

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

**DAVID M. TRICKLER,**

**AGREED  
STATEMENT OF FACTS**

a Justice of the Birdsall Town Court, the Burns  
Town Court and the Grove Town Court,  
Allegany County.

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Subject to the approval of the Commission on Judicial Conduct

("Commission"):

**IT IS HEREBY STIPULATED AND AGREED** by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable David M. Trickler ("Respondent"), who is represented in this proceeding by Brian C. Schu, Esq., that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent is not an attorney. Respondent has been a Justice of the Birdsall Town Court since January 1, 2002, a Justice of the Burns Town Court since November 1, 1980, and a Justice of the Grove Town Court since November 1, 1994. His current terms in the Birdsall Town Court and the Burns Town Court expire on December 31, 2017, and his current term in the Grove Town Court expires on December 31, 2015.

2. Respondent was served with a Formal Written Complaint dated October 27, 2015, a copy of which is appended as Exhibit A. He enters into this Agreed Statement of

Facts in lieu of filing an Answer.

**As to Charge I**

3. From January 2013 to November 2013, in the course of presiding over *People v Kenneth A. Jablonski* and *People v Donald R. Shelton* in the Birdsall Town Court, Respondent engaged in *ex parte* conversations with the defendants and handled the cases in a manner that was contrary to the Rules Governing Judicial Conduct (“Rules”).

**As to the Specifications to Charge I**

4. On December 18, 2012, Kenneth A. Jablonski and Donald R. Shelton were charged by Environmental Conservation Officer Ken R. Basile with trespass to hunt on posted property in violation of Section 11-2113 (1) of the Environmental Conservation Law (“ECL”). Mr. Jablonski was additionally charged with hunting deer during muzzle-loader season without a muzzle-loading license, in violation of ECL 11-0703 (6)(a)(2)<sup>1</sup>.

5. On January 3, 2013, Respondent presided in Birdsall Town Court and arraigned Mr. Jablonski and Mr. Shelton on the ECL charges. No prosecutor or Environmental Conservation Officer was present.

6. After Respondent read to Mr. Jablonski and Mr. Shelton the supporting deposition of Cherie Button-Dobmeier, who accused the men of trespassing, Mr. Shelton said, “here’s my version of the story,” and proceeded to recount to Respondent certain facts related to the trespass charges. Mr. Shelton *inter alia* stated that he and Mr.

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<sup>1</sup> The accusatory instrument inaccurately cited the violation section as ECL 11-0703 (6)(a)(3).

Jablonski had gone with another hunter to help track a deer that the other hunter had wounded earlier in the day on state land, that he and Mr. Jablonski had gone into a roadside ditch tracking the wounded deer, and that Ms. Button-Dobmeier lied when she said that he and Mr. Jablonski were carrying guns. Respondent questioned Mr. Shelton about the name of the road where the alleged trespass occurred.

7. Respondent said that he would “bring” witnesses into court and “we’ll have a trial.” Mr. Shelton responded that he would “love it” because he was “toting no gun,” was not “trespassing” and had the right to “walk up to the posted sign to see who’s posted the land.” Respondent replied, “I would think so.”

8. At Mr. Shelton’s suggestion, Respondent viewed a map of the alleged trespass area with the defendants. Mr. Shelton pointed out to Respondent that the map indicated that more than a two-mile stretch on both sides of the road in the area where they allegedly trespassed was state land. Respondent asked Mr. Shelton, “Where’s, where’s this property [the witness] is saying?” Mr. Shelton responded by pointing out the area. Mr. Jablonski asked Respondent if the area they were identifying was state land. Respondent replied, “Yeah, if that, that’s where you were.” Mr. Jablonski replied, “Standing right here, yeah, that’s where we were.”

9. Mr. Shelton again indicated that the map showed more than a two-mile stretch of state land on both sides of the road, and Respondent stated, “You were probably right here.” Respondent asked, “Where did [the environmental conservation officer] give you the tickets? Right there?” Mr. Shelton showed Respondent the location on the map where he and Mr. Jablonski had been stopped by Ms. Button-Dobmeier.



10. Respondent told Mr. Shelton and Mr. Jablonski that he would let them know by mail about a trial date and that it would “probably be a few weeks.”

11. Respondent failed to set a court date in the cases for about ten months. By letter dated July 10, 2013, Emmanuel Hillery, one of the allegedly aggrieved landowners, wrote to the court inquiring about the status of the cases. On September 21, 2013, Respondent spoke to Mr. Hillery, who again inquired about the status of the cases. On October 21, 2013, Respondent sent letters to Mr. Jablonski and Mr. Shelton advising them to appear at the Birdsall Town Court on November 13, 2013, regarding the ECL charges.

12. On November 13, 2013, both Mr. Jablonski and Mr. Shelton appeared for trial without counsel. Their cases were being prosecuted by Allegany County Assistant District Attorney J. Thomas Fuoco.

13. Notwithstanding an error in the court address on subpoenas issued to Ms. Button-Dobmeier, she appeared at the Birdsall Town Court on November 13, 2013, prior to the commencement of the trial, accompanied by Mr. Hillery and Margaret Spittler, another allegedly aggrieved landowner in the ECL matters. Shortly after their arrival, they engaged in conversation with Mr. Fuoco in a room adjacent to the courtroom and expressed to him their dissatisfaction with various aspects of the impending trial, including Mr. Fuoco’s decision not to call Environmental Conservation Officer Basile, Mr. Hillery or Ms. Spittler as witnesses. Ms. Spittler addressed Mr. Fuoco in a loud voice.

14. Respondent, upon hearing the conversation in the room adjacent to the courtroom, left the bench and went into the adjacent room, where he observed Mr. Fuoco, Ms. Button-Dobmeier, Mr. Hillery and Ms. Spittler engaged in discussion about the prosecution of the cases. Respondent heard Ms. Spittler questioning Mr. Fuoco about not calling Mr. Basile as a trial witness. Mr. Fuoco stated, in words or substance, "Nobody's going to tell me how to do my job," and said he would ask Respondent to dismiss the charges against both defendants.

15. Respondent, followed by Mr. Fuoco, returned to the courtroom and took the bench. Mr. Fuoco stated that Ms. Button-Dobmeier, the only witness he had intended to call, had appeared at the courthouse late due to an error on the subpoenas drafted by his office. Subsequently, the following exchange occurred:

MR. FUOCO: ... So, she arrived anyway, and she arrived also with the landowners, and all three of them proceeded to give me a hard time and tried to tell me how to do my job. I didn't appreciate it. So, I'm doing my job by asking the court to dismiss the charge against Donald Shelton. With regard to Kenneth Jablonski--

JUDGE TRICKLER: --Go ahead--

MR. FUOCO: --same facts apply. I'm asking the court to dismiss that charge as well.

JUDGE TRICKLER: Right, then all charges dismissed.

MR. JABLONSKI: Thank you, Your Honor--

16. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that 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; 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; failed to perform the duties of judicial office impartially and diligently, in that he participated in unauthorized *ex parte* communications in a proceeding pending before him, in violation of Section 100.3(B)(6) of the Rules; and failed to dispose of all judicial matters promptly, efficiently and fairly, in violation of Section 100.3(B)(7) of the Rules.

**Additional Factors**

17. Respondent has been cooperative with the Commission throughout its inquiry.

18. Respondent, in his 35 years of judicial service (including 8 years serving concurrently in two town courts and 13 years serving concurrently in three town courts), was previously twice admonished for conduct in the Burns Town Court where he has served since 1980. In 2009, Respondent was admonished for failing to timely remit fines and fees to the State Comptroller, report traffic convictions, issue receipts, and use available means to punish defendants who had failed to appear to pay traffic fines. In



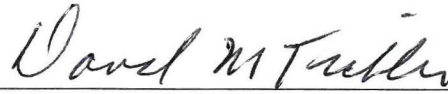
2010, Respondent was admonished for failing to immediately disqualify himself in a harassment case despite knowing the parties and having personal knowledge of the underlying events.

19. Respondent recognizes his obligation to avoid improper *ex parte* communications. Respondent regrets his scheduling delay in this matter and avers that henceforth he will promptly and efficiently dispose of judicial matters.

**IT IS FURTHER STIPULATED AND AGREED** that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

**IT IS FURTHER STIPULATED AND AGREED** that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: *NOVEMBER 17, 2015*



**Honorable David M. Trickler**  
Respondent

Dated: *NOVEMBER 7, 2015*



**Brian C. Schu**  
Attorney for Respondent

Dated: *November 30, 2015*



**Robert H. Tembeckjian**  
Administrator & Counsel to the Commission  
(John J. Postel and David M. Duguay, Of Counsel)



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

**DAVID M. TRICKLER,**

a Justice of the Birdsall Town Court,  
Burns Town Court, and Grove Town Court,  
Allegany County.

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**NOTICE OF FORMAL  
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, David M. Trickler, a Justice of the Birdsall Town Court, Burns Town Court, and Grove Town Court, Allegany County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: October 27, 2015  
New York, New York

**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800

To: Brian C. Schu, Esq.  
226 Main Street  
Hornell, New York 14843

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

**FORMAL  
WRITTEN COMPLAINT**

**DAVID M. TRICKLER,**

a Justice of the Birdsall Town Court, the Burns  
Town Court and the Grove Town Court,  
Allegany County.

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1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon David M. Trickler ("Respondent"), a Justice of the Birdsall Town Court, the Burns Town Court, and the Grove Town Court, Allegany County.

3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").

4. Respondent has been a Justice of the Birdsall Town Court since January 1, 2002, a Justice of the Burns Town Court since November 1, 1980, and a Justice of the Grove Town Court since November 1, 1994. His current terms in the Birdsall Town Court and the Burns Town Court expire on December 31, 2017, and his current term in the Grove Town Court expires on December 31, 2015. Respondent is not an attorney.

## **CHARGE I**

5. From in or about January 2013 to in or about November 2013, in the course of presiding over *People v Kenneth A. Jablonski* and *People v Donald R. Shelton* in the Birdsall Town Court, Respondent engaged in *ex parte* conversations with the defendants and handled the cases in a manner that was contrary to the Rules, as indicated in the specifications below.

### **Specifications to Charge I**

6. On or about December 18, 2012, Kenneth A. Jablonski and Donald R. Shelton were charged by Environmental Conservation Officer Ken R. Basile with trespass to hunt on posted property in violation of Section 11-2113 (1) of the Environmental Conservation Law ("ECL"). Mr. Jablonski was additionally charged with hunting deer during muzzle-loader season without a muzzle-loading license, in violation of ECL 11-0703 (6)(a)(2)<sup>1</sup>.

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JUDGE TRICKLER: --Go ahead--

MR. FUOCO: --same facts apply. I'm asking the court to dismiss that charge as well.

JUDGE TRICKLER: Right, then all charges dismissed.

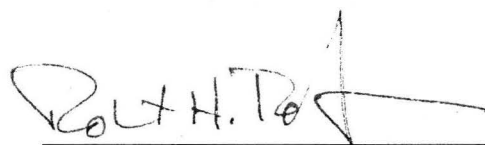
MR. JABLONSKI: Thank you, Your Honor--

18. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44.

subdivision 1, of the Judiciary Law, in that 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; 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; and failed to perform the duties of judicial office impartially and diligently, in that he participated in unauthorized *ex parte* communications in a proceeding pending before him, in violation of Section 100.3(B)(6) of the Rules, and failed to dispose of all judicial matters promptly, efficiently and fairly, in violation of Section 100.3(B)(7) of the Rules.

**WHEREFORE**, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: October 27, 2015  
New York, New York



**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800

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

**VERIFICATION**

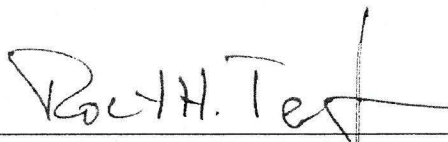
**DAVID M. TRICKLER,**

a Justice of the Birdsall Town Court,  
Burns Town Court, and Grove Town Court,  
Allegany County.  
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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF NEW YORK        )


ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1.     I am the Administrator of the State Commission on Judicial Conduct.
2.     I have read the foregoing Formal Written Complaint and, upon information  
and belief, all matters stated therein are true.
3.     The basis for said information and belief is the files and records of the State  
Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this  
27<sup>th</sup> day of October 2015



Notary Public

**LATASHA Y. JOHNSON**  
Notary Public, State of New York  
No. 01JO6235579  
Qualified in New York County  
Commission Expires Feb. 14, 2019