admitted pecuniary interest in his company receiving payment under the camera-installation contract. Thus, he was required to publicly disclose the nature and extent of his interest in the camera-installation contract to the Town board as soon as he knew about it. *See* 1973 N.Y. Op. (Inf.) Att’y Gen. 104 (1973 N.Y. AG LEXIS 53) (concluding that a town justice’s contract of employment as an attorney

¹¹ Paragraph 19 of the Formal 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. However, because the record is unclear whether Respondent, in his official capacity, had any of these powers and duties, the Commission withdraws this particular allegation.

¹² *See also* 1990 N.Y. Op. (Inf.) Att’y Gen. 46 (1990 N.Y. AG LEXIS 31) (concluding that “[w]hile town courts are included in the unified court system [NY Const, Art VI, §1(a)], the town justice is an officer of the town”); 1973 N.Y. Op. (Inf.) Att’y Gen. 104 (1973 N.Y. AG LEXIS 53) (concluding that provisions of Article 18 of the General Municipal Law were applicable to a town justice).

for a special improvement district in the same town in which the justice served required public disclosure under General Municipal Law §803[1]). But Respondent admitted that he failed to make any disclosures to the Town board at any point prior to submission of the voucher (Respondent: 337-38, 344). By failing to do so, Respondent not only committed judicial misconduct for failing to “respect and comply with the law” (Rules §100.2[A]), he may have committed a misdemeanor. *See* General Municipal Law §805.

Finally, Respondent’s undisclosed self-award of the installation contract also violated various provisions of the Town of Athens Code of Ethics. Chapter 19 of the Athens Town Code provides “rules of ethical conduct for the officers and employees of the Town of Athens.” Section 19-1 of the Town of Athens Code of Ethics.¹³ Notably, the Town’s ethical rules are “*in addition* to any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.” *Id.* (emphasis added).

Sections 19-3(C) and (G) of the Town of Athens Code of Ethics provide, respectively, that a town “officer . . . shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he or she is an officer . . .” and that

¹³ The Town of Athens Code of Ethics is available online at: <https://ecode360.com/12634242>. *See also* Exhibit 28.

an “officer . . . shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or services creates a conflict with or impairs the proper discharge of his or her official duties.”

In violation of paragraph (C), Respondent – by his own admission – unilaterally entered into an agreement by which his company would be compensated for installation of the camera system in his court. With respect to paragraph (G), Respondent conceded that he engaged in self-dealing and created a conflict of interest by using his position at the courthouse to arrange for his private company to be the company to install the security camera system (Respondent: 344). Critically, Respondent demonstrated he was aware this self-dealing was improper when he initially told Ms. Puorro that he was going to contact a different electrical contractor about doing the installation (Puorro: 30-31; Respondent: 341-42). The fact that he surreptitiously changed course thereafter shows not only that he acted in his own self-interest, but that he knew he was doing the wrong thing in making that choice.

D. Respondent Committed Misconduct by Charging the Town for a Different and More Expensive Security Camera System and by Signing a Town Voucher Authorizing Payment of His Company’s Invoice, Knowing those Documents Contained False Information.

Clandestinely securing JCAP funds for Mercer Associates to install a security camera system that was not authorized by the Town Board apparently was

not enough for Respondent. After his court was awarded JCAP funds for the purchase and installation of the \$2,329.99 camera system he advertised in his estimate, Respondent purchased a different camera system for \$1,569.99, installed that system without disclosing the change, and attempted to pocket the \$760 difference as additional profit (Respondent: 345-47, 351-53). Respondent admitted that the reason he charged \$760 more than he paid for the system was for “profit” and “personal gain” (Colloquy: 286, 288-89; Respondent: 350-51).

Respondent’s claim that he believed he was entitled to a “business markup” as a “businessperson” (Colloquy: 285-86; Respondent: 351) does not excuse his blatant effort to misappropriate public funds. Respondent should not have been acting a “businessperson” in the first place, as his private interest in Mercer Associates cannot supersede his judicial responsibilities. *See* Rules §100.4(A). By seeking payment for a security camera system that was not installed, Respondent sought to line his own pockets with public money that had been awarded solely for the court’s benefit – an act smacking of fraud.

Respondent claimed that he purchased a cheaper camera system than the one he put in his estimate because of supply chain issues caused by the COVID-19 pandemic (Respondent: 345). But that excuse is, at best, immaterial and, at worst, a lie. Notably, he provided no evidence indicating that the model from his estimate was unavailable at the time of purchase. Even if this testimony were true,

Respondent was not entitled to charge for the more expensive model on his invoice. As both the JCAP Award Letter and Reconciliation Report plainly stated:

If the amount you spend purchasing the item(s) approved on this Report is less than the amount awarded, leftover funds are not to be used to offset the cost of another grant item. Please contact OJCS at 800-232-0630 for further direction”

(Ex 7). Clearly then, Respondent had no reason to believe that he could keep the leftover funds as additional profit, and he had every reason to believe he was violating town laws and judicial ethics rules – if not committing a crime¹⁴ – when he submitted a voucher seeking to pocket the \$760 difference. *See* Rules of the Chief Administrative Judge §138.2 and Judiciary Law §849-h(2).

Respondent perpetrated a fraud by directing Ms. Puorro to prepare a voucher for the Town in the amount of \$3,329.99 and signing his name in the box labeled “Departmental Approval” (Puorro: 44; Colloquy: 287-88; Respondent: 347, 368-69; Exs 13, 14). Critically, Respondent admitted that he knew – at the time he submitted the Mercer Associates invoice and signed the Town voucher approving its payment – that both documents contained false information about his purchase price of the camera system (Respondent: 348). Respondent conceded that it was

¹⁴ Under Penal Law §§170.05 and 170.10, a person commits Forgery in the Third Degree when, “when, with intent to defraud, deceive or injure another, he 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.”

dishonest for him to submit a voucher indicating that the system cost over \$2,300 when it actually cost less than \$1,600 (Respondent: 348-49).

Respondent's blatant dishonesty in the mishandling of public funds for personal profit was serious misconduct. *See generally 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). The Court of Appeals has made clear precisely why such dishonesty is antithetical to a judge's role:

Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity. A judge's conduct that departs from this high standard erodes the public's confidence in our justice system so vital to its effective functioning.

Matter of Mazzei, 81 NY2d 568, 571-72 (1993).

Respondent's misconduct is much more serious than the false reporting of a JCAP expenditure in *Matter of Knab*. There, the court was awarded a JCAP grant of nearly \$7,500 to purchase two metal detectors, a judicial robe, and a door. After spending less than \$5,800 for these items, the judge used the remainder to purchase audio-visual equipment for the court that had not been authorized in the award. The judge then falsely reported to OJCS that he had spent the entire grant amount on only approved items. *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 of the transactions” and that the judge’s sole purpose was to assist the court, it nonetheless held that the judge’s conduct “brought reproach upon the judiciary.” *Id.* at 119-20.

Like Judge Knab, Respondent dishonestly reported their expenditure of his court’s JCAP funds. But whereas all the funds expended by Judge Knab went toward purchasing items for his court, Respondent deliberately submitted false reports as to how his court’s JCAP funds were expended so he could compensate himself – a significant aggravating factor. Thus, in this case, it seems like an understatement to say that Respondent’s “improper conduct fell short of the high standards required of a judge and undermined confidence in the integrity of the judiciary.” *Knab*, 2022 Ann Rep at 120.

E. Respondent Committed Misconduct by Invoking the Prestige of his Judicial Office While Demanding Payment of His Company’s Voucher, and by Attempting to Charge the Town Interest for Late Payment.

Respondent committed judicial misconduct when he lent the prestige of judicial office to advance his own private interests by using his judicial email account to seek payment from Town officials. “Such conduct 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. *See also Matter of Persons*, 2023 Ann Rep of NY Commn on Jud Conduct at __, *2 (judge asserted his judicial office to advance his private interests by providing his judicial email address in connection with a private matter); *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).

Respondent’s use of his judicial email was improper even if he did not intend to lend the prestige of judicial office in furtherance of getting paid (*see* Respondent: 355), as “such conduct may convey an appearance of using the prestige of judicial office to advance private interest.” *Matter of Sullivan*, 2016 Ann Rep at 213-14. Indeed, as the Court of Appeals has warned, a judge “must always be sensitive to the fact that members of the public . . . will regard his words and actions with heightened deference simply because he is a Judge” – a title that may have a “persuasive and perhaps even subtly coercive effect” in the judge’s personal dealings, given the “power and prestige that the title implies[.]” *Matter of Steinberg*, 51 NY2d 74, 81 (1980) (citation omitted).¹⁵

¹⁵ Respondent’s testimony that he mistakenly used his judicial email account to email Mr. Butler (Respondent: 369) should be squarely rejected, as he cc’d his Mercer Associates email address (█@mercerp1g.com) on that very email (Ex 15). As it would make no sense to cc the same email address from which the email was being sent, Respondent must have known that he was not using his Mercer Associates email address to email Mr. Butler.

Furthermore, Respondent inappropriately continued to seek payment of the voucher even after he was notified by Supervisor Butler that he may have committed an ethical violation, acknowledged to his supervising judge that his conduct created at least an appearance of impropriety, and 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 and threatened to charge an interest fee if the Town continued to refuse payment (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).

Although Respondent tried to claim that his QuickBooks program automatically generated and sent this invoice for interest (Respondent: 356-57), he eventually conceded that he submitted the new invoice because he was angry with "how the Town was proceeding with [him]," and was "maintaining the interests of Mercer Associates," which he felt took precedence over his judicial duties (Colloquy: 292-93; Respondent: 369).

Upon recognition of his transgressions, which – again – were repeatedly pointed out to him, Respondent could and should have withdrawn the Mercer Associates bill, or at least retracted his installation fee and charged the town solely for the *actual, non-inflated* cost of the camera system (Respondent: 357). Instead, he doubled down. By continuing to insist on payment, especially after

acknowledging the impropriety of his actions, Respondent failed to maintain high standards of conduct, failed to act in a manner that promotes public confidence in the integrity of the judiciary, failed to have his judicial duties take precedence over all his other activities and failed to conduct his extra-judicial activities in a way that did not detract from the dignity of judicial office, in violation of Sections 100.1 and 100.2(A), Section 100.3(C)(1), and Section 100.4(A)(2) of the Rules.

F. Respondent Aggravated His Misconduct by Refusing to Sign for and Accept from the Town Documentation Related to His Misconduct, and by Blaming Others for His Wrongdoing.

Respondent aggravated his misconduct in at least two ways. First, he refused to sign for and accept copies of the Town of Athens Employee Handbook (Ex 26), the Town's newly revised Procurement Policies and Procedures (Ex 27) and Town's Code of Ethics (Ex 28). Notably, each of these materials contains provisions that are applicable to Respondent – both as an elected official and town officer (*see supra* at p 37) – and address his recent violations of the Town's procurement and ethics rules. Respondent finally accepted these materials only after he testified before the Commission and was questioned about his refusal.

Second, throughout the Commission's process, Respondent has demonstrated his unwillingness to fully accept responsibility for his wrongdoing without making excuses and blaming others. In his Answer to the Formal Written Complaint, Respondent brazenly blamed court staff and Town officials for his

misconduct, stating that his actions were “meant to safeguard and protect [his] staff from elicit sexual harassment” by the Town Bookkeeper, that the court clerks – whom he “relied heavily upon” because he was a new judge – “failed to competently perform their duties” (Answer at 1-5). At the hearing, Respondent blamed Supervisor Butler for not being “more honest” with him, and he testified that he “still [felt] 100 percent” that this entire situation was somehow “instigated” by Mr. Pierro as an act of “retaliation” (Respondent: 362). Those excuses ring especially hollow, given that Respondent’s misconduct constituted apparent fraud, the alteration of court business records for personal profit, and a transparent attempt to use his judicial status to bully the town officials into paying him even after his misconduct was unmasked.

G. Respondent’s Conduct Is Distinguishable from the Advisory Opinions Identified by the Referee at the Hearing.

The Referee asked the parties to address Advisory Opinions 89-19, 95-79, 98-163 and 99-128 (Colloquy: 412-13), in which the Advisory Committee on Judicial Ethics (“Advisory Committee”) opined that the inquiring justices ethically could be compensated for performing extra-judicial services for the town. As is set forth below, the Advisory Opinions are distinguishable from the facts of this case in a number of important respects.

First, Section 849-h(2) of the Judiciary Law and Section 138.2 of the Rules of the Chief Administrative Judge both explicitly prohibit the use of JCAP funds to

compensate justices. Respondent committed misconduct when he attempted to violate those provisions by directing JCAP fund to his own company for his own personal gain. Because none of the Advisory Opinions permitting judges to be paid by the town for extra-judicial services involved JCAP funds, they are simply inapposite.

Second, it is apparent from the facts stated in the Advisory Opinions that the Town Boards knew or would be informed that they were committing public funds to pay for services performed by their own town judge. For example:

- in Opinion 99-128, the judge was *asked* by the Town Supervisor and Town Board to serve as a *per diem* town engineer;
- in Opinion 89-19, the town appears to have wanted to hire the judge to remodel the court and the judge apparently had not yet done so at the time of the judge's inquiry; and
- in Opinion 98-163, the judge's contracting company was going to make an "*open and public* bid, [in which] each construction company participating in the bidding process w[ould] be subject to public bidding procedural requirements and safeguards" before building a town airport hangar.¹⁶

Here, Respondent concealed his role by adding the security camera system to the JCAP application without the knowledge of the Town Board, took steps to

¹⁶ The facts of Advisory Opinion 95-79 are too sparse to determine the circumstances underlying the judge's seeking of compensation from Town for services rendered in connection the use of a court computer. In any event, the limited facts provided in this Opinion are simply not applicable to this matter.

bypass a competitive bidding process¹⁷ and failed to publicly disclose his financial interest to the Town Board as required by Section 803(1) of the General Municipal Law (*see supra* at pp 35-37).

Commission Counsel notes that whereas the Advisory Committee apparently found that each of the inquiring judges' proposed business deals with the town would not reasonably be perceived to exploit the judge's judicial position, here Respondent did more than create such a perception. He explicitly admitted that his "judgeship allowed [him] an opportunity" to make some money and that the only reason Mercer Associates was hired to install the camera system was because he used his authority "as Judge" to award the job to himself (Respondent: 344).

In addition, Respondent's own Town's Code of Ethics explicitly prohibited him from engaging in this business transaction (*see supra* at pp 37-38). There is no indication in any of the Advisory Opinions that any of the inquiring judges' municipalities had enacted any similar ethical bans. Notably, in Opinion 89-19 in particular, the Advisory Committee declined to address any legal issues which may be involved in a justice performing carpentry work for the town.

¹⁷ In Opinion 89-19, the Advisory Committee "assume[d]" that it would be impractical for the town to submit the job for public bidding based on the size of the project. Regardless of whether such an assumption was appropriate under those circumstances, here it was incumbent upon Respondent to at least ask Town Supervisor Butler and/or the Town board about the necessity of a bidding process. Indeed, Supervisor Butler had a responsibility to ensure that the town complied with its competitive bidding and procurement policies and procedures with respect to the use of JCAP funds (Butler: 201; Ex 4, p 2).

Finally, unlike Respondent, each of the inquiring judges took the initiative to seek an Advisory Opinion about the propriety of their proposed business deals with their municipalities *before* going forward. Instead of seeking his own Advisory Opinion based upon his particular facts and circumstances, Respondent acted without any regard for the propriety of his conduct.

Accordingly, these Advisory Opinions do not support the proposition that it was permissible for Respondent – under the fully-developed particular facts and circumstance of this case – to perform services for the town that were not authorized by the Town Board, and then seek compensation from JCAP funds.


CONCLUSION

Counsel to the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charge I of the Formal Written Complaint is sustained.

Dated: September 5, 2023
Albany, New York

Respectfully submitted,

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

By: 

S. Peter Pedrotty
Senior 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.

APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent has been a part-time judge of the Athens Town Court since the beginning of 2020 (Puorro: 17). 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).

2. Mercer Associates has no other employees and all profits from the company flow directly and exclusively to Respondent (Colloquy: 282; Respondent: 335).

3. 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).

4. The Justice Court Assistance Program ("JCAP") of the Unified Court System provides annual grants to assist the operation of town and village justice courts (Jud Law §849-h[1]; 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.*).

5. Each town and village that receives JCAP funds must comply with all the rules and regulations pertaining to JCAP funds (Exs 4 p2; 24). The law explicitly prohibits the use of JCAP funds to compensate justices or nonjudicial court staff (Judiciary Law §849-h[2]; 22 NYCRR §138.2; Exs 4 p2; 24; 25).

6. JCAP is operated and managed by the Office of Justice Court Support (“OJCS”) (Puorro: 18; Exs 3; 4). The determination 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]). In determining whether to approve an application, the chief administrator is required to consider, *inter alia*, whether the applicant has complied with this detailed description requirement (Judiciary Law §849-i[3][a]).

7. In her 24 years at the Athens Town Court, Senior Court Clerk Marcia Puorro has been involved in the filing of over 10 JCAP applications (Puorro: 16, 18).

8. 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).

9. 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).

10. 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).

11. 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).

12. Awarded JCAP funds are sent to the Town, rather than to the court, and are 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 (Puorro: 23).

13. After receiving notice that the 2020-21 application process was open, Respondent, Judge Pazin, Ms. Puorro and former court clerk Vicenzina Carl discussed what to request (Puorro: 23, 25; Pazin: 229-30; Respondent: 334). They collectively agreed to seek funds for two air conditioners, window blinds, a paper shredder, a desk chair, and reimbursements for COVID expenses (Puorro: 23-24; Pazin: 229-30). They did not discuss the purchase of a security camera system (*Id.*).

14. 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's letter included only those items that the justices and the court staff agreed upon (Puorro: 25-26; Pazin: 230-31). Ms. Puorro copied Respondent and Judge Pazin on the letter (Puorro: 25; Pazin: 230-31; Ex 1; *see* Respondent: 338).

15. As of September 21, 2020, there had been no discussion amongst 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).

16. 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): two air conditioners, new window blinds, a new shredder, a desk chair, and reimbursement from Covid expenses (Ex 2). A security camera system was not included among the requested items (Puorro: 33; Pazin: 70).

17. 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).

18. 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).

19. 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).

20. 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).

21. 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 onto the JCAP application (Puorro: 28-29; Respondent: 335-36).

22. Ms. Puorro noted that the Town Board and Judge Pazin would not know that the court was requesting cameras, 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).

23. On October 6, 2020, Respondent printed a listing from the website 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).¹ 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).

24. 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 – and with a lower priority level than other requests – at a price of \$3,329.99 (Puorro: 28-32; Ex 3, p 5).

25. 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). Stone Creek Electric was a company to whom Respondent had subcontracted work in the past (Respondent: 341). They did not discuss the possibility of Respondent’s company, Mercer Associates, performing the installation (Puorro: 31).

26. 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

¹ 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).

regarding the items requested, including the cctvsecuritypros.com printout Respondent had provided (Puorro: 32; Ex 4).

27. 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).

28. 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).

29. 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).

30. 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).

31. On December 1, 2020, Ms. Puorro received an email from “Carrol Mercer,” an “Estimator” for “Mercer Associates,” attaching an estimate dated

September 2, 2020 (Puorro: 36; Ex 6).² 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).

32. There is no evidence that the September 2, 2020, estimate was provided to Ms. Puorro or the Town at any point prior to December 1, 2020. Ms. Puorro first saw the estimate on December 1, 2020, when she received it via email from Carrol Mercer (Puorro: 36-37). Respondent’s testimony that he “assumed” that Ms. Puorro previously had sent the estimate to the Town Board is rejected as a fabrication and an attempt to blame Ms. Puorro for Respondent’s own admitted failure to properly disclose his conflict to the Town. Respondent admitted at the hearing that he could not confirm that the estimate was ever provided to the Town Board (Respondent: 338).

33. 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).

² Caroll Mercer is Respondent’s wife (Colloquy: 282).

34. Respondent never notified OJCS that he had any financial interest in Mercer Associates (Respondent: 339-40).

35. By letter dated January 22, 2021 (“Award Letter”), and an enclosed Reconciliation Report, JCAP notified the Athens Town Court was 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 as to the other items it sought was not granted, despite the fact that other items had been listed as a higher priority than the surveillance system (Ex 7; Puorro: 32).

36. 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).

37. 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).

38. On June 3, 2021, Respondent purchased a “Model: CSP-4POEMIC8” security camera system from cctvsecuritypros.com for \$1,569.99, which was different from – and \$760 cheaper than – the “CSP-4POEMX8-S” model identified in the JCAP 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 (Puorro: 40-42; Respondent: 335, 347, 395; Ex 21).

39. 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, without making any attempt to acknowledge or engage in a competitive bidding process (Puorro: 42-43; Respondent: 335). Judge Pazin did not know that Respondent was installing the camera system until after he had finished (Pazin: 236).

40. 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 a security camera system model number that was different from the one he actually installed and cost \$760 more than the one that was installed (Respondent: 345-47; Exs 9; 13).

41. 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).

42. 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).

43. Had Respondent's invoice listed the price of the security camera system that actually was 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.

44. 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).

45. On the same day (July 6, 2021), Respondent officially 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).

46. 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 that was installed (Colloquy: 288; Respondent: 347-48, 375).

47. Instead of contacting OJCS for further direction or reducing the cost of the security camera system in the voucher and attached invoice, Respondent intentionally charged the Town \$2,329.99 for the cost of the system, 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). Respondent admittedly included the inflated amounts listed in his invoice because he “wanted to make money” (Respondent: 342-43).

48. Respondent admitted it had been “dishonest” for him 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).

49. 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 his own company (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).

50. Supervisor Butler and Mr. Pierro, along with Respondent’s own witnesses, Town Board Member Anthony Paluch, learned for the first time at the

hearing that Respondent had paid significantly less for the camera system than he had charged in the invoice (Pierro: 163; Butler: 204; Paluch: 316).

51. 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 [REDACTED]@nycourts.gov – his official court system email address, which contained a signature block identifying him as “Town Justice” (Ex 15). Respondent copied Mr. Pierro, Judge Pazin, Ms. Puorro, and his own email address at Mercer Associates (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).

52. Respondent’s testimony that he mistakenly used his judicial account to email Mr. Butler (Respondent: 369) is rejected, inasmuch as he cc’d his Mercer Associates email address on that very email (Ex 15). This cc shows that, contrary to his testimony, Respondent knew he was not using his Mercer Associates email address to email Mr. Butler.

53. 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 while he did not feel he had violated any town ethics policies, “the look of impropriety is enough . . .” (*id.*).

54. Nonetheless, in early August 2021, Respondent went to Mr. Pierro’s office and – using an “irritated” tone – requested payment of the voucher (Pierro: 152-53; Colloquy: 291; Respondent: 356, 358; Ex 21). Respondent said he would charge interest if the Town continued to refuse payment.

55. 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). Upon learning at 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 not more (Butler: 204-05).

56. Respondent did not follow up on Mr. Butler’s 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).

57. Respondent admitted that he continued to seek payment and levied an interest fee even after acknowledging the appearance of impropriety, because he was angry with “how the Town was proceeding with [him],” and “was still maintaining the interests of Mercer Associates,” which he considered “took precedence” over his judicial duties (Colloquy: 292-93; Respondent: 369).

58. 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 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).

59. 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).

60. 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).

61. In November 2021, Supervisor Butler tasked Mr. Pierro with distributing copies of the Town Employee handbook, the Town Code of Ethics, and the Town Procurement Policies and Procedures to all Town employees and elected officials (Pierro: 154-62; Butler 205-06); Exs 22, 26, 27, 28). Respondent refused to accept and sign for copies of these materials until after he was questioned about his refusal to do so during testimony before the Commission (Pierro: 156-57; Colloquy: 281, 293).

PROPOSED CONCLUSIONS OF LAW

62. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

63. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

64. Respondent failed to avoid impropriety and the appearance of impropriety, in that he lent the prestige of judicial office to advance his own private interest, in violation of Section 100.2(C) of the Rules.

65. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to have his judicial duties take precedence over all his other activities, in violation of Section 100.3(A) of the Rules.

66. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

67. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules.

68. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct all of his extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, detract from the dignity of judicial

office or interfere with the proper performance of judicial duties and are not incompatible with judicial office, in violation of Sections 100.4(A)(1), (2), and (3) of the Rules.

69. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to refrain from engaging in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position, in violation of 100.4(D)(1)(a) of the Rules.

70. Respondent should be disciplined for cause, pursuant to Article VI, Section 22, subdivision (a), of the Constitution of the State of New York and Section 44, subdivision 1, of the Judiciary Law.