

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

E. TIMOTHY MERCER, :
a Justice of the Athens Town Court, :
Greene County. :

ORAL ARGUMENT

Commission Office
61 Broadway, Suite 1200
New York, NY 10006

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December 12, 2023
10:54 AM

B e f o r e:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair (via videoconference)
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
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Commission Members

P r e s e n t:

For the Commission

S. Peter Pedrotty, Esq., Senior Attorney
Cathleen S. Cenci, Esq., Deputy Administrator

For the Respondent

Honorable E. Timothy Mercer, *pro se*

A l s o P r e s e n t:

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Robert H. Tembeckjian, Esq., Administrator & Counsel
Denise Buckley, Esq., Senior Litigation Counsel
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Michael Maisonet, Senior Clerk

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MS. ZAHNER: Good morning, Mr. Belluck and members of the Commission. This is the oral argument in the *Matter of E. Timothy Mercer*, a Justice of the Athens Town Court. Judge Mercer is appearing for himself. Mr. Pedrotty is appearing for the Commission.

MR. BELLUCK: Thank you. In the *Matter of E. Timothy Mercer*, a Justice of the Athens Town Court, this is the oral argument with respect to the referee's report, a determination of whether misconduct has occurred, and if so, what the appropriate sanction will be.

The judge and counsel will each have 30 minutes for their argument. Counsel for the Commission may reserve a portion of time for rebuttal. The judge and counsel are subject to questioning by the Commission at any time during their presentation. The judge and counsel are advised that their argument should be confined to the record and any statements outside the record will be disregarded.

You will notice that there are three lights on the podium to indicate your time. The green light means you may continue to speak, a

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blinking green light means there are two minutes left, the yellow light means there's a minute left and the red light means you should stop speaking.

I want to remind everyone to please silence your cellphones and other electronic devices to prevent interference with the recording.

Please note that one member of the Commission, Ms. Grays, is participating in the argument by videoconference. If there are any technical difficulties, we will pause the argument and the time will not be counted against your presentation.

Mr. Pedrotty, are you ready to proceed?

MR. PEDROTTY: I am, thank you. Good morning. May I please reserve five minutes for rebuttal?

MR. BELLUCK: Yes. Thank you.

MR. PEDROTTY: It is undisputed that respondent engaged in self-dealing and dishonesty to misappropriate Justice Court Assistance Program funds. The Court of Appeals said that the mishandling of public funds is serious misconduct even when not done for personal profit. Here, respondent admitted

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that personal profit was his motivation. Removal is the appropriate sanction.

JUDGE SINGH: Does it matter counsel, that in this instance the judge did not personally benefit from this scheme because it was thwarted?

MR. PEDROTTY: It does not, because what matters is that it's, it's personal profit that motivated him. That's what matters. The only reason that he did not actually see personal gain was not for want of trying, but it's because others followed their ethical responsibilities and resisted his later exertions of judicial influence to try to seek that payment.

JUDGE MILLER: Counsel, could I ask you the amount of money involved here because it doesn't seem to be significant? If, if 3, \$200 or \$300 or \$100 dollars were involved, would you be taking the same position? Is the amount of factor in our consideration?

MR. PEDROTTY: The amount is not a factor. And first of all, if he had succeeded he would have misappropriated \$1,800 in public funds. I think many people would consider that to be significant. And I don't think that the

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actual amount matters. What matters is that he engaged in self-dealing and was dishonest to try to get that amount.

JUDGE MILLER: Thank you.

MS. YEBOAH: Excuse me, counsel, do you, are you asserting judicial influence based only on the fact that the judge used court letterhead to send an email requesting payment or is there some other evidence you are relying on?

MR. PEDROTTY: Well that's the primary exertion of judicial influence that he, that he used with town officials when he actually, he sent an email using his judicial email account. It had actually had his title within that email as well. But everybody he is dealing with also knows he's a judge. Whenever he's dealing with them, he's dealing with them essentially in his official capacity. But he is seeking funds on behalf of his private company. So, that's lending the prestige of judicial office to enhance, to further his own private financial interest and it's wrong. Yes?

MS. YEBOAH: Thank you.

MS. MOORE: Do you have any sense so

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as to contextualize the amount that's involved here? Do you have any sense of the income of the business at the time that this occurred?

MR. PEDROTTY: That is not in the record. No, it's, I don't know the respondent's –

MS. MOORE: Okay.

MR. PEDROTTY: Business income.

MS. MOORE: Thank you.

MR. SEITER: Does a, do you have any belief that this occurred during COVID had anything to do with the judge's actions?

MR. PEDROTTY: I don't believe that has any bearing here. If, I know the judge has claimed that he ended up buying a different camera system because there were supply problems due to COVID. Well, so be it. He, he bought a different system for a different amount. He still had to disclose that amount and he couldn't falsify his invoice to show that he paid \$2,300 for the system when he actually paid less than \$1,600. That was absolutely dishonest as he admitted. And furthermore, whatever other circumstances there might be going on here about why this camera system needed to be installed, it's not an excuse for engaging in self-

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dealing and dishonesty and misappropriation of public funds.

The referee found that respondent exploited his judicial position to further his private business interests in a manner that was deliberately deceptive and consistently secretive and withholding. In that regard, respondent's conduct is much worse than in judge, in the *Matter of Judge Knab*, who was censured for his dishonest but good faith mishandling of JCAP funds.

JUDGE FALK: That was an agreed upon, agreed upon disposition, correct?

MR. PEDROTTY: That's correct.

JUDGE FALK: Okay.

MR. PEDROTTY: But it's more like the *Matter of Judge Moore* who was removed for falsifying court records to conceal his misappropriation of court funds. Removal is crucial to hold respondent accountable for his self-dealing, dishonest conduct and to send a message to the public that this type of conduct will not be tolerated.

I can go into many numerous admissions by respondent throughout this proceeding. Or,

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unless you have any other questions, I can concede the rest of my time.

MR. BELLUCK: Could I just ask you? The referee doesn't make any mention of any mitigation of the conduct and the Commission argues that the conduct was exacerbated by his conduct after the initial acts. Could you just elaborate on that?

MR. PEDROTTY: Sure. So, when respondent submitted his voucher and then town officials realized that he had had this conflict of interest, they put a halt to the payment to look into whether or not he had violated any of his ethical responsibilities. And at that time, he realized, okay I may be created at least an appearance of impropriety here. But, and at that point, this is the point where he should have taken mitigating steps, okay, he should have said, oh I realize this was wrong, I am withdrawing my entire bill. Or he could have accepted the supervisor's offer to pay him for just the cost of the camera system and that's just the true cost because he never disclosed to anybody that he paid \$760 more than he actually did. All the witnesses at the hearing learned that

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for the very first time during their testimony before the referee. Instead he ackno— he realized he committed impropriety here but he kept going, he doubled down. He insisted again and again for payment on this. He went to the bookkeeper’s office. He demanded payment. He threatened to add a finance charge. And he followed up on that a short time later by adding a finance charge, sending another bill after he’d already acknowledged to his supervising judge an email that he realized there was an appearance of impropriety here. The fact that he kept going when he realized he’d done something wrong and only relented after he realized and found out later that the Commission was investigating his conduct is very aggravating here. And it shows that he is either unwilling or unable to abide by the rules governing judicial conduct.

MS. MOORE: Yes, but the other part of the quote that you mentioned as which is the second part is that he stated, “I don’t feel I broke any town ethics.” So, if he’s under the impression, according to the statement in the heat of the moment that he hasn’t done anything wrong, your thoughts about that relative to the

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Chair’s comments about mitigation?

MR. PEDROTTY: Well, he did still acknowledge though that even the appearance of the impropriety is enough. So, he should have taken actions at that point to mitigate it. He should have done some research himself. He should have looked into the Athens Code of Ethics which absolutely prohibited this type of conduct and said, oh I was wrong here. He should have looked at the rules governing judicial conduct which says you cannot engage in any business or financial dealings which may reasonably be perceived to have exploited your judicial office. He could have taken so many steps. He could have talked to the Advisory Committee. He did nothing. He just bulldozed ahead to try to seek payment without any regard to his ethical responsibilities or to the reputation of the inte— judiciary as a whole.

MS. MOORE: Yeah, but he also has the Town Supervisor as well as his supervising judge saying that they’re in the process of looking into it. So, you’re saying that parallel to that, he should have conducted his own inquiries?

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MR. PEDROTTY: Yes. Yeah.

Absolutely.

MR. BELLUCK: Thank you, Mr. Pedrotty.

MR. PEDROTTY: Thank you.

MR. BELLUCK: Judge.

JUDGE MERCER: Good morning and I appreciate your time this morning and a heartfelt sorry that we all have to be here today discussing this matter that happened almost three years ago.

Mr. Pedrotty has been a gentleman through this whole process and I feel that I have openly cooperated in every step of his investigation without any hesitation to fully cooperate and try to present a picture of the situation that was in our town hall and in our actual town court at that time.

MR. BELLUCK: Justice Mercer, could I, if possible, just ask you to keep your voice up a little bit?

JUDGE MERCER: Sure.

MR. BELLUCK: Thank you.

JUDGE MERCER: In going through the findings and such from Mr. Garber's finding as referees and the proposed findings of facts, I find a lot of interest in them with regards to people

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coming forward with the truth in their testimony, which obviously counsel is aware of the testimony that is being told to him. And along the process he has mentioned numerous times is that I have been putting blame and finding excuses for myself based on what they had said.

I had been offered resolution to this prior to coming here today. I feel strongly that there needs – my story needs to be told and it isn't in a resignation letter. It isn't in the clarity of what truly happened in my town building, not just in my court. And on the, in the record there is numerous circumstances of interactions with town employees, with our court clerks, along with my partner judge in the same office. So, what I would like to do if it's procedurally wise how I had done it is to basically go through the findings and a little, I'm going to say, explanation of what truly happened in the office. It's all part of the record, it's part of testimony. And in, in some of the witnesses' testimony, I feel, is an outright lie. And that is the frustrating part of the sequence of events which create a story that isn't necessarily true how it happened which then obviously creates a picture in

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everybody's mind. I, I interpret this whole event as being a, a, an angry judge with a temper, doesn't follow directions, doesn't follow the law, doesn't follow the ethics. Then the ethics part of what happened, there's no excuse for my actions that I did. What I am asking is to just understand the circumstances of how my actions and how I responded to those town officials, how I responded to my court clerk, Judge Pazin's court clerk and to Judge Pazin itself.

So, let's see here, I'm just trying to, may I ask do we have copies of the Proposed Findings that I, okay. For, for some reason here I don't have a – it's not labelled so I am just going to read, if I could. Then, again, I apologize for *pro se*. As being a judge for four years, it's the hardest thing for anybody to be sitting on the bench and having somebody appear without representation. And, I apologize for that.

The discussion of security and installation was discussed by the court clerks and myself in testimony. It is brought out that there was limited conversation about the cameras being installed and why we applied for them in the court grant. It is commented that I unilaterally

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directed the court clerk for the cameras for the JCAP grant. We all discussed excluding Judge Pazin at this time, the two clerks and myself. The cameras, in the months of August and September, well before the application for the JCAP grant. The reason that we discussed them before which is part of the record I believe, I can be corrected I am sure, was that we had an inter relational experience with the town bookkeeper in our town court. And it started off as saying he was intruding into our function and the separation and the branches of government and our, how we govern was in question. He wanted to our numbers on a daily basis, on what we collected. And this was within two months of me becoming a new judge. And, I'm going to say taking the bench, training, is very, very good. I should have paid a little bit closer attention to the ethics. Yes?

MS. MOORE: Yes. So, the discussions that you just referenced, did they include discussion of purchasing the cameras from your company?

JUDGE MERCER: In August and September, we discussed cameras. At that point,

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Stone Creek and myself was discussed about the cameras, to purchase them and to, it was either Mercer Associates or Stone Creek. And that is when the COVID issue comes in to play, is that the building was locked down. We couldn't bring any outside –

MS. MOORE: – I understand that but I'm trying to see how it, it turned out to be your company plus another, are – were those the only two possibilities nearby? Why those two?

JUDGE MERCER: In, in the community they were. I, I'm not an electrician by say, but my company has done projects with that. Stone Creek are, is an electrical contractor locally and we're a small town upstate. Are there other contractors? I'm sure. That's what I was familiar with from previous projects and was a suggestion.

Along with the numbers of the intrusion of the town, of the bookkeeper, was some sexual innuendos and harassment. There were numerous complaints filed with the town regarding this individual. And I instructed him to stay out of the court office. Do not come past the half door, which is our cash window, and

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stay out. So, for seven or eight months prior to this, we had many interactions with payroll, with hours and all the rest and it was becoming overwhelming. The cameras were discussed that they're in the office, if anything were to happen in a lot of different situations. But one would be is that it would be recorded and the camera system was a fully CCTV system with recording of voice, color images and stores, I believe, twenty-four days of back-up data. So, when the –

MR. RASKIN: – Judge, if I may, your Honor. I'm sorry, were you finished speaking?

JUDGE MERCER: Yes.

MR. RASKIN: Answer your question. I didn't want to –

JUDGE MERCER: – Yes. Yes, I believe I am.

MR. RASKIN: How do you respond, Judge, to Mr. Pedrotty's contention that you doubled down after the initial transaction?

JUDGE MERCER: There is no open honesty of conversation with the judge. After the second day that I submitted the invoice, the town office downstairs would not talk to me and

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I had to walk past this gentleman's office with his door open every day to go into the court and every day it was harassing. And the town supervisor says that in a phone call in August he offered to make an arrangement. That phone call never happened. Never happened. I never got a phone call from the town bookkeeper. The only thing I know about an arrangement is the town attorney advised or gave advice to Mr. Butler, the supervisor and the bookkeeper, is to have a meeting with myself and discuss resolution of this matter. What his feelings were as to the size or the scope of it is immaterial. But he advised them to meet and discuss that. Does that change the ethical question? No, I did it. I signed on a piece of paper and I know what I did. My, it's what else is going on at the time of the cameras is the most stressful part of my life, dealing with people.

MS. YEBOAH: Judge, in addition to being a part-time judge, you are also a business owner.

JUDGE MERCER: I am.

MS. YEBOAH: You're a businessman. In the transcript hearing, hearing of the, the transcript of the hearing, several times with

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respect to what you charged the town for the system and the profit that was involved you mentioned, it was mentioned that you considered it proper to put the business interest above the court interest, because that's how business is done, if I'm quoting correctly.

JUDGE MERCER: I remember the questioning.

MS. YEBOAH: Can you elaborate a little bit more about why that's proper and appropriate to put the interest of the business above your position as a judge?

JUDGE MERCER: How the statement I believe is interpreted is incorrect. We were discussing at the time of the questioning during the deposition back in January of 2022, I believe or early 2022 was counsel and I got in a heated discussion over profit margin and mark-up. We discussed numbers. We discussed what is your mark-up that you typically do, etc. and I would say of all the questioning I've ever had with that, I, I felt that the most aggressive by counsel. And I believe every business that purchases an item whether purchases an item is entitled to make a profit on that item just as if you buy a chair from

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JCAP, was my example that I used in my testimony. If I buy a chair from Staples on a JCAP grant for \$600, it's what \$600 is. My estimate had the \$2,200 item on it. I can get into what the difference in the cost was. It was approximately \$700 is the invoice that I gave to counsel.

MS. YEBOAH: Right. What I'm trying to ask is do, do you at the time you felt that it was appropriate because there was a profit, it's a business and you were making a profit, you felt it was appropriate to put that interest above your position as a judge? And do you still feel that way?

JUDGE MERCER: It wasn't the interest of the judge itself. It was –

MS. YEBOAH: – The interest of the court, I'm sorry.

JUDGE MERCER: Of the court itself could have been resolved in the reconciliation report which I never saw or filed after that. It was all done by the town and by my partnering judge. So, would I have been able to do that at that time? The reconciliation report was not sent in until May or June of 2022. They actually held

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on to the reconciliation report and the funds for JCAP for up to probably five or six months after I presented a zero invoice to the town.

MS. YEBOAH: Okay.

JUDGE MERCER: Markup and profit, if I could answer—

MS. YEBOAH: – That’s fine.

JUDGE MERCER: Is part of the business function. And I’m not saying when we say that the company is more important than being a judge and the court, no it’s not. I looked at it as an item. When we submitted the estimates for that, it was a camera cost and an installation of \$1,000. The \$1,800 that was just discussed prior was the labor to install the cameras, the hardware, the software, the monitor, things like that.

As a businessperson, there is markup. I believe in everything there needs to be a profit to run your business to pay the insurance and I don’t have to tell people here on what is required to run a business. And I, do I feel that I misguided and stole money from them, i.e., JCAP and that it was part of the function of the business in the markup and I presented the

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invoice of \$1,500 and twenty some odd cents to counsel without any reservation, never hiding the fact of what I paid for it. When he asked for it, I gave it to him.

MS. YEBOAH: And if I'm not mistaken it was in presenting that invoice that Mr. Pierro and Mr. Butler brought to the attention of the town attorney a potential conflict of interest?

JUDGE MERCER: Correct.

MS. YEBOAH: Do you feel –

JUDGE MERCER: – Well that was, that was the invoice for the completed project.

MS. YEBOAH: Yes. Yeah. Do you feel that it was proper for Mr. Butler or Mr. Pierro, do you feel it was proper for them to bring that potential, to make the town attorney aware of that?

JUDGE MERCER: I strongly believe it was their right and their legal responsibility is to bring it. In testimony I say retaliation comes up a couple of times. The retaliatory action has nothing to do with the actual camera installation, the camera bill and that. It's everything that came before the installation of those cameras.

MS. YEBOAH: Okay.

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JUDGE MERCER: And the bookkeeper was walking around in the town office saying we're going to indict the person. I'll leave it at that.

MS. YEBOAH: And you're saying that part of that was a retaliatory action on their part? Is that what you are suggesting?

JUDGE MERCER: They have the right to do, I'll make that perfectly clear because they are officials of this town and that my explanation for retaliation was based on all the things that I didn't play well in the sandbox, which was sent in an email that was presented to counsel also.

MS. YEBOAH: Thank you, Judge.

JUDGE MERCER: You're welcome. Yes?

MR. SEITER: You have raised the issue today that you raised several times in the, in the hearing that there were, I'm going to call them security issues, that, that and the reason you wanted cameras. There was either these things being said or things you wanted to have recorded to make sure that there was a more secure courthouse. Yet, I can't help but ask if these cameras are so important and you had had these

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conversations with the judge and the clerk prior, why were they not in the first request that went to the town board with the JCAP, for the JCAP monies?

JUDGE MERCER: Because the court clerk forgot to put it to the town and I have that on the recording and I –

MR. SEITER: – But didn’t you sign off on that, on that request before it went to the town board?

JUDGE MERCER: I signed off on that thing on September 20th and it went to the town board December– October 5th or 6th . There was almost two weeks’ time in between when I signed the paper and Judge Pazin signed it to when it was submitted. In that time there is a very gray area of when Ms. Puorro, Marcia, the senior court clerk who takes care of the JCAP grants for the last twenty-four years, why it wasn’t there. In my testimony, I stated that she was going on vacation. It was rushed. I thought in a witness at my testimony and it wasn’t relevant or it was hearsay, he was informed, Sam June, during conversation between the two court clerks who was not there during the time of the

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incident she told him that she didn't put it in. And she didn't put it in is because Marcia Puorro, the senior court clerk and Judge Pazin feel they are not responsible to the town. And that is specifically what is stated by Marcia Puorro, in full context of the recording.

MR. SEITER: Well then I guess my follow up would be then if you later found out that that wasn't, that that did not get presented to the town board, why did you feel that it was appropriate to add that after the matter had already gone before the town board? Why did, would you think that that was okay?

JUDGE MERCER: I never saw the process. We handed the invoice statements after, after the process was started. Somewhere between the day we signed and the day she electronically filed with the state, with the town board's signatures is when the gray areas and that is when, as I said, she didn't feel the town needed it. It wasn't required. And I've always said to her is that when we do JCAP grants, you itemize everything. You can apply to the town for a resolution or go to the town for a resolution for a dollar amount up to \$30,000. It doesn't

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have to be a specific item. Does that apply in this case? No. But I felt that that would be a situation going forward from this situation because they talk about curtains, they talk about blinds, they talk about other things. I brought up a security camera.

And to answer, to add one more thing to the security component, this is when COVID was full lockdown, we had defendants in such, in our hallways not grouped together with security or anything else. So, it was a, it was a mess on the second floor in our town building.

MR. DOYLE: Judge, did your invoice to the town disclose the difference between the cost of the camera that you purchased and what you sought to be paid, the \$760?

JUDGE MERCER: They did not see that, Mr. Doyle, because I was purchasing the camera that was specified, I'll say on the invoice. COVID, supply chain, command and other things, that camera was not available. I substituted and trying to get the cameras for six months from this company was struggling.

MR. DOYLE: So that, so, is it, is it a typical markup in your business of a 48 or 50%

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markup on an item, is that a typical markup that you would charge a customer?

JUDGE MERCER: No, it's typically about 30%, which I had discussed with Mr. Pedrotty when, during that situation.

JUDGE FALK: Judge, I have a few questions for you.

JUDGE MERCER: Yes, sir.

JUDGE FALK: You are here without counsel today. So, I just want to ask you first of all, at that time when you submitted the JCAP application, how long were you a judge?

JUDGE MERCER: Nine months.

JUDGE FALK: At that point, what was your salary?

JUDGE MERCER: \$17,000.

JUDGE FALK: So, counsel for the Commission is asking that you, that we vote that you be removed, okay.

JUDGE MERCER: And I understand that.

JUDGE FALK: Mr. Belluck used a good term, mitigation. And, can you tell us why is it that when we go back and discuss your case that we should not vote for removal? And, and keeping in mind that they're saying, they used

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terms self-dealing but more importantly that a product, a lesser product was exchanged in the end and you still wanted the same price. Could you tell us why we should not vote for removal and should vote for something different?

JUDGE MERCER: I would like to ask for a censure in this case. I would like it to be said that I had no personal gain because I removed the cameras. Why I shouldn't be removed is because –

JUDGE SINGH: – So, I just, I just want to interrupt for one second while you – why did you end up removing the cameras?

JUDGE MERCER: It was the right thing to do.

JUDGE SINGH: Is that the only reason?

JUDGE MERCER: It was the right thing to do and I had broken my ethics and my obligation to the state and to my town. I have strong remorse for, for my actions.

JUDGE SINGH: See, and that's the tension I see in your argument. On one hand in your, in your, in your letter brief you express your remorse. But it appears you still continue to blame your clerk, town officials for what

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occurred. And there were many times in this process that you could have reflected on what you were doing to see that there were ethical violations, asked for, asked for opinions from the advisory committee, etc., etc., but you didn't. And that's, that's concerning, at least to me.

JUDGE MERCER: I believe I was a new naïve judge who was under the premise that my 24- and 38-year judge, not would correct me but would put the brakes down somewhere. No one did. Marcia never stopped. Marcia could have said senior court clerk and again this sounds like I'm blaming Marcia. There is, there was a process. I signed the voucher. It was Marcia's responsibility to complete the task with the town. We don't go to the town board for the reso, to the board meetings for the resolutions. It's just submitted. We only go to the town board once a year, in March.

Not knowing or being naïve at that does not make it correct and right. At that time, the pressures that were going on in the office and in the court itself with regards to the actions that were there, led me to not, I'm going to say, think correctly with regards to my responsibilities

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outside looking out on how I resolved this. I was looking at it as the town attorney was going to approach me and say something to me, ask me something. At this point I've, I've said it all along, I took responsibility for the, for the actions that I did. I just wish there was a, some type of support structure in my court. And I, today, four years later, know there is a very big support structure. I know there's a system in place in this state that's fair and truthful. Nine months in as a judge, I was looking up to my peers in my office.

MR. BELLUCK: Okay. So, just –

JUDGE FALK: – Joe, I just him to answer my question.

MR. BELLUCK: Yes, I am aware.

Alright, so, judge –

JUDGE FALK: – Judge, wait, let me jump in. Judge, did you finish? I asked you a question about why we shouldn't vote for removal and I don't think you got to finish your answer. Go ahead please.

JUDGE MERCER: I, I, I didn't get to finish the answer. I'm a fair judge. I've, I've learned to be responsible with regards to every

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part of my judicial requirements and needs. I am a fair person. My court is unbiased. My court is truthful and honest. And my court is also very open to the people. Whether I get removed or censured, I am not looking forward – I’m here today saying I’m never going to run as a judge in New York State. My experience with four years in the town has soiled my thought process of how a town operates, not of the judicial system itself.

I should not be removed but censured for the very reason is that I am a person. The court is, for four years has been my plaque on the front and I, I respect that. What that does in my community going forward, I, I’m not an elected official anymore at the end of December. That is the end of it. Losing an election has nothing to do with where I am saying with this. Counsel and I discussed this action going forward and we could never just come to an agreement on what it was.

I could go for ever on what I would love to be able to say to you of not being removed. It is just that I am truly sorry for what I did. And I just wish that I had support within my court, not

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as a blame factor but as a new judge, this is what, this is what happened.

MR. BELLUCK: Commissioner Grays has a question.

JUDGE MERCER: Yes.

MR. BELLUCK: And then Dr. Moore.

MS. GRAYS: Thank you very much.

Hello, Judge Mercer. My question to piggy back on part of what you were saying as being a new judge. You are a businessperson. And how long have you run your business or have you had your business?

JUDGE MERCER: I've had Mercer Associates for 25 years.

MS. GRAYS: So, as a businessperson you are familiar with that in order to get business sometimes you submit things called RFPs, a request for proposals, is that correct?

JUDGE MERCER: In my residential world, that wasn't part of a component of my business. We only submitted bills when –

MS. GRAYS: – Okay –

JUDGE MERCER: – When I subbed out for a veneer company, that's all.

MS. GRAYS: Okay. But you are familiar

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with that process?

JUDGE MERCER: Oh, absolutely, absolutely.

MS. GRAYS: Okay. So, in your experience in the business world, although you may have been a new judge, when you were thinking about using your business for obtaining the security camera, why didn't you consider that from your business perspective that perhaps there was a process around this that included maybe getting other proposals or perhaps there could be a conflict because you were doing work for your employer for the place where you work. So, I am asking you to think back to your business experience versus you being a new judge, which okay grant that. But in your business perspective, this isn't something that occurred to you that perhaps, 1. There should have been some other proposals that were brought in in order to determine which was the best price and then 2. That perhaps there could be a concern from the business perspective that there have been an optics issue or perhaps a conflict of interest in you even moving forward with this.

1 JUDGE MERCER: I, I understand your
2 question and in my personal business role is that
3 I take care of 99% of the things of the business.
4 My, my wife does the office work and she just
5 basically takes care of QuickBooks and sends
6 out an estimate, which is what we did here. We
7 had the estimate to submit for JCAP grant itself.
8 That's how that estimate got to that. In my
9 business experience the senior court clerk who,
10 again, hate to put blame on, who was responsible
11 for the task of the office and filing the paperwork
12 didn't flag it and it wasn't part of our
13 conversation after we signed it and sent the
14 JCAP application.

15 MS. GRAYS: Okay. But as a, as a
16 businessperson as you go and you get business,
17 you should, you weren't aware that perhaps you
18 should ask some questions concerning what the
19 process is, again, not as a newbie judge but as a
20 businessperson in moving forward with trying to
21 provide this service?

22 JUDGE MERCER: Looking back, I should
23 have been a little bit more aware of the
24 procedures of the town, yes.

25 MR. BELLUCK: Commissioner Moore.

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MS. GRAYS: Thank you. Thank you.

MS. MOORE: Okay, so judge, I, I just want to get a sense of scale of this transaction for your business. So, as I understand it the IC8 camera model was in your inventory, correct?

JUDGE MERCER: No, it was not. I was purchasing it from CCTV.

MS. MOORE: Okay, so how does the I8-S model, that is what was in the estimate, correct?

JUDGE MERCER: Correct.

MS. MOORE: Okay. And so, you had to purchase the IC8 and you said that you had some difficulties finding the one that was in the estimate –

JUDGE MERCER: – Correct.

MS. MOORE: Because of COVID and I believe I heard you say that you had called a company?

JUDGE MERCER: Yes, the company that I had purchased it from.

MS. MOORE: And what's the name of that company?

JUDGE MERCER: CCTV.

MS. MOORE: Okay, that is the name of the company?

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JUDGE MERCER: Yes.

MS. MOORE: CCTV. And did you consult others, other companies or is it, is it just one horse –

JUDGE MERCER: – That is, that is the actual tear sheet or the estimate that was submitted for the JCAP grant. I was staying within that company for what was submitted with the grant itself.

MS. MOORE: I understand. And so if I could just, again, trying to get a sense of the scale and importance of this with respect to your company, especially during COVID. So, I asked Commission Counsel, I'll ask you also, thinking about your profit margin, how much did this figure into the income of the business during 2020 when COVID, like would you say what percent of –

JUDGE MERCER: – Percentage wise?

MS. MOORE: Yeah.

JUDGE MERCER: A couple percent.

MS. MOORE: Okay.

JUDGE MERCER: It wasn't a large portion.

MS. MOORE: Okay. Thank you.

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MR. BELLUCK: And last but not least.

MS. YEBOAH: And judge, you mentioned that you did not make any money off of this.

JUDGE MERCER: That is correct.

MS. YEBOAH: And, you submitted eventually a bill to the town for \$0?

JUDGE MERCER: That is correct.

MS. YEBOAH: My question is, did you remove, and you removed the cameras?

JUDGE MERCER: Absolutely.

MS. YEBOAH: Did you remove the cameras before you were aware that you were being investigated by this Commission or after?

JUDGE MERCER: I removed the cameras in November and I believe the first questionings to me, I was fully aware is that people were being called because they all talk in the office. So, I knew it was going on. And I, I had known that there is possible filing of a complaint two to three weeks into the process, which was my letter to my supervising judge, Dave Dellehunt.

MS. YEBOAH: So –

JUDGE MERCER: – I was aware of the investigation prior to me removing the cameras.

MS. YEBOAH: Okay.

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JUDGE MERCER: Absolutely.

MS. YEBOAH: Thank you, judge. Thank you.

MR. BELLUCK: Judge Camacho.

JUDGE CAMACHO: Ah, judge, during the entire process when all this was happening, did you ever make any effort to hide the fact that it was your company that was getting this contract?

JUDGE MERCER: Never.

JUDGE CAMACHO: From the very beginning?

JUDGE MERCER: The name of the company is Mercer Associates. There is one Mercer in our county and there's one judge's name. My wife's name is Carol Mercer, which is on the estimate that we submitted. And every person in the town building is aware of that. Did I disclose that on the JCAP application in any way? No I did not, sir. That was an estimate.

MR. BELLUCK: Justice, thank you so very much for your time.

Mr. Pedrotty, do you have anything additional? We did let the judge go over a little bit on time. So, please take whatever time you

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want to respond.

MR. PEDROTTY: Thank you. I'll be very brief. I just want to point out two things. First about how respondent continues to not take full responsibility for his actions and a prime example of that is how he claims he relied on the expertise of Ms. Puorro and how he blames her for not putting a stop –

JUDGE MILLER: – Counsel, counsel could I ask, counsel –

MR. PEDROTTY: – Can I just, oh I'm sorry could I just finish –

JUDGE MILLER: – Sure –

MR. PEDROTTY: – Just this one statement and then please I'm happy to –

JUDGE MILLER: – No. No. Finish up.

MR. PEDROTTY: And he says that she didn't put a stop to his actions. But the uncontroverted testimony which was found by the referee is that during this process she twice voiced her concerns to him about the impropriety of his actions, first when he told her to add the camera system to the JCAP application after the town board already passed the resolution and she pointed out that they, they didn't include that in

1 the resolution and that Judge Pazin was not
2 aware of it. She again voiced her concerns to
3 him when she saw him installing the camera
4 system himself and how that might not look
5 good. And both times he brushed her off and
6 didn't say to himself oh maybe I should look into
7 this further. Sorry, thank you.

8 JUDGE MILLER: I guess I have a slightly
9 impertinent question. In light of the amount of
10 money involved and the whole nature of this, has
11 this really been worth the Commission's time to
12 spend as much time and work has been done on
13 this matter? And now it sounds like this
14 gentleman lost this re-election. So, we would
15 basically be punishing somebody who's not, who
16 will not be a judge in what, twenty days? Has it
17 been really worth the energy and the time?

18 MR. PEDROTTY: Given, first of all, given
19 the amount is all the more reason that if you
20 consider this a small amount, it's all the more
21 reason why when this is brought to respondent's
22 attention, he should have said, you know what
23 I'm relenting. I don't want a payment for this.
24 This is not worth anyone's time. This is not
25 worth putting in jeopardy the integrity of the

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judiciary for me to continue seeking this amount of money. As far as the fact that he didn't, his term is up at the end of the year and he lost his re-election, and I know he's claiming he will never again seek office but nothing will prevent him from changing his mind and coming back to the bench unless you remove him now. If you take no action, then this matter will be suspended at this point only to resume later after he's been re-elected and the public will have had no opportunity to know that he, while he was in office before he used his judicial office to exploit, to exploit it and to try to pocket public funds, their money. The public deserves to know now. And I will add on, let's not spend anymore taxpayer funds on this case by having to bring it again later, however many years in the future. Remove him now. Thank you.

JUDGE MILLER: Thank you.

MR. BELLUCK: Okay. That concludes our hearing. Thank you, Mr. Pedrotty. Thank you, Judge.


(Whereupon the oral argument was concluded at 11:44 AM.)

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CERTIFICATION

I, JACQUELINE AYALA, an Assistant
Administrative Officer of the State Commission on Judicial
Conduct, do hereby certify that the foregoing is a true and
accurate transcript of the audio recording of the proceedings
transcribed by me, to the best of my knowledge and belief, in
the matter held on December 7, 2023.

Dated: December 18, 2023



JACQUELINE AYALA