

REPORT AND RECOMMENDATION OF THE
COMMISSION ON JUDICIAL CONDUCT

APPENDIX D

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Number 2019-22

RESPONSE TO FORMAL CHARGES

GENERAL STATEMENT

Judge Shelley M. Richmond Joseph denies the conclusory allegations of the unnumbered introductory paragraph of the Formal Charges, which do not delineate the specific conduct alleged to violate each—or any—Rule. Judge Joseph has committed no misconduct, and certainly no willful judicial misconduct. She has attempted at all times to treat the parties before her, including Jose Medina-Perez, fairly and in accordance with the law and court policies, and to promote the fair administration of justice and public confidence in the independence, integrity, and impartiality of the judiciary. She has fully cooperated and responded truthfully to the inquiries of her judicial colleagues, supervisors, and judicial disciplinary authorities. To the extent that the incident involving Medina-Perez has attracted unfavorable media attention, that attention initially resulted from the actions of Attorney David Jellinek in secretly arranging with a court officer for his client to evade ICE. After the federal government began to investigate the event, David Jellinek falsely implicated Judge Joseph in order to obtain immunity for himself.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Judge Joseph received her *Juris Doctor* degree from New England School of Law in 1992. Judge Joseph was then admitted to the Massachusetts Bar and worked as an Assistant Attorney General with the Office of the Attorney General for Massachusetts (“Attorney General’s Office”) from 1993 to 2000. After leaving the Attorney General’s Office, Judge Joseph worked for six months as an associate in a civil law firm. From October of 2000 until her judicial appointment, she practiced with the Law Office of

Joseph & Joseph in Newton, Massachusetts. While at the Law Office of Joseph & Joseph, Judge Joseph specialized in criminal defense, hearings before the registry of motor vehicles, and restraining orders.

RESPONSE No. 1

Judge Joseph agrees that Paragraph 1 sets out a brief, but incomplete, summary of her professional background.

2. Judge Joseph was sworn in as a Massachusetts District Court Judge on November 2, 2017, and she began her training and orientation as a judge on November 3, 2017.

RESPONSE NO. 2

Judge Joseph agrees that Paragraph 2 is accurate.

3. In accord with the practice of the Administrative Office of the District Court (“AODC”), Judge Joseph’s training and orientation included approximately four weeks sitting with a series of other judges to observe a variety of types of courtroom proceedings.

RESPONSE NO. 3

Judge Joseph agrees that Paragraph 3 is accurate.

4. In accord with the policy of the Executive Office of the Trial Court (“EOTC”), Judge Joseph’s training also included the assignment of a mentor judge to assist her. As of the time of the assignment of Judge Joseph’s first mentor, her mentor had served continuously as a District Court Judge since 2000. In May of 2019, her mentorship assignment was transferred to another judge, who had served as a District Court judge continuously since 2005. Judge Joseph was then assigned to sit primarily in the court where her mentor was First Justice, and her mentor observed her regularly and provided close supervision and training. That assignment continued until February of 2019, when she was transferred to a different region and assigned a different mentor.

RESPONSE NO. 4

Judge Joseph agrees that she was assigned a mentor judge, whose identity changed over time as described in Paragraph 4 of the Amended Statement of Allegations. Judge Joseph does not recall receiving close supervision or training from any mentor judge, but regularly consulted with colleagues about questions that arose in different courthouses.

5. The AODC’s initial orientation program for new judges, and the training materials provided to Judge Joseph during that initial training period, did not specifically address the topic of recording of courtroom proceedings. Judge Joseph did not undertake on her own to familiarize herself with rules applicable to the District Court. At the time of the

events that are the subject of this complaint, she was unaware of District Court Special Rule 211, which requires that all District Court proceedings be recorded.

RESPONSE NO. 5

Judge Joseph agrees that Paragraph 5 is accurate. Judge Joseph believed, based on her observations and experience during her legal practice prior to her judicial service, that District Court judges sometimes conduct unrecorded discussions at sidebar during courtroom proceedings. Judge Joseph believes that her own observations and experience were consistent with District Court practice as described by other judges.

6. The AODC's training program for new judges also did not specifically provide judges with guidance regarding how to handle ICE detainees, the presence of ICE agents in courthouses, or responding to circumstances in which ICE agents might seek to take custody of a person in a courthouse.

RESPONSE NO. 6

Judge Joseph agrees that Paragraph 6 is accurate.

7. In response to the Court's decision in Lunn v. Commonwealth, 477 Mass. 517 (2017), on November 10, 2017, the Chief Justice of the Trial Court and the Court Administrator issued EOTC Transmittal 17-13, entitled "Policy and Procedures Regarding Interactions with the Department of Homeland Security" (the "Lunn policy"). On that same date, EOTC sent Transmittal 17-13 by email to all Trial Court judges, clerks, department heads, and other management personnel, to provide guidance to all Trial Court personnel (a copy of the Lunn policy is attached as Appendix A).

RESPONSE NO. 7

Judge Joseph agrees that Paragraph 7 is accurate.

8. The Lunn policy provides the following specific guidance for circumstances in which an Immigration and Customs Enforcement ("ICE") agent seeks to take custody of a person in a courthouse:

If, during the processing of an individual subject to release out of the courthouse, a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody, if a security department supervisor

determines that the OHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

RESPONSE NO. 8

Judge Joseph agrees that Paragraph 8 is accurate though incomplete as to its recitation of material sections of the Lunn policy.

9. When the Lunn policy was emailed to all Trial Court judges on November 10, 2017, Judge Joseph was at an early stage of her orientation as a judge. She received access to her official judicial email account no later than November 24, 2017. The Lunn policy may or may not have been sent to her email account, depending on when her email address was added to the Trial Court's distribution list for judges.

RESPONSE NO. 9

Judge Joseph agrees that Paragraph 9 is accurate. Judge Joseph does not recall receiving the Lunn policy at that time, and was unable to locate it among her orientation and training resources when she looked for guidance on April 2, 2018.

10. The District Court held an educational conference for all District Court judges on December 13, 2017, but Judge Joseph was unable to attend this conference because of a death in her family. Among the materials provided to judges at the conference was an "Updated Immigration Benchcard" (attached as Appendix B). This Benchcard instructed all District Court judges to refer to the Lunn policy "[f]or guidance on the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers, and how Trial Court staff should respond when officials from DHS enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer" Judge Joseph does not recall whether she received the materials that were distributed at the conference.

RESPONSE NO. 10

Judge Joseph agrees that the first sentence of Paragraph 10 is accurate. Since she did not attend the training, she does not know what was provided to judges at the conference, and therefore cannot respond to the second and third sentences.

11. On January 16, 2018, the Chief Justice of the District Court issued District Court Transmittal No. 1222 (attached as Appendix C). AODC emailed the transmittal to the official judicial email address of all District Court judges. That document described the updated Benchcard that had been distributed to judges at the December 13, 2017,

conference, and referred to an attached electronic copy of the Benchcard. District Court Transmittal No. 1222 also referred to the Lunn policy as a source of “additional guidance.” Judge Joseph received transmittal No. 1222 by email on or about the date it was issued.

RESPONSE NO. 11

Judge Joseph agrees that Paragraph 11 is accurate. Judge Joseph is in possession of her original bench card on immigration issues, which is laminated, and appears in many ways similar to the “updated” distribution. She does not believe that she was ever aware that there were two different bench cards. Judge Joseph does not claim that any of the allegations against her resulted from the content of any bench card(s).

12. On April 2, 2018, Judge Joseph was assigned to preside over a courtroom in the Newton Division of the District Court department (“Newton District Court”). Judge Joseph was the only judge sitting in the Newton District Court on April 2, 2018. She had sat in that Court previously and had done so as the only judge in the courthouse on dates when no matters were scheduled. This was the first time she had sat there alone with a list of scheduled matters.

RESPONSE NO. 12

Judge Joseph agrees that Paragraph 12 is accurate.

13. On April 2, 2018, the matters that Judge Joseph presided over included criminal charges against a man using the name, Jose Medina-Perez (“Defendant”).¹ A copy of a transcript of a series of hearings in the Commonwealth v. Medina-Perez matter on April 2, 2018, is attached as Appendix D. This transcript does not include a brief third call of the case that occurred before the lunch recess, and it does not include certain non-substantive comments that Judge Joseph recalls. In all other respects this transcript accurately reflects the content of the recorded hearings conducted in the case in the morning and afternoon.

RESPONSE NO. 13

Judge Joseph agrees that Paragraph 13 is accurate. Judge Joseph agrees that the transcript does not include the “third call,” at which Medina-Perez’s then-counsel, Elizabeth Bostwick, stated that she had just sent a fax, or a “fourth call” two minutes later, at which time Attorney Bostwick requested that the next call of the case be delayed until 2:15 p.m. because she had a medical appointment. Based on these statements, Judge Joseph believed that Attorney Bostwick was actively investigating Medina-Perez’s situation, and

¹ The Newton District Court docket for Commonwealth v. Medina-Perez (attached as Appendix F) identifies the defendant as Jose Oscar Manuel Medina-Perez. This document will refer to him as Mr. Medina-Perez or, in the context of the District Court proceeding, as “the defendant.”

expected that Attorney Bostwick would appear for her client in the afternoon session. Judge Joseph was therefore surprised and somewhat puzzled by the sudden and unexplained appearance of David Jellinek as private counsel in place of the bar advocate, Attorney Bostwick, for the afternoon session.

14. At approximately 10:34 a.m., on April 2, 2018, the Commonwealth v. MedinaPerez matter came before Judge Joseph for arraignment on a charge of being a fugitive from justice based on a warrant issued in a case in Pennsylvania, and two counts of controlled substance violations. The court provided a Spanish language interpreter (the “interpreter”) to assist the defendant in understanding the courtroom proceedings.

RESPONSE NO. 14

Judge Joseph agrees that Paragraph 14 is accurate.

15. When the Commonwealth v. Medina-Perez matter was first called at approximately 10:34 a.m., Judge Joseph appointed the bar advocate (“bar advocate”) assigned to Newton District Court on that day to represent the defendant. The prosecutor handling the matter advised Judge Joseph that she was not seeking bail on the controlled substance charges but would request that the defendant be held without bail on the Pennsylvania warrant. The case was then recessed and put on for a second call.

RESPONSE NO. 15

Judge Joseph agrees that Paragraph 15 is accurate, and that she appointed the duty bar advocate, Elizabeth Bostwick, to represent Medina-Perez.

16. After the first call but before the final afternoon call of the Commonwealth v. Medina-Perez matter, Judge Joseph learned that ICE agents were present at the Newton District Court with a civil immigration detainer that authorized the ICE agents to take custody of the defendant if he were released from Massachusetts state custody. The detainer stated that ICE had probable cause to believe that the defendant was a deportable alien based on a final order of removal previously issued against him.²

RESPONSE NO. 16

Judge Joseph agrees that on second call, the bar advocate, Attorney Bostwick, expressed her opinion that the photograph accompanying the Pennsylvania warrant was not that of the defendant, Medina-Perez, who maintained that he was not the person sought by the warrant. Attorney Bostwick requested time to obtain information from the defendant’s

² The ICE agents also had a warrant of removal for the defendant, stating that the defendant was subject to removal from the United States based upon a final order by a designated official, and that any Immigration Officer with the United States Department of Homeland Security was commanded to take custody of the defendant for removal from the United States.

employer and to review the “Triple I” form, which Judge Joseph granted. The Commonwealth indicated that it was continuing to request that the defendant be held without bail on the fugitive warrant from Pennsylvania. At the third call before lunch, Attorney Bostwick stated that she had just sent a fax. At a fourth call two minutes later, she asked for additional time over the lunch break because both she and the interpreter had appointments. Judge Joseph granted the request and indicated that she would hold the Medina-Perez case until 2:15 or 2:30 to accommodate Attorney Bostwick’s schedule.

17. While the Commonwealth v. Medina-Perez matter was recessed, the First Assistant Clerk, who was serving as the session clerk, brought to Judge Joseph’s attention that an ICE agent was present in the courtroom, and that the Newton District Court had a policy that ICE agents be directed to wait outside the courtroom. After contacting AODC for information about any applicable Trial Court policy, and learning the content of the Lunn policy, Judge Joseph asked the session clerk to give direction to the ICE agent in accord with the Newton District Court policy. The clerk did so, and the ICE agent waited in the public lobby on the first floor or outside the building.

RESPONSE NO. 17

Judge Joseph agrees that the first two sentences of Paragraph 16 are accurate. Specifically, it was during the lunch recess that she first learned about the Newton District Court policy that the ICE agents were present and should be directed to wait outside the courtroom. She called the Executive Office of the Trial Court for guidance, and the Lunn policy was read to her. In consultation with the EOTC, she was advised that the Newton District Court policy, as established by the Newton District Court Presiding Justice, was not inconsistent with the Trial Court’s Lunn policy and could be followed. Judge Joseph then advised the session clerk that she would adhere to the Newton District Court policy. With respect to the third and final sentence of Paragraph 17, Judge Joseph has no knowledge of the location of the ICE agents at any time or what conversation occurred between the clerk and the ICE agents, as she neither saw nor spoke with any ICE agent on April 2, 2018.

18. During the recess, persons associated with the defendant in the Commonwealth v. Medina-Perez matter retained private counsel for him, and that attorney entered an appearance.³

³ This defense attorney graduated from an ABA-accredited law school in 2000 and has been a member of the Massachusetts Bar since 2001. At the time of the April 2, 2018 incident, defense counsel had been practicing exclusively criminal defense in his own private practice for approximately nine to ten years. That private criminal defense work included approximately nine to ten years of regular appearances representing criminal defendants in the Newton District Court. Prior to his private practice, defense counsel worked as a criminal defense attorney for the Massachusetts Committee for Public Counsel Services, where he was a Superior Court certified attorney for approximately five years. Defense counsel is also the author of a published practice guide to Massachusetts criminal law.

RESPONSE NO. 18

Judge Joseph has no information about how or when the appointed bar advocate, Attorney Bostwick, who had been advocating effectively for Medina-Perez, and who immediately before the lunch recess had expressed her intention to return for further call at 2:15 p.m., came to be replaced with David Jellinek.

19. The final hearing before Judge Joseph in the matter began at approximately 2:48 p.m. At some point before that hearing, the defendant attorney had formulated a plan with the court officer that the defense attorney intended to permit Mr. Medina-Perez to avoid the ICE agents. As part of that plan, the court officer indicated that he could release Mr. Medina Perez through the sally-port door in the lockup if the defense attorney could arrange for the defendant to return to the lockup after his court proceedings. During this final call of the matter, the defendant, the prosecutor, and the newly-retained defense attorney appeared before Judge Joseph in the courtroom. Defense counsel asked for a sidebar conference. Judge Joseph granted that request and conducted a recorded sidebar conference with the defendant's attorney and the prosecutor. An interpreter was present for the defendant and had some access to the sidebar conference. In the course of this conference, the prosecutor advised that she no longer believed that the defendant was the same person subject to the Pennsylvania warrant, and thus that she would move to dismiss the fugitive from justice charge and would not seek bail on the remaining Massachusetts controlled substances charges.

RESPONSE NO. 19

Judge Joseph agrees that the first sentence of Paragraph 19 is accurate. With regard to the second and third sentences of Paragraph 19, Judge Joseph has no first-hand information about the time and manner in which David Jellinek formed his agreement with the court officer. Judge Joseph was unaware of any such agreement, and first learned about an agreement when she was given access to David Jellinek's federal grand jury testimony, in which he admitted making that agreement. Judge Joseph agrees that the fourth, fifth and sixth sentences of Paragraph 19 are accurate. With respect to the seventh sentence of Paragraph 19, it is not accurate that the interpreter had "access" to the sidebar conference, as he was located next to Medina-Perez. Medina-Perez was in the glass-enclosed custody dock on the other side of the courtroom from the sidebar, and the interpreter was standing outside the glass, inches from Medina-Perez. Judge Joseph agrees that the final sentence of Paragraph 19 is accurate, in that the prosecutor for the first time, and without any explanation, recanted the position regarding the defendant's identity that she had taken repeatedly in the morning. The prosecutor now stated, apparently after a conversation with David Jellinek, that she did not believe the defendant was the person subject to the Pennsylvania warrant and said she would dismiss the fugitive of justice charge.

20. The sidebar conference included discussion of whether the defendant was the person who was the subject of the ICE detainer, and the presence of the ICE agents who, at that time, were still waiting in the front area of the courthouse to take the defendant into custody if he were released from state custody. Defense counsel told Judge Joseph, “ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal, . . . and hope that we can avoid ICE.”

RESPONSE NO. 20

Judge Joseph agrees that Paragraph 20 includes selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. Judge Joseph had no knowledge about where the ICE agents were located, and had not directed them where they should wait.

21. After hearing this information, Judge Joseph said, “the other alternative is if you need more time to figure this out – hold until tomorrow.” Defense counsel explained that “if he’s bailed out . . . ICE will pick him up.” Judge Joseph responded, “ICE is gonna get him?” . . . What if we detain him?” The quality of the recording is insufficient to allow a listener to evaluate the tone of these comments and questions.

RESPONSE NO. 21

Judge Joseph agrees that first two sentences of Paragraph 21 include selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. Judge Joseph is unable to determine whether “[t]he quality of the recording is insufficient to allow a listener to evaluate the tone of these comments and questions.”

22. At that point, defense counsel asked, “Are we on the record?” Judge Joseph then said to the session clerk, “can we go off the record for a moment?” After she repeated that request, the session clerk turned off the courtroom recording system. Judge Joseph did not ask defense counsel for any explanation of his request to confer off the record and did not consider any reason or justification for doing so. In violation of District Court Special Rule 211, Judge Joseph conducted an unrecorded conference with counsel regarding the case, lasting approximately 52 seconds. The unrecorded conference occurred at sidebar, with the prosecutor and defense counsel present, outside the hearing of others present in the courtroom.

RESPONSE NO. 22

Judge Joseph agrees that the first two sentences of Paragraph 22 include selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. With respect to the

third sentence of Paragraph 22, Judge Joseph agrees that she did not know why David Jellinek asked to go off the record, but that given the complicated and somewhat puzzling sequence of events, including the unexpected change of counsel and the prosecutor's abrupt reversal of her position on whether the defendant was the person sought by the fugitive warrant, Judge Joseph did not consider the request alarming or unusual. With respect to the fourth sentence of Paragraph 22, Judge Joseph agrees that she unknowingly violated District Court Special Rule 211, which was inconsistent with her prior experiences as a lawyer. With respect to the final sentence of Paragraph 22, Judge Joseph agrees that the three people who could hear the unrecorded conference were she herself, the prosecutor and David Jellinek. The courtroom clerk was near the sidebar, but Judge Joseph does not know whether he heard what was said.

23. Judge Joseph's statements on the record, particularly her questions "ICE is gonna get him?" and "What if we detain him?" would give a reasonable observer the impression that she sought to assist defense counsel in identifying a means for the defendant to avoid ICE. Judge Joseph's willingness to conduct an unrecorded sidebar conversation with counsel, in violation of District Court Special Rule 211, added to the basis for that impression.

RESPONSE NO. 23

Judge Joseph disagrees either that her statements as quoted in Paragraph 23 conveyed an intention to "assist defense counsel in identifying a means for the defendant to avoid ICE" or that she subjectively had any such intention. As she had tried to do throughout the day, Judge Joseph did intend to permit both of Medina-Perez's counsel sufficient time to represent their client properly, and she did not want ICE to take custody of Medina-Perez if it was determined that he was not the person subject to the detainer. Given the preceding events, Judge Joseph's intention was to make sure that Medina-Perez's counsel, who had repeatedly insisted that the ICE detainer did not pertain to his client, had a reasonable opportunity to investigate his belief that his client was not the subject of the detainer and to present ICE with any further information he was able to obtain to establish that ICE was mistaken about his client's identity. Her suggestion was intended to explore a course of action that would cause the defendant to be held without bail in state custody until the morning to permit defense counsel a reasonable opportunity to make that inquiry. Judge Joseph further disagrees that any inference of improper motive should be drawn from the unrecorded conference, as the record prior to that point reflects no indication that Jellinek planned to engineer his client's escape, and would have given her no reason to expect that Jellinek—in the presence of the assistant district attorney and perhaps the clerk—was about to suggest that any party take improper actions to assist his client's escape. Further, Judge Joseph's experience with unrecorded sidebar and lobby conferences, over twenty-five years as a practicing lawyer, led her to believe that this was an occurrence with no sinister meaning.

24. During the unrecorded conference, defense counsel asked Judge Joseph to allow the defendant to return downstairs to the lockup area after he was released from state custody, and to allow defense counsel to accompany him there, along with the interpreter.

RESPONSE NO. 24

Judge Joseph disagrees with the first sentence of Paragraph 24. She agrees that she was asked by defense counsel to permit him to speak with his client in the downstairs lockup with the assistance of the interpreter before he was released, which Judge Joseph expected to be into ICE custody. In view of 111E rights read by Judge Joseph in open court but otherwise unexplained, as well as the multiple legal issues facing the defendant and his impending move to ICE custody, she believed such communication to be essential to attempt to protect Medina-Perez's right to counsel. She was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody. She therefore thought it was reasonable to allow the conference to occur before he was released to ICE, and the lockup was the only practical place for such a conference.

25. Defense counsel informed Judge Joseph that, if she permitted him to return to the downstairs lockup area with the defendant and the interpreter, he thought his client could be released through the rear sally-port exit of the courthouse. Knowing that the ICE agents were, at her direction, still waiting for the defendant in a different location in the front area of the courthouse, Judge Joseph allowed defense counsel's request.

RESPONSE NO. 25

Judge Joseph denies that David Jellinek stated that he thought his client would be released through the rear sally-port exit of the courthouse. Judge Joseph had no knowledge about where the ICE agents were located, and had not directed them where they should wait. Judge Joseph has no knowledge about what conversations occurred between the clerk and the ICE agents after she told the clerk that she would adhere to the Newton District Court policy prohibiting the ICE agents from entering the courtroom. Judge Joseph agrees that she allowed David Jellinek's request to accompany his client and the interpreter to the lockup.

26. Judge Joseph responded to these statements from defense counsel in a manner that, in the context of her above-described conduct, caused defense counsel to reasonably believe that Judge Joseph had granted him permission to try to help the defendant avoid being taken into custody by ICE, including by granting defense counsel's request to return to the lockup area with the defendant and the interpreter, after the defendant had been released from state custody.

RESPONSE NO. 26

Judge Joseph denies the allegations in Paragraph 26. Judge Joseph specifically denies that she had any knowledge of the plan that David Jellinek had formed with the court officer, or that she did or said anything that would cause David Jellinek to form a belief—reasonable or unreasonable—that she was aware of or had acquiesced to his secret plan to have Medina-Perez released from the downstairs lockup.

27. From her discussion with defense counsel during the unrecorded sidebar conference, Judge Joseph understood that defense counsel intended to continue to help the defendant avoid being taken into custody by ICE that day.

RESPONSE NO. 27

Judge Joseph denies the allegations in Paragraph 27. Judge Joseph believed that she had, by suggesting that the defendant be held without bail overnight, offered David Jellinek reasonable time to pursue legal means to help the defendant avoid ICE custody by further investigating his identify and convincing ICE, if he could, that Medina-Perez was not the subject of the detainer. Since David Jellinek rejected this suggestion, Judge Joseph reasonably assumed that he intended to confer with his client and formulate a plan for his continued defense once he was in ICE custody. Judge Joseph specifically denies that David Jellinek communicated to her his secret plan, apparently previously concocted with the court officer, to evade ICE through illegal means, or that she said or did anything that would cause him to form that belief.

28. When the courtroom recorder was turned on again at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court. The prosecutor indicated that her intention was to dismiss the fugitive from justice charge, and not to seek bail on the Massachusetts charges.

RESPONSE NO. 28

Judge Joseph agrees that Paragraph 28 is accurate.

29. The defendant's attorney then stated, "I would ask that he, uh - I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may." Judge Joseph responded, "That's fine. Of course." After the defendant was arraigned and advised of certain statutory rights, the session clerk reminded the participants of the presence of ICE representatives "to visit the lockup." Judge Joseph responded, "That's fine. I'm not gonna allow them to come in here. But he's been released on this."

RESPONSE NO. 29

Judge Joseph agrees that Paragraph 29 is accurate

30. After the judge set a date for pretrial conference, a court officer asked whether the defendant had been released. The session clerk confirmed that the defendant had been ordered released. Judge Joseph then reiterated that the defendant’s attorney had “asked if the interpreter can accompany him downstairs, um, to further interview him – and I’ve allowed that to happen

The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m.

RESPONSE NO. 30

Judge Joseph agrees with the first paragraph of Paragraph 30, and that the content of the discussions of the recorded and unrecorded sidebar conferences was placed on the record in open court. Judge Joseph agrees that she proceeded to arraign Medina-Perez and to give him statutory warnings, including the Chapter 111E rights which she said his attorney would further explain to him. She further confirmed with the clerk that the ICE agents could “visit the lockup” but, in accordance with the Newton District Court policy, could not enter the courtroom. She assumed that ICE would reach the lockup either through the public stairwell or the sallyport entrance, based on the court officers’ determination in accordance with the Lunn policy of what was best. Judge Joseph agrees with the second paragraph of Paragraph 30.

31. Judge Joseph’s statements after the record resumed, referencing her decision to allow defendant and defense counsel to go down to the lockup area after defendant’s release from custody, and referencing the ICE officer’s exclusion from the courtroom, further added to defense counsel’s reasonable impression that Judge Joseph had granted permission for defense counsel to pursue efforts to have the defendant to exit the courthouse through a rear exit in an effort to avoid ICE.

RESPONSE NO. 31

Judge Joseph denies the allegations of Paragraph 31, and specifically that she did or said anything that would cause David Jellinek to form a belief—reasonable or unreasonable—that she was aware of or had acquiesced to his secret plan to have Medina-Perez released from the downstairs lockup before ICE agents could take custody of him. Judge Joseph believed that permitting defense counsel to go to the lockup to speak with his client was essential to assure the protection of Medina-Perez’s right to counsel, because she was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody, and therefore thought it was reasonable to ensure that the conference would occur before he was released to ICE. Further, her response to the clerk’s inquiry about the ICE agents specifically approved the request to have ICE go to the lockup—where she knew David

Jellinek and Medina-Perez were headed—and permitted that to happen, as long as the agents complied with the Newton District Court policy by remaining outside the courtroom.

32. Judge Joseph’s decision to allow defendant and his counsel to go downstairs to the lockup area after the defendant had been released from state custody assisted defense counsel’s plan for the defendant to exit the courthouse through a rear exit and avoid being taken into custody by the ICE agents who, at Judge Joseph’s direction and pursuant to the Newton District Court policy, were still waiting outside the courtroom.

RESPONSE NO. 32

Judge Joseph agrees that the unintended effect of her assent to allow defense counsel and the interpreter to accompany Medina-Perez to the lockup was to assist defense counsel’s plan, but denies that she had any knowledge of that plan, that she intended to assist that plan, or that she intended to permit anything other than the retrieval of the defendant’s property and an opportunity for him to confer with counsel before he was taken into ICE custody, after which attorney-client communication might be difficult or impossible. Judge Joseph disagrees with the final clause of Paragraph 32, as she had no contact or communication with the ICE agents, had no idea where the agents were located at the time Medina-Perez left the courtroom, and had not directed the agents to wait in any particular location outside the court room.

33. Immediately following the above-described proceeding, the same court officer who had inquired about the defendant’s custody status escorted the defendant to the downstairs lockup area of the Newton District Court, accompanied by the defendant’s attorney and the interpreter.

RESPONSE NO. 33

Judge Joseph agrees that Paragraph 33 is accurate.

34. Once inside the lockup area, the court officer used his security access card to open the rear sally-port exit of the courthouse and released the defendant out of the courthouse through the sally-port exit at approximately 3:01 p.m., on April 2, 2018.

RESPONSE NO. 34

Judge Joseph believes that Paragraph is accurate, but her belief is based on documents provided to her counsel by the federal government, and not on any direct or indirect personal knowledge.

35. The ICE agent, who, at the direction of Judge Joseph and in accord with practice in the Newton District Court, had been instructed to wait outside the courtroom, was unaware of the defendant’s release out the rear sally-port exit. Because the defendant had been

released through the sally-port exit, the defendant succeeded in avoiding being taken into custody by the ICE agents waiting for him pursuant to the detainer and Warrant of Removal.

RESPONSE NO. 35

Judge Joseph disagrees that the first sentence of Paragraph 35 is accurate, as she, in accordance with the Newton District Court policy as conveyed to her, instructed the clerk to tell the ICE agents that they should wait outside the courtroom, but did not speak to the ICE agents herself and did not instruct them, directly or indirectly, where they should wait. Judge Joseph believes that the ICE agents were unaware that David Jellinek procured his client's escape out the sallyport door, and that Medina-Perez thereby succeeded in avoiding the ICE agents, but this belief is based on documents provided to her counsel by the federal government, and not on any direct or indirect personal knowledge. Judge Joseph also has no knowledge as to why the ICE agents did not "visit the lockup" where David Jellinek and Medina-Perez were headed, as the clerk had stated they wished to do and as she had agreed they could do.

36. On April 4, 2018, the First Justice of the Newton District Court met with Judge Joseph at the Newton District Court and asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

Judge Joseph told the First Justice that she was not sure what to do about making sure that ICE could take custody of the defendant and that there was some confusion about the Pennsylvania fugitive charge. Judge Joseph advised the First Justice that the defendant was released on personal recognizance. Judge Joseph did not advise the First Justice that she had conducted part of the hearing off the record, nor did the First Justice inquire on the point, having received no information to indicate that any part of the proceeding had occurred off the record.

Judge Joseph was less than fully candid with the First Justice in this conversation, in failing to advise the First Justice that she had conducted part of the hearing off the record, and that during the off-the-record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area.

RESPONSE NO. 36

Judge Joseph agrees that the first sentence of Paragraph 36 is accurate, except that this was not a planned occasion where they "met," but rather a brief conversation in the First Justice's lobby during a break in the day. Judge Joseph disagrees that the second sentence is accurate. During this brief conversation, Judge Joseph learned for the first time that Medina-Perez had not been taken into ICE custody, apparently because he was released out through the sally-port door. She had no additional information, and the

focus of the First Justice's questions seemed to be the court officer, with whom Judge Joseph had had no contact. They also briefly discussed Judge Joseph's unfamiliarity with the Newton District Court practice of excluding ICE from the courtroom and her effort to obtain the Lunn policy from the District Court Administrative Office, as well as the uncertainty about the defendant's identity. Judge Joseph told the First Justice that she had granted David Jelinek's request to speak with his client in the lockup with the assistance of the interpreter. Judge Joseph agrees that the third sentence of Paragraph 36 is accurate. Judge Joseph agrees that the fourth sentence of Paragraph 36 is accurate, in that she was unaware of Special Rule 211, and therefore did not believe there was anything about having gone off the record that was relevant to the discussion or to Medina-Perez's escape. Her belief was apparently shared by David Jelinek, who, unknown to Judge Joseph, had spoken with the First Justice *ex parte* without informing the First Justice that he had asked to go off the record or that any proceedings had been conducted off the record. As far as Judge Joseph is aware, David Jelinek did not at that time make the claim that he had informed Judge Joseph of his secret plan with the court officer or that he believed she had approved his scheme. Judge Joseph denies that she was not candid with the First Justice, as she truthfully responded to the First Justice's questions based on her limited understanding of the situation that had just been made known to her.

37. On a date within the next month, the Regional Administrative Justice ("RAJ") met with Judge Joseph at the Lowell District Court. The RAJ asked Judge Joseph about the off-the-record portion of the hearing in the Commonwealth v. Medina-Perez matter.

The RAJ advised Judge Joseph that it was the RAJ's understanding that a portion of the April 2, 2018 hearing in the matter had not been recorded. When the RAJ asked Judge Joseph what happened, Judge Joseph was less than fully candid, failing to answer that she had directed her session clerk to turn off the courtroom recorder.

Instead, Judge Joseph responded by implying that her unfamiliarity with the courtroom recording system may have caused a portion of the hearing not to be recorded, asking questions about how the courtroom recording equipment in the Newton District Court worked, referencing an experience in another courthouse where she had disconnected the recording system after learning that it was amplifying a sidebar conversation. She expressed concern about not wanting people in the audience to hear the discussion at sidebar relating to the defendant's identity.

Judge Joseph was less than fully candid in this conversation with the RAJ, in failing to explicitly acknowledge that she had conducted part of the hearing off the record, and in failing to advise the RAJ that during the off-the-record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area.

The RAJ informed Judge Joseph about District Court Special Rule 211 and emphasized to her that all courtroom proceedings must be recorded.

RESPONSE NO. 37

Judge Joseph agrees that the first three sentences of Paragraph 37 are an accurate but incomplete summary of the discussion she had with the RAJ at the Lowell District Court in April 2018. The RAJ invited Judge Joseph to her chambers during the lunch recess, where they spoke while having lunch. Judge Joseph learned from the RAJ of the existence of Special Rule 211, which prohibited off-the-record proceedings. Judge Joseph told the RAJ that she was unaware of the rule prohibiting off-the-record proceedings, expressed her understanding of the rule and its purpose, and promised that she would observe the rule in all future proceedings.

Judge Joseph denies that she was less than fully candid, as she believed that the RAJ understood that Judge Joseph had directed that the conference take place off the record, and that it was that understanding that prompted the meeting and the discussion about Special Rule 211 and its purpose.

Judge Joseph acknowledged having been off the record on one other particular occasion in the Waltham District Court, where she asked for the recording to be turned off after being told that the contents of a sidebar discussion were being amplified throughout the courtroom where the gallery could hear. Judge Joseph explained that she did not understand why the recording system, which was the same as the Newton District Court, had permitted that amplification. She expressed concern about not wanting people in the audience to hear the discussion at sidebar relating to the defendant's identity. She denies that she intended to imply that her unfamiliarity with the system was the cause of her decision to agree to defense counsel's record to go off the record.

Judge Joseph denies that she was less than fully candid with the RAJ, as the RAJ clearly understood that Judge Joseph had conducted proceedings off the record, and, in Judge Joseph's mind, had asked to speak with her to inform her of the rule and its purpose. Further, although Judge Joseph does not remember every detail of the conversation with the RAJ, she would not have placed significance on the fact that she had granted defense counsel's request to speak to the defendant with the interpreter in the lock-up as part of the off-the-record conversation, since she placed that fact on the record when the recording resumed, and would have assumed that the RAJ was aware of that fact. Judge Joseph did not tell the RAJ that defense counsel had said that he thought that he could have his client released through the sally-port exit if he could return to the lock-up area because David Jellinek made no such statement. As far as Judge Joseph is aware, David Jellinek had not yet begun to tell people that Judge Joseph had approved his plan with the court officer, so there was neither a reason for Judge Joseph to deny it, or for the RAJ to inquire specifically about it. Certainly, the RAJ did not ask Judge Joseph if Jellinek had made such a statement.

38. The Chief Justice of the District Court and the RAJ met with Judge Joseph in the Chief Justice's office on May 8, 2018.

The Chief Justice expressed particular concern that the recording had been shut off, and that a defendant had been released from the back of the courthouse. Judge Joseph responded by acknowledging that she had directed the session clerk to turn off the courtroom recording, and by apologizing for having done so.

When the Chief Justice asked Judge Joseph why she had directed that the courtroom recorder be shut off, Judge Joseph responded by explaining that she thought that the defendant's attorney wanted to speak to her off the record about the defendant's identity and about his charge from Pennsylvania. Judge Joseph indicated that the off-the-record discussion pertained to the defendant's identity. Judge Joseph did not disclose that the off-the-record discussion had included defense counsel's request that the defendant be allowed to return downstairs, accompanied by defense counsel and the interpreter, and his statement to the effect that he believed he could have the defendant released through the rear of the courthouse.

Judge Joseph's response to the Chief Justice's questions regarding the reasons for and the content of the off-the-record conversation were less than fully candid and were misleading.

Judge Joseph was less than fully candid with the Chief Justice in this conversation when she told the Chief Justice that the non-recorded conversation at sidebar was merely her and the defense counsel still talking about the out of state warrant for Mr. Medina-Perez from Pennsylvania.

Judge Joseph was also less than fully candid with the Chief Justice when, in response to a series of questions from the Chief Justice about whether she had anything to do with the defendant's release from the courthouse on April 2, 2018, or any responsibility for it, she strongly denied that she had anything to do with it, or responsibility for it, and did not tell him that, at the conclusion of the Medina-Perez hearing that day, she released the defendant from state custody but then allowed defense counsel, the interpreter, and the defendant to all return to the lockup area, which allowed the defendant to then leave the courthouse through the sallyport and avoid being taken into custody by ICE.

The Chief Justice asked Judge Joseph if she had anything to do with the defendant's release through a non-public exit of the Newton District Court on April 2, 2018. Judge Joseph denied having any role in or awareness of that result. This denial was false.

RESPONSE NO. 38

Judge Joseph agrees that the first two paragraphs of Paragraph 38 are accurate. With respect to the third paragraph, Judge Joseph believes that she expected the off-the-record conversation would provide further information about the prosecutor's sudden reversal of her previous position, which involved the Pennsylvania charges, and the overall question of the defendant's identity, which she does not understand to this day. Judge Joseph states that the discussion with the Chief Justice included defense counsel's request to be allowed to speak to his client in the lockup with the interpreter, but she is not clear about whether it was as part of the discussion about the conference off the record, or the larger description of events, as that request was made both off and on the record. Judge Joseph would not have placed significance on the fact that she had granted defense counsel's request to return to the lock-up as part of the off-the-record conversation, since she placed that fact on the record when the recording resumed, and the Chief Justice informed her that he had listened to the transcript and presumably heard that statement. Judge Joseph did not tell the RAJ that defense counsel had said that he thought that he could have his client released through the sally-port exit if he could return to the lock-up area because David Jellinek made no such statement. As far as Judge Joseph is aware, David Jellinek had not yet begun to tell people that Judge Joseph had approved his plan with the court officer, so there was neither a reason for Judge Joseph to deny it, or for the Chief Justice to inquire specifically about it. Certainly, the Chief Justice did not ask Judge Joseph if Jellinek had made such a statement, and Judge Joseph did not tell the Chief Justice that David Jellinek had made such a statement, because he did not. At the time Medina-Perez's hearing concluded, Judge Joseph believed that the ICE officers would take custody of the defendant, and had no inkling that there was a plan to have him released out the sally-port door. Her lack of knowledge is confirmed by the conduct of the prosecutor, who was present at the sidebar conference in which David Jellinek claims to have said that he intended to get his client released out the backdoor. After the Medina-Perez hearing concluded, the prosecutor went to the front public area of the courthouse, where she told the ICE agents that Medina-Perez would be coming out the courtroom door into that area and stood with them to await his arrival. Judge Joseph does not believe that the prosecutor would have lied to the ICE agents if she knew that David Jellinek had a plan to have his client released from the back door, and believes that the prosecutor's conduct confirms that neither the prosecutor nor Judge Joseph was aware of that plan

Judge Joseph denies that she was less than fully candid with the Chief Justice. At the time of that meeting, Judge Joseph had no idea that David Jellinek would later claim that he had told her of his secret plan or that she had approved it, and therefore no reason to deny or even address that claim. She did permit David Jellinek to accompany his client and the interpreter to the lockup—a fact which was known to the Chief Justice from the recording—and thereby unwittingly assisted in Jellinek's plan. However, at the time of the meeting, that plan was not known either to Judge Joseph or to the Chief Justice. She also knew—and the record reflected—that she had agreed that the ICE agents could go to

the lock-up, where she assumed that they would take the defendant into custody in accordance with the Lunn policy. Having no understanding of why the ICE agents did not do what they had apparently intended to do, Judge Joseph believed that she had followed the Lunn policy, which was to permit the ICE agents to do their job.

Judge Joseph agrees that she told the Chief Justice that she had nothing to do with the defendant's release through a non-public exit of the Newton District Court on April 2, 2018, and that she denied having any role in or awareness of that result. Both statements were true. As noted above, her role did include granting David Jellinek's request to accompany his client to the lockup; however, that fact had been placed on the record and was known to all at the meeting, and Judge Joseph did not at the time understand that action to be improper in any way or to have contributed to the defendant's escape, as she thought that ICE would take custody of the defendant in the lockup. Further, her denial that she was aware "of the result" was true, as she was unaware of the defendant's escape until her conversation with the First Justice two days later. Her denial that she was aware of David Jellinek's secret agreement with the court officer was true, because she first learned of that agreement when her counsel received David Jellinek's federal grand jury testimony.

39. After investigation, a federal grand jury returned indictments against Judge Joseph and a court officer based on the events of April 2, 2018. On September 22, 2022, Judge Joseph entered into an agreement with the United States Attorney, in which she stipulated to certain facts regarding the events of April 2, 2018, and agreed to refer herself to the Commission on Judicial Conduct. Based on that agreement, the United States Attorney moved to discuss the charges against her, and the United States District Court so ordered on September 23, 2022. (A copy of the motion to dismiss, with attached agreement between Judge Joseph and the United States Attorney and agreement of facts, is attached hereto as Appendix E).

RESPONSE NO. 39

Judge Joseph agrees that Paragraph 39 is accurate.

40. The events in connection with the Medina-Perez case on April 2, 2018, including the unrecorded conference, the defendant's release through the non-public sallyport exit, and subsequent federal criminal charges against Judge Joseph and a court officer, have received substantial public attention through news media and other sources. The public attention to this incident has had the effect of undermining public confidence in the judiciary.

RESPONSE NO. 40

Judge Joseph agrees that the first sentence of Paragraph 40 is accurate. Judge Joseph is unable to offer an opinion on the effect of news media on public confidence, but notes

that the publicity was precipitated by many factors, but particularly by the false statements of David Jellinek, who subsequently received complete immunity for his actions in arranging for his client to avoid the ICE agents, and whose false statements continued to evolve, from the time of his initial *ex parte* approach to the First Justice of the Newton District Court through his multiple encounters with the United States Attorney's Office. Judge Joseph disagrees with the last sentence and further notes that she was reinstated to her position after the criminal charges were dismissed, and has sat as a judge for two years in the Boston Municipal Court with neither incident nor unfavorable publicity.

41. In the course of the Commission's investigation of this matter, Special Counsel conducted an interview of Judge Joseph, under oath, recorded by a court reporter, with Judge Joseph's counsel present.

In the course of that interview, when asked about events in the Medina-Perez case on April 2, 2018, Judge Joseph denied that defense counsel told her he thought that the defendant could be released out the back door and/or avoid being taken into custody by ICE if he could speak to the defendant downstairs.

She further denied that she had said or done anything to facilitate the defendant's avoidance of ICE, or that she said or did anything that day that could have led to defense counsel having a reasonable belief that she had assented to his plan to help the defendant avoid being taken into custody by ICE that day. These denials were false.

RESPONSE NO. 41

Judge Joseph agrees that Paragraph 41 is true, except for the final sentence, which is not true. Judge Joseph truthfully denied that defense counsel told her that the defendant could be released out the back door and/or avoid being taken into ICE custody because that did not happen. Judge Joseph truthfully stated that she could not think of anything that would have given David Jellinek the impression that he had Judge Joseph's "blessing for the plan to have his client released out the back." Judge Joseph is unable to address this allegation further because she was not informed either during that interview or in the present Formal Charges what "actions and statements" are alleged to have led defense counsel to have such a belief. Finally, the actions of the prosecutor, who told the ICE agents that Medina-Perez would be coming out the front door of the courtroom and waiting with them in the lobby for him to appear, confirm that David Jellinek was the only person other than the co-conspiring court officer who was aware of his plan, and neither Judge Joseph nor David Jellinek said or did anything that caused the prosecutor to believe that Jellinek intended to have his client avoid ICE by being released through the back door.

**FURTHER RESPONSE OF
JUDGE SHELLEY M. RICHMOND JOSEPH**

1. On November 2, 2017, I was sworn in as an Associate Justice of the Framingham District Court. I completed the four-week training and was assigned a mentor judge to assist me. I also regularly consulted with colleagues in different courthouses where I sat about issues or matters that arose in different courthouses.

2. April 2, 2018, I was a new judge, just four months after my training ended. I was assigned to sit in the Newton Division of the District Court. I was familiar with Newton District Court from having practiced there regularly as a defense attorney. My husband's parents came to watch me for the first time before going to their airport having visited for the holiday weekend. Nothing seemed out of ordinary during the morning session, even the Medina-Perez matter.

3. When the Commonwealth v. Medina-Perez case was first called at approximately 10:34 a.m., I appointed the duty bar advocate ("bar advocate") to represent the defendant. I also provided a Spanish language interpreter (the "interpreter") to assist in communication. The defendant came before me for arraignment on a charge of being a fugitive from justice based on a warrant issued eight years earlier for a drunk driving case in Pennsylvania, and two new counts of controlled substance violations in Massachusetts. The prosecutor handling the matter advised me that she was not seeking bail on the controlled substance charges but would request that the defendant be held without bail on the Pennsylvania warrant. The defendant denied that he was the same person subject to the Pennsylvania warrant and therefore the case was recessed and put on for a second call so that his attorney could investigate the question of identification. During the second call the prosecutor provided a copy of the booking photograph from Pennsylvania. The bar advocate expressed her opinion that the photograph accompanying the Pennsylvania warrant was not that of the defendant, Medina-Perez, who continued to maintain that he was not the person sought by the warrant. I also believed that the photograph was inconclusive as to whether or not it resembled the person before me. The duty defense attorney requested time to obtain information from the defendant's employer and to review the "Triple I" form. I again recessed the case and scheduled it for a third call to allow further time for the attorney to investigate her client's identification.

4. A copy of the transcript attached to the Commission's document as Appendix D is accurate but does not include a brief third call of the case that occurred before the lunch recess, at which Medina-Perez's attorney stated that she had just sent a fax regarding his identification, or a "fourth call" two minutes later, at which time the duty

defense attorney requested that the next call of the case be delayed after the lunch recess until 2:15 p.m. because she had a medical appointment. Based on these statements, I believed that the duty attorney was actively investigating Medina-Perez's identification, and I expected that she would appear for her client in the afternoon session. I went to lunch expecting Attorney Bostwick would provide additional information when I returned.

5. During the lunch recess I learned from the First Assistant Clerk, who was serving as the session clerk that day, that ICE agents were present at the Newton District Court with a civil immigration detainer that authorized the ICE agents to take custody of the defendant if he were released from custody. There had been no mention of ICE all morning.

6. The clerk explained to me that the presiding justice had a policy that ICE agents were not allowed in the courtroom and asked what I wanted to do concerning the agents. Upon learning this information, I questioned the constitutionality of the Newton District Court policy knowing that courtroom proceedings are open to the public and therefore spent the next hour looking for guidance. I searched my training materials, other materials in the judges' lobby, inquired with the First Assistant Clerk, and finally called the Executive Office ("EO") of the District Court for guidance. The *Lunn* policy was read to me by one of the EO's attorneys and subsequently emailed to me. I was advised that the Newton District Court policy was not inconsistent with the Trial Court's *Lunn* policy and could be followed. I advised the session clerk that I would adhere to the Newton District Court policy. I believe that the clerk directed the ICE agent to wait outside the courtroom. I never personally saw or spoke with any ICE agent on April 2, 2018.

7. The *Lunn* policy provides, in addition to the excerpt in Paragraph 7 above, that the detainee should be taken by ICE from the lockup, not from a public place. The lockup in the Newton District Court was downstairs, which is where Medina-Perez went when the final hearing ended. The policy states that, "[T]o the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse."

8. During the lunch recess, I was informed that a new attorney had filed a general appearance of counsel as a private attorney to represent the defendant in the criminal matter, not a limited appearance for arraignment only.

9. I returned to the bench expecting that Medina-Perez would probably be held on the Pennsylvania fugitive of justice charge as the ADA had requested prior to lunch, but I was open to further argument.

10. Because I had needed time to research the Newton District Court and *Lunn* policies with the EOTC, the final hearing in the matter began late at approximately 2:48 p.m. The newly retained defense counsel, David Jellinek, asked for a sidebar conference, which was not an uncommon request, and I conducted a recorded sidebar conference with the him and the prosecutor. At the time of the sidebar conference, Medina-Perez was in the glass-enclosed custody dock on the other side of the courtroom from the sidebar, and the interpreter was standing outside the glass, inches from Medina-Perez. To my surprise, David Jellinek said in essence that he and the ADA now agreed that Medina Perez was *not* the person sought by Pennsylvania and thus that she would move to dismiss the fugitive from justice charge and would not seek bail on the remaining Massachusetts' controlled substances charges. He also added that he did not think Medina-Perez was the person named in the ICE detainer. He was concerned that ICE would take the defendant into custody – and be taking the wrong person.

11. Given the ADA's change of opinion as to Medina-Perez's identity, new defense counsel's argument, and my own concerns regarding his identity, I felt at the time that I had a responsibility to make a reasonable effort to try to determine Medina-Perez's true identity, or at least to allow the parties adequate time for a fuller further investigation, particularly given David Jellinek's having been in the case for an hour or so. I therefore suggested that we detain Medina-Perez overnight, believing that he would be transported to Billerica, held there, and returned to the Newton District Court the following morning. I thought that the plan would give everyone just a little more time to address the issue since Medina-Perez would be back in court in the morning.

12. For some reason that was inexplicable to me at the time, David Jellinek resisted what I thought was a good suggestion for his client; he claimed ICE might get him if I set bail and he was later released from Billerica. That made no sense to me because I did not intend to set bail for an overnight hold, but rather intended to detain him without bail, believing that he would be transported to Billerica, held there, and returned to the Newton District Court the following morning. I now understand that once I accepted the ADA's position that Medina-Perez was not the person sought by Pennsylvania, I did not have authority to hold him overnight for identification purposes post arraignment, but without that understanding, it seemed like a reasonable course to allow David Jellinek time to investigate while keeping Medina-Perez secure in state, not federal, custody.

13. Defense counsel then asked if we were on the record, which I took as a request to go off the record. In all my years as both a prosecutor and a defense attorney, especially in the BMC courts, judges often allowed requests to go off the record and I allowed this one without reservation, as I was unaware of District Court Special Rule 211. But, despite my own past experience concerning requests to go off the record, I realize and acknowledge that I violated a rule of the district court and accept responsibility for that.

14. During the 52 seconds off the record conversation, I do not recall the defense attorney saying anything more than what he said on the record, other than the request to accompany his client downstairs with the interpreter, which I put on the record afterwards. However, the prosecutor, who was present at sidebar both on and off the

record, told the ICE agents that she expected that Medina-Perez would be coming out the front door of the courtroom. At no time did I understand that the new defense attorney intended to have the defendant released through the back door if I permitted him to accompany the defendant to the lock up with the interpreter. To this day it is not clear to me what the defense counsel claims to have said that alerted me to his plan, but I did not hear or understand anything he said which revealed his scheme.

15. I do not believe that David Jellinek needed my approval to speak with his client with the interpreter's assistance in the lockup area as that occurs regularly. But I was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody and I wanted to protect Medina-Perez's right to counsel by ensuring that the conference would occur before he was taken into ICE custody as I expected that Medina-Perez would be released on personal recognizance from the lock-up into ICE custody.

16. When the courtroom recorder was turned on again after the off-the-record sidebar, at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court. The prosecutor indicated that her intention was to dismiss the fugitive from justice charge, and not to seek bail on the Massachusetts charges.

17. The new defense attorney then stated, "I would ask that he, uh - I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may." I agreed and said "That's fine. Of course." I then conducted the arraignment of Medina-Perez and gave him statutory warnings, including the Chapter 111E rights which I said his attorney would further explain to him. The session clerk confirmed that the defendant had been ordered released and I reiterated that the defendant's attorney had "asked if the interpreter can accompany him downstairs, um, to further interview him – and I've allowed that to happen."

18. In response to a reminder from the clerk that the ICE agents were present "to visit the lockup." I responded, "That's fine. I'm not gonna allow them to come in here. But he's been released on this" – meaning ICE could not come into the courtroom for that purpose, following the presiding justice's policy, but very clearly that Medina-Perez "was released," meaning he could be taken into custody in accordance with the *Lunn* policy from either of two other entrances to the lockup. The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m. That is the last contact I had with the case that day. I assumed that the defendant was in the custody of ICE. I was not aware until two days later when I returned to the Newton District Court that he had not been taken into ICE custody.

19. When I later learned from the First Justice of the Newton District Court that Medina-Perez had been released out the back door, I still did not know that the defense attorney and the court officer had made a plan before the afternoon court session and executed the plan downstairs after the court appearance. The ICE agents had had

unobstructed access to the lockup entrance either through the public stairwell or the sally-port entrance; for whatever reason, they chose not to use it. It is my understanding that instead, they spoke with the prosecutor, who had also been present at both the recorded and unrecorded sidebar conferences. The prosecutor told the ICE agents that she expected Medina-Perez would come upstairs to the front door. The ICE agents and the prosecutor waited in that public area for Medina-Perez to appear. When he did not appear, the prosecutor went to inquire about his whereabouts and learned that he had been released from the sally-port entrance.

20. On April 3, 2018, the defense attorney approached the First Justice of the Newton District Court and spoke with her about the Medina-Perez case. He did not inform the First Justice that any proceedings had occurred off the record, revealed that he was notified of the escape but did not reveal his role in planning and assisting Medina-Perez's escape, and did not claim to her that I was aware of his plan to allow his client to avoid ICE. The First Justice also spoke with the session clerk about the previous day's events.

21. Over the following few weeks, I discussed the circumstances with three different senior judges: the Newton presiding justice, the regional justice and the chief justice. Each of the discussions were different. I was truthful with each, and answered different questions posed by each, since they all expressed different concerns consistent with their roles. None of them suggested that David Jellinek or anyone else had implicated me in Medina-Perez's escape. The Chief Justice, in particular, told me not to worry about this matter any further and that it was a good learning experience.

22. I continued to work as an associate justice of the district court until April 25, 2019 when a federal grand jury returned indictments against me and the court officer based on the events of April 2, 2018. David Jellinek was granted immunity for his involvement and testimony. I was suspended from my judicial duties.

23. On September 22, 2022, I entered into a joint agreement with the United States Attorney, in which I stipulated to uncontested facts regarding the events of April 2, 2018, and agreed to refer myself to the Commission on Judicial Conduct. Based on that agreement, the United States Attorney moved to dismiss the charges against me, and the United States District Court so ordered on September 23, 2022. (A copy of the motion to dismiss, with attached agreement between me and the United States Attorney and agreement of facts, is attached to the CJC statement of allegations as Appendix E).

24. Although I had no knowledge of David Jellinek's plan, and no intent to assist in Medina-Peter's escape, I regret the harm that my handling of the matter caused the reputation of the Massachusetts judiciary.

The Respondent
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By her Attorneys,

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