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

DETERMINATION

THOMAS R. GLOVER,

a Justice of the Saranac Lake Village
Court and the Harrietstown Town Court,
Franklin County.

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THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission

John J. Muldowney for the Respondent

The respondent, Thomas R. Glover, a justice of the Saranac Lake Village Court and the Harrietstown Town Court, Franklin County, was served with a Formal Written Complaint dated June 28, 2005, containing one charge.

On September 19, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 30, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Saranac Lake Village Court since March 1991 and a justice of the Harrietstown Town Court since January 2003. He is not an attorney.

2. In or about the fall of 2003, Dan Marrone distributed flyers to his neighbors, notifying them that his band would be rehearsing during the evenings from 7:00 to 9:00 PM in a shed on his property, which he had soundproofed. Mr. Marrone's letter requested that the neighbors first contact him with regard to any complaints before notifying police.

3. Thereafter, Mark Taylor and Susan Etri made a series of complaints to the New York State Police regarding noise associated with Mr. Marrone's band

rehearsals. The State Police investigated but declined to lodge any charges against Mr. Marrone.

4. In or about October and November 2003, respondent met *ex parte* at court with Mark Taylor and Susan Etri and received at least two letters from them, complaining about Mr. Marrone's band rehearsals. Ms. Etri also furnished respondent with copies of the State Police incident reports relative to her complaints, and hotel bills she claimed to have incurred in order to avoid the noise from Mr. Marrone's band rehearsals.

5. In or about November 2003, respondent met *ex parte* at court with Mr. Marrone and his mother, Rhonda Marrone, who inquired whether Mr. Marrone was violating any laws with regard to the band rehearsals. Respondent did not indicate that Mr. Marrone was violating the law.

6. In or about November 2003, respondent received additional complaints by telephone from Ms. Etri concerning Mr. Marrone's band rehearsals. Respondent thereafter issued to Mr. Marrone a letter dated December 1, 2003, on Town Court stationery, a copy of which is annexed as Exhibit 1 to the Agreed Statement of Facts, stating that it was "an order of this court" that "from this day forward" Mr. Marrone "shall not continue to practice" with his musical band "outside in any area (*i.e.* shed, shack, barn or building) within your property" except "within the confines of your home with windows and doors closed." Respondent further stated in the letter that if Mr. Marrone were to violate the provisions of the letter, he would be held in contempt of

court and that the New York State Police were allowed to arrest him for contempt of the order. Respondent sent copies of his letter to the State Police, the District Attorney's office, his co-judge and Mr. Marrone's neighbors, among others. Respondent sent the letter based upon his prior *ex parte* communications with neighbors of Dan Marrone and others, and notwithstanding that no court or other legal proceedings concerning Mr. Marrone had been commenced or were otherwise before respondent.

7. After receipt of respondent's letter, Mr. Marrone and his parents complained to the District Attorney's office, which brought the impropriety of respondent's letter to his attention. Thereafter, respondent orally instructed the State Police not to enforce his December 1, 2003 letter, but respondent did not put anything in writing to that effect.

8. On or about March 1, 2004, on the complaint of Mark Taylor and Susan Etri, an accusatory instrument was filed by the State Police charging Dan Marrone with Aggravated Harassment for playing his bass guitar loudly on that date. The defendant accompanied the arresting officer to the police station, where he was issued an appearance ticket to appear in the Harrietstown Town Court. Respondent properly disqualified himself as a consequence of his prior improper *ex parte* communications. The charge was summarily dismissed by respondent's co-judge, Michael Kilroy, on the recommendation of the District Attorney.

9. Respondent was attempting to mediate a troublesome situation among neighbors. He now recognizes that he should not have engaged in the *ex parte*

communications described above in an attempt to mediate the dispute and that he should not have issued the December 1, 2003 letter. Once the impropriety of his letter was brought to his attention, respondent should have acted promptly to rescind it in writing, rather than simply advising the police orally that his letter should not be enforced.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

It is the proper role of a judge to preside in court proceedings, not to act as a mediator, investigator, prosecutor or ombudsman. Respondent's activities in an effort to resolve a neighborhood dispute overstepped the boundaries of his judicial authority and compromised his impartiality.

In the absence of any civil or criminal proceeding, and based upon *ex parte* complaints from Mr. Marrone's neighbors, respondent sent a letter on court stationery ordering Dan Marrone to stop band rehearsals on his property or face contempt charges. Respondent, who had previously met *ex parte* with both sides to the dispute, sent the letter not only to Mr. Marrone, but to the State Police, the District Attorney's office, the Town Board, respondent's co-judge, and Mr. Marrone's neighbors. In issuing the

"order," respondent acted without jurisdiction and prejudged the matter by determining that Mr. Marrone's band rehearsals would subject him to criminal charges. Such conduct compromised respondent's impartiality and conveyed the appearance that he was acting as a law enforcement officer, not as a judge. *See Matter of Barnes*, 2004 Annual Report 81 (Comm. on Judicial Conduct) (judge issued an order involving disputed property although no case was pending); *Matter of Maclaughlin*, 2002 Annual Report 117 (Comm. on Judicial Conduct) (judge sent a threatening letter to a landowner about code violations on her property, although no charges had been filed against her); *Matter of Colf*, 1987 Annual Report 71 (Comm. on Judicial Conduct) (judge sent a letter threatening to hold an individual in contempt, based on *ex parte* information, although no civil or criminal action had been commenced).

Respondent's conduct undermined the independence and impartiality of the judiciary (Rules Governing Judicial Conduct, §§100.1 and 100.2[A]). Indeed, as a consequence of his improper *ex parte* communications in connection with the dispute, respondent was later obliged to disqualify himself when the matter came before his court.

As a judge for more than a decade, respondent should have realized that he lacked jurisdiction to issue an *ex parte*, threatening letter. The fact that he orally instructed the police not to enforce the letter mitigates but does not excuse his conduct. Every judge is required to maintain professional competence in the law and to refrain from lending the prestige of office to advance private interests (Rules, §§100.3[B][1] and 100.2[C]).

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Luciano, Judge Peters and Judge Ruderman concur.

Mr. Pope was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: October 11, 2005

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct