

REPORT AND RECOMMENDATION OF THE
COMMISSION ON JUDICIAL CONDUCT

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC No. OE-157

PRE-HEARING MEMORANDUM

Pursuant to the direction of the Hearing Officer at the preliminary conference held on February 12, 2025, the Commission on Judicial Conduct (the “Commission”) submits this Pre-Hearing Memorandum, consisting of a summary of relevant law, a list of planned witnesses and a summary of their expected testimony, a list of agreed-upon exhibits,¹ and replies to Judge Joseph’s responses to the Formal Charges.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On May 19, 2019, the Commission initiated the complaint underlying the Formal Charges against Judge Shelley M. Richmond Joseph (“Judge Joseph”), pursuant to M.G.L. c. 211, sec. 5(1), “upon the receipt of reasonable information that appears to constitute grounds for discipline.”

That information on which the Commission issued the complaint included the Commission’s receipt of a copy of an indictment returned by a federal grand jury on

¹ Submitted herewith is a Stipulation of the parties, with an Appendix of documents that the parties have agreed may be admitted in evidence, or, as to certain documents, although not admitted substantively, may be used for impeachment, to refresh recollection, or as otherwise permitted by the law of evidence. The items in the Appendix are identified by letters, and the entire Appendix is paginated sequentially for ease of reference. This memorandum will refer to documents in the Appendix by their identifying letter and page number.

April 25, 2019, charging Judge Joseph with Conspiracy to Obstruct Justice, Aiding and Abetting Obstruction of Justice, and Aiding and Abetting Obstruction of a Federal Proceeding. Those federal charges were in connection with allegations that, while assigned to preside over the First Session of the Newton District Court on April 2, 2018, Judge Joseph conspired with others to help a Defendant appearing before her that day evade Immigration and Customs Enforcement (“ICE”) officers who were present and waiting to take the Defendant into custody pursuant to a lawful immigration detainer and warrant.

The Commission-initiated complaint against Judge Joseph was docketed by the Commission as Complaint Number 2019-22. On May 16, 2019, the Commission sent a letter to Judge Joseph, notifying her of Complaint Number 2019-22.

On September 23, 2019, the Commission received a letter, dated September 18, 2019, from an attorney representing Judge Joseph on Complaint Number 2019-22, Attorney Michael B. Keating (“Attorney Keating”). In his letter, Attorney Keating requested that “[in light of the criminal proceedings in the U.S. District Court, and to preserve Judge Joseph’s right to present her defense in that case, . . . the Commission stay all proceedings in Complaint No. 2019-22 until the federal criminal proceedings are resolved.”

At its October 2019 meeting, the Commission granted Attorney Keating’s request and stayed all proceedings in Complaint Number 2019-22. The Commission then notified Attorney Keating of its decision.

On September 26, 2022, Mr. Keating sent another letter to the Commission regarding Complaint Number 2019-22, notifying the Commission that the federal charges against Judge Joseph had been dismissed on September 23, 2022. Stipulated Appendix M, pp. APP155-APP170, consists of the motion to dismiss the federal charges, with the attached Agreement of

Facts between Judge Joseph and the United States Attorney, and the order of the United States District Court.

On December 16, 2022, the Commission sent a request to the Supreme Judicial Court, requesting that retired former Chief Justice of the Superior Court Judith Fabricant (“Special Counsel Fabricant”) be appointed to serve as Special Counsel on behalf of the Commission to investigate Complaint Number 2019-22 and handle the matter to completion.

On December 22, 2022, the Supreme Judicial Court responded to the Commission’s request and agreed to appoint Special Counsel Fabricant to this matter.

On November 19, 2024, pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), the Commission issued Formal Charges against Judge Joseph in connection with Complaint Number 2019-22. On that same day, Judge Joseph was served with the Formal Charges through her attorneys, Attorney Keating, Attorney Thomas Hoopes (“Attorney Hoopes”), and Attorney Elizabeth Mulvey (“Attorney Mulvey”).

On November 29, 2024, Attorney Mulvey provided the Commission with Judge Joseph’s Response to the Formal Charges.

On December 2, 2024, the Commission filed the Formal Charges and Judge Joseph’s Response to the Formal Charges with the Supreme Judicial Court. On January 9, 2025, the Supreme Judicial Court appointed Attorney Denis J. McInerney as the Hearing Officer for this matter.

II. SUMMARY OF LAW

A. STATUTORY STRUCTURES AND RESPONSIBILITIES OF THE MASSACHUSETTS COURT SYSTEM AND THE COMMISSION ON JUDICIAL CONDUCT

1. The Massachusetts Court System

The Massachusetts Court System includes the Supreme Judicial Court (“SJC”), the Appeals Court, and the Trial Court. The SJC has “general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided.” M.G.L. c. 211, sec.3.

Chapter 211B establishes the Massachusetts Trial Court, consisting of seven court departments: the Superior Court, the Housing Court, the Land Court, the Probate and Family Court, the Boston Municipal Court, the Juvenile Court, and the District Court. Chapter 211B, sec. 1 provides that “there shall be selected . . . a chief justice of the trial court, a court administrator, a chief justice for each of the departments of the trial court and a deputy court administrator for each of the departments of the trial court.” M.G.L. c. 211B, sec. 9 provides that “the chief justice [of each court department] shall have the power to assign or to transfer justices appointed to his department of the trial court to any particular court within that department for such period or periods of time as the chief justice deems necessary; the chief justice shall also have the power to appoint regional justices and to define their duties.” Pursuant to M.G.L. c. 211B, sec. 10, the Chief Justice of a court department also has “the power to discipline any justice assigned or appointed to his department who refuses or fails to comply with any order concerning the performance of his duties as justice or any other lawful order of the chief justice of his department.”

The District Court Department consists of sixty-two divisions across the Commonwealth, not including the City of Boston.² M.G. L. c. 218, sec. 6 authorizes the Chief Justice of the District Court to appoint a First Justice of each division. M.G.L. c. 211B, sec. 10A provides that

² The Boston Municipal Court serves the City of Boston, with jurisdiction corresponding to that of the District Court.

the First Justice of each court division is the “administrative head” of the court division. The divisions of the District Court are grouped into six regions, each with a Regional Administrative Justice appointed by the Chief Justice of the District Court.

The District Court has jurisdiction to hear criminal, civil, housing, mental health, and other types of cases. The criminal jurisdiction of the District Court includes all felonies punishable by a sentence of up to five years of commitment, all misdemeanors, and all violations of city and town ordinances and by-laws. The sentencing jurisdiction of the District Court is limited to two and a half years in the House of Correction. In civil matters, the District Court hears cases in which the damages are not likely to be more than \$50,000, and small claims cases up to \$7,000.

2. The Massachusetts Commission on Judicial Conduct

The Massachusetts Commission on Judicial Conduct (“Commission”) was established in 1978 with the enactment of the Court Reorganization Act. Before April 1, 1988, Commission activity was governed by the provisions of Massachusetts General Laws Chapter 211C, as inserted by St. 1978, Chapter 478, sec. 114. In 1987, Chapter 211C was amended, effective April 1, 1988. See St. 1987, Chapter 656. Since 1988, the Commission has been operating under the amended version of Chapter 211C and its procedural rules.

Pursuant to Section 2(1) of Chapter 211C, “All judges of the trial court, the appeals court and the supreme judicial court shall be subject to discipline pursuant to this chapter. The commission on judicial conduct shall have the authority to receive information, investigate, conduct hearings, and make recommendations to the supreme judicial court concerning allegations of judicial misconduct and allegations of mental or physical disability affecting a judge’s performance.”

Pursuant to M.G.L. c. 211C, sec. 5(13), Formal Charges are issued by the Commission only when there is a “concurrence of the majority of all commission members that there is a preponderance of credible evidence that the judge’s conduct constitutes grounds for discipline.” Pursuant to Section 5(14) of Chapter 211C, “[w]hen sufficient cause [to issue formal charges] is found, the commission shall issue formal charges stating those allegations as to which sufficient cause is found.”

The Commission is then required to “schedule the time and place of the hearing [on the Formal Charges]” and has “the burden of proving the charges by clear and convincing evidence.” M.G.L. c. 211C, secs. 7(1) and 7(4).

B. CODE AND STATUTORY PROVISIONS IN THE FORMAL CHARGES

1. Massachusetts Code of Judicial Conduct

The Formal Charges in this matter charge Judge Joseph with violating Rules 1.2, 2.2, 2.5, and 2.16 of the Massachusetts Code of Judicial Conduct (SJC Rule 3:09, the “Code”):

- a. **Canon 1, Rule 1.2:** Rule 1.2 requires that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”
 - Comment 1 to Rule 1.2 states that “public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety” and that “[t]his principle applies to both the professional and personal conduct of a judge.”
 - Comment 2 to Rule 1.2 explains that “[c]onduct that compromises or appears to compromise the independence, integrity, or impartiality of a judge undermines public confidence in the judiciary” and “[b]ecause it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.”
 - Comment 4 to Rule 1.2 explains that “[i]mproprieties include violations of law or this Code, or other conduct for which the judge could be disciplined pursuant to G. L. c. 211C, sec. 2(5).” Comment 4 also provides a standard for what constitutes impropriety by a judge: “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the

judge's honesty, impartiality, temperament, or fitness to serve as a judge.”

- b. Canon 2, Rule 2.2:** Rule 2.2 requires that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”
- Comment 2 to Rule 2.2 provides, “Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.”
 - Comment 3 to Rule 2.2 provides, “When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule. In the absence of fraud, corrupt motive, or clear indication that the judge’s conduct was in bad faith or otherwise violates this Code, it is not a violation for a judge to make findings of fact, reach legal conclusions, or apply the law as the judge understands it.”
- c. Canon 2, Rule 2.5:** Rule 2.5 requires that “[a] judge shall perform judicial and administrative duties competently, diligently, and in a timely manner. Rule 2.5 also requires that “[a] judge shall cooperate with other judges and court officials in the administration of court business.”
- Comment 1 to Rule 2.5 provides, “Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.”
- d. Canon 2, Rule 2.16:** Rule 2.16 requires that “[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary authorities.”

2. Massachusetts General Laws, Chapter 211C, Section 2(5)

The Formal Charges issued by the Commission specify not only that Judge Joseph violated the Code but that her violations of the Code were aggravated because she “engag[ed] in willful judicial misconduct that brought the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer,” in violation of Section 2(5) of Chapter 211C.

The SJC has stated that the purpose of the Code is “to preserve the integrity, independence, and impartiality of the judiciary and, moreover, to preserve public confidence in the integrity, independence, and impartiality of the judiciary.” Matter of Killam, 388 Mass. 619,

622 (1983). The SJC has also observed that “[b]ecause of the great power and responsibility judges have in passing judgment on their fellow citizens, such standards are desirable and necessary, and there should be strict adherence to them.” Matter of Morrissey, 366 Mass. 11, 16-17 (1974).

Accordingly, even after a determination that a judge has violated the Code, it is relevant whether there is also evidence that “the judge’s misconduct brought undeserved discredit to the administration of justice in the Commonwealth,” Matter of Larkin, 368 Mass. 87, 91-92 (1975), and whether the conduct was willful, Matter of Markey, 427 Mass. 797, 803-804 (1998); Matter of Donahue, 390 Mass. 364, 367-368 (1983).

III. STATEMENT OF EVIDENCE TO BE PRESENTED

A. EXPECTED TESTIMONY

The following is a non-exhaustive summary of the testimony that the Commission expects to present in its affirmative case.

1. Attorney David Jellinek

Attorney Jellinek was at the Newton District Court on April 2, 2018. One of the matters before the court that day was the arraignment³ of the defendant in Commonwealth v. Jose Medina-Perez.⁴ Attorney Jellinek was at the Newton District Court for a matter unrelated to Mr. Medina-Perez. A person or persons associated

³ Rule 7 of the Massachusetts Rules of Criminal Procedure governs arraignments. The rule requires that “[a] defendant who has been arrested and is not released shall be brought for arraignment before a court if then in session; and if not, at its next session.” Rule 7 requires that the court read the charges to the defendant in open court, except that the reading of the charges in open court may be waived by the defendant if he or she is represented by counsel; enter the defendant’s plea to the charges; inform the defendant of all warnings and advisories required by law; and determine the conditions of the defendant’s release, if any.

⁴ The Newton District Court docket for Commonwealth v. Medina-Perez identifies the Defendant as Jose Oscar Manuel Medina-Perez. This document will refer to him as Mr. Medina-Perez or “the Defendant.”

with Mr. Medina-Perez was/were also present at the Newton District Court and retained Attorney Jellinek to represent Mr. Medina-Perez.

Attorney Jellinek informed the bar advocate who had already been appointed by the court to represent Mr. Medina-Perez, Attorney Elizabeth Bostwick (“Attorney Bostwick”), that he had been privately retained. Attorney Jellinek entered his appearance with the clerk, and sent word through a court officer to Mr. Medina-Perez in the lockup.

Attorney Jellinek obtained information about the case and about Mr. Medina-Perez, including that Mr. Medina-Perez was being held in state custody based on his arrest for one count of Possession of a Class B Substance (misdemeanor), one count of Possession of a Class E Substance (misdemeanor), and one count charging him as a Fugitive from Justice,⁵ based on a warrant from Pennsylvania.

Attorney Bostwick told Attorney Jellinek that she had already determined that a photograph relating to the Pennsylvania warrant did not match Mr. Medina-Perez. Attorney Jellinek also learned that an ICE officer was present to take Mr. Medina-

⁵ The process for Fugitive from Justice charges in Massachusetts is governed by Sections 11 to 20R of Chapter 276. A person charged as a “Fugitive” based on an out-of-state warrant is brought before a judge of the District or Municipal Court. Such an individual has a right to court-appointed counsel and may either waive rendition or contest the validity of the out-of-state warrant. An individual who contests the validity of the out-of-state warrant may be held for up to thirty days. Section 20D provides that such a person has a right to bail unless also charged with having committed certain crimes in Massachusetts involving threats or violence. In such a case, the individual could be admitted to bail or held without bail. If the out-of-state warrant is for a capital offense, the person must be held without bail.

Perez into custody on a detainer and warrant of removal in the event of his release from state custody.⁶

Based on the information that Attorney Jellinek obtained, he questioned whether his client was the person named in the Pennsylvania warrant, as well as whether his client was the person who was the subject of the ICE detainer and warrant of removal. He discussed the matter with Assistant District Attorney Shannon Jurgens (“ADA Jurgens”).⁷ ADA Jurgens agreed that the information available was insufficient to connect Mr. Medina-Perez with the Pennsylvania warrant. Accordingly, ADA Jurgens told Attorney Jellinek that she would move to dismiss the Fugitive from Justice

⁶ In 2017, the Supreme Judicial Court issued a decision addressing the Commonwealth’s authority to hold a person in custody pursuant to an immigration detainer: Lunn v. Commonwealth, 477 Mass. 517, 537 (2017) (the “Lunn” decision). In that decision, the Supreme Judicial Court held that “Massachusetts law provides no authority for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody.” Following the Lunn decision, the Executive Office of the Trial Court issued Executive Office Transmittal 17-13, which included a copy of a policy for interactions between employees of the Trial Court and employees of the Department of Homeland Security consistent with the Lunn decision: *Policy and Procedures Regarding Interactions with the Department of Homeland Security*. That policy directs court personnel to allow ICE to take custody of a party being released from state custody if ICE is present at a courthouse at the time a party is being released and is ready to take custody immediately. The policy specifies that court employees must allow ICE officers into the lock-up area of the courthouse if allowing them to take custody of a party being released in the lock-up would prevent disruption in public. Executive Office Transmittal 17-13 is Stipulated in Appendix B, pp. APP004 to APP008.

⁷ ADA Jurgens has since married and is now Shannon Jurgens McDermott. She is presently employed as an Assistant Clerk Magistrate in the Malden District Court. In this document, she will be referred to as ADA Jurgens.

charge, that she would not seek bail⁸ on the misdemeanor drug charges, and that she would recommend that Mr. Medina-Perez be released on personal recognizance.

Attorney Jellinek also spoke with the ICE agent in the courtroom, but he was unable to persuade the ICE agent that Mr. Medina-Perez was not the person that ICE was seeking pursuant to the detainer and warrant. The ICE agent showed Attorney Jellinek a video purporting to be of Mr. Medina-Perez, but Attorney Jellinek remained unpersuaded.

Attorney Jellinek became aware that the ICE agent had been directed to leave the courtroom and wait outside the courtroom for Mr. Medina-Perez.

Attorney Jellinek had a conversation with Court Officer Wesley MacGregor (“Court Officer MacGregor”) in the courtroom while no one else was present. Attorney Jellinek told Court Officer MacGregor of his concern that Mr. Medina-Perez had been incorrectly identified as the person ICE was seeking and that ICE intended to take Mr. Medina-Perez into custody that day as soon as he was released from state custody.

Court Officer MacGregor told Attorney Jellinek that he could release a person out of the courthouse through the sallyport door at the rear lower level. Attorney Jellinek believed, based on previous experience, that persons were often released from custody in that manner in the Newton District Court if they had property to retrieve from the lockup. In Attorney Jellinek’s experience, a defense attorney would not normally accompany a client back down to the lockup after the client’s case was concluded unless there was a specific reason to do so. A defendant who did not have property to retrieve would be released directly through the courtroom.

Based on his conversation with Court Officer MacGregor, Attorney Jellinek expected or hoped that, if he could arrange for Mr. Medina-Perez to go back down to the lockup after being ordered released from state custody, Court Officer MacGregor

⁸ Section 58 of Chapter 276 governs the setting of bail at arraignments and provides that “when a person is held under arrest or committed either with or without a warrant for an offense other than an offense punishable by death, or, upon the motion of the commonwealth, for an offense enumerated in section fifty-eight A or for any offense on which a warrant of arrest has been issued by the superior court,” the court shall “hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail on his personal recognizance without surety unless said justice, clerk or assistant clerk, bail commissioner or master in chancery determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person before the court.” Pursuant to Section 58A, “The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result . . .”

would release him through the sallyport door, so that he would be able to avoid being taken into custody by the ICE officer still waiting in the courthouse lobby.

When Mr. Medina-Perez's case was called before Judge Joseph at 2:48 p.m., Attorney Jellinek requested to confer at sidebar. The conversation proceeded as reflected in the transcript, Stipulated Appendix G, pp. APP029-APP043. Based on Judge Joseph's comments and suggestions during that sidebar, Attorney Jellinek formed the impression that Judge Joseph was open to his effort to assist Mr. Medina-Perez in avoiding being taken into ICE custody that day, but she did not fully understand that, in light of the dismissal of the Fugitive from Justice charge, she did not have lawful authority to order that Mr. Medina-Perez be detained without bail. Attorney Jellinek also formed the impression that Judge Joseph did not understand that, if she set a cash bail and Mr. Medina-Perez was then bailed out, ICE would immediately take him into custody.

At this point, Attorney Jellinek requested to go off the record in an effort to protect both himself and Judge Joseph. Judge Joseph then instructed Clerk Okstein to turn off the courtroom recording system.⁹ If Judge Joseph had denied his request to go off the record, Attorney Jellinek would still have made the same statements that he made to Judge Joseph that day after she instructed the clerk to turn off the courtroom recording system.

During the off-the-record conversation, Attorney Jellinek made a statement to Judge Joseph to the effect that if Mr. Medina-Perez could go back downstairs after she released him from state custody, Mr. Medina-Perez would be able to leave the courthouse through a back door and avoid being taken into custody by the ICE officers who were waiting for him. Judge Joseph responded by stating something to the effect of, "Yes, that's what we'll do."

Attorney Jellinek believed that he had Judge Joseph's permission to proceed in the manner he had discussed earlier with Court Officer MacGregor. The proceeding resumed on the record, as reflected in the transcript. ADA Jurgens appeared unhappy, although Attorney Jellinek was not sure that ADA Jurgens understood the plan for Mr. Medina-Perez that he had just discussed with Judge Joseph.

After the proceeding on Mr. Medina-Perez's case ended, Court Officer MacGregor allowed Attorney Jellinek and the interpreter, Eric Mendoza ("Interpreter Mendoza"), into the dock, and then escorted Attorney Jellinek, Mr. Medina-Perez, and Interpreter Mendoza downstairs to the lockup. After a brief exchange between Attorney Jellinek

⁹ District Court Special Rule 211(A)(1) provides as follows: "In all divisions of the District Court Department and in the Boston Municipal Court Department, all courtroom proceedings, including arraignments in criminal and juvenile delinquency cases, shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; (b) proceedings that are being recorded by a court reporter appointed by the court; and (c) proceedings conducted by a magistrate other than a judge."

and Mr. Medina-Perez through the interpreter, Court Officer MacGregor opened the secure sallyport door and allowed Mr. Medina-Perez to exit.

Later that day, when Attorney Jellinek was leaving the courthouse, he saw Attorney Bostwick in the parking lot. She said to him something to the effect that what he had done was obstruction.

The next morning, motivated in part by Ms. Bostwick's comment, Attorney Jellinek requested to speak with First Justice Mary Elizabeth Heffernan ("First Justice Heffernan") in her lobby. He spoke with her briefly, telling her that there was an issue regarding Mr. Medina-Perez's identity and that Mr. Medina-Perez had been released from the courthouse through the back door. First Justice Heffernan responded that she already knew about it and not to worry about it.

Attorney Jellinek acknowledges that his conduct was not "entirely clean," and was "skirting on the edges" of what was ethical.

Attorney Jellinek conducted a proffer session with the United States Attorney on November 8, 2018, after which he was granted immunity for his truthful testimony before the grand jury, which he gave on January 24, 2019.

2. Shannon Jurgens McDermott

ADA Jurgens was the Assistant District Attorney assigned to the Newton District Court on April 2, 2018. She had been an Assistant District Attorney with the Middlesex County District Attorney's Office since 2015. She had been assigned to the Newton District Court a few weeks prior to April 2, 2018. She was the only ADA assigned to the Newton District Court and was responsible for handling all of the Middlesex County District Attorney's Office's criminal matters there. ADA Jurgens had also worked in the Newton District Court at an earlier time.

ADA Jurgens believed, based on her experience in Newton, that persons released from state custody in that court would be released from the dock into the courtroom and then out to the main public lobby of the courthouse. She also believed that, if the person being released from state custody had property, a court officer would bring the property to the courtroom with the person or would retrieve it from the downstairs lockup area and then give it to the person when the person was released into the courtroom. ADA Jurgens believed that if a person being released from state custody needed to report to the Probation Department downstairs before leaving the courthouse, the person would exit the courtroom to the main courthouse lobby and then use the public stairway to go downstairs.

Prior to April 2, 2018, ADA Jurgens had never seen a defendant return to the lockup after being ordered released from state custody. She was unaware of any means by which a person could be released from custody and leave the building without going through the public lobby.

At the beginning of the day on April 2, 2018, ADA Jurgens had paperwork for each case on the docket that she was responsible for. The paperwork for Mr. Medina-Perez's case included the ICE detainer and warrant of removal, as well as a complaint listing the Fugitive from Justice charge and the two misdemeanor drug possession charges.

After a review of the records and photographs available to her, ADA Jurgens became persuaded that she lacked sufficient evidence to establish that Mr. Medina-Perez was the person sought in Pennsylvania. Accordingly, she told Attorney Jellinek that she would move to dismiss the Fugitive from Justice charge. ADA Jurgens had already determined, and advised Judge Joseph during a morning call of the case, that she would not seek bail on the two misdemeanor drug charges and would recommend that Mr. Medina-Perez be released on personal recognizance.

ADA Jurgens was aware that an ICE agent was present at the Newton District Court that day and that the ICE agent intended to take Mr. Medina-Perez into custody on the detainer and warrant of removal upon his release from state custody.

ADA Jurgens learned of Attorney Jellinek's contention that his client was not the person ICE sought. She viewed the issue of identity with respect to the ICE detainer as outside her role, so she would take no position on that topic.

When Mr. Medina-Perez's case was called before Judge Joseph at 2:48 p.m., the conversation proceeded at sidebar as reflected in the transcript, Stipulated Appendix G, pp. APP033-APP034, APP040-041. When Judge Joseph asked, "What if we detain him," ADA Jurgens interpreted the suggestion to mean that Judge Joseph would set a small amount of bail to keep Mr. Medina-Perez in state custody, so that ICE could not take custody of him. ADA Jurgens viewed that as not a legitimate use of bail, and was uncomfortable with the discussion.

When the clerk turned off the recording at Judge Joseph's direction, ADA Jurgens was surprised, having never before seen a judge conduct an off-the-record conversation about the substance of a case.

The conversation off the record between Judge Joseph and Attorney Jellinek was about what would happen to the Defendant with ICE. ADA Jurgens heard Judge Joseph say, "What should we do," and heard Attorney Jellinek say something to the effect that he was "all set" or that he "had a plan." During this off-the-record conversation, Attorney Jellinek asked Judge Joseph to be allowed to go down to the lockup with his client and the interpreter, which Judge Joseph allowed. ADA Jurgens continued to be uncomfortable with the discussion, viewing Judge Joseph's statements as trying to "skirt" the ICE officer. ADA Jurgens did not interpret the conversation to indicate that Mr. Medina-Perez would leave the courthouse other than through the public lobby, as she continued to believe that no other means of egress was possible.

After the proceeding concluded and ADA Jurgens had completed her work in the courtroom, she went out to the public lobby, where the ICE officer was still waiting for Mr. Medina-Perez. ADA Jurgens advised the ICE officer of her expectation that the Defendant would exit the courthouse through the public lobby.

Sometime later, when Mr. Medina-Perez still had not appeared in the public lobby, a Victim-Witness Advocate, who worked for the Middlesex County District Attorney's Office and was assigned to the Newton District Court, came through the public lobby. The Victim-Witness Advocate had an office in the lower level of the courthouse. ADA Jurgens asked the Victim-Witness Advocate to go downstairs to check on Mr. Medina-Perez. The Victim-Witness Advocate reported back that Mr. Medina-Perez was not downstairs.

3. Eric O. Mendoza

Interpreter Mendoza was serving as a per-diem interpreter for the Trial Court, assigned to the Newton District Court on April 2, 2018.

When Mr. Medina-Perez's case was called at 2:48 p.m., and the conversation at sidebar began, Mr. Medina-Perez had not yet been brought up to the courtroom from the lockup. While he waited for the Defendant, Interpreter Mendoza sat on a chair behind one of the counsel tables. From that position, he could hear some of the conversation at sidebar. Based on what he heard, Interpreter Mendoza formed an understanding that the substance of the conversation between Attorney Jellinek and Judge Joseph was that Mr. Medina-Perez was to be released. He heard Judge Joseph say words to the effect of "then we will let him go." He was surprised since he was aware that an ICE agent was present waiting to take Mr. Medina-Perez into custody on a detainer if he was released from state custody.

When the sidebar ended, and the proceeding went back on the record in open court, Mr. Medina-Perez was in the dock. Interpreter Mendoza then stood outside the dock to interpret the remainder of the proceeding for him.

At the conclusion of the proceeding, in accord with Judge Joseph's direction, Interpreter Mendoza accompanied Attorney Jellinek into the dock and, with Mr. Medina-Perez, to the lockup. On the way downstairs, Attorney Jellinek asked Interpreter Mendoza if he was "cool with this." Interpreter Mendoza responded to Attorney Jellinek that the decision was not up to him and that he was required to remain neutral and just let the Defendant know what was happening.

Upon their arrival in the lockup, Interpreter Mendoza interpreted a brief exchange between Attorney Jellinek and the Defendant. Court Officer MacGregor then opened the sallyport door, and Mr. Medina-Perez exited. Interpreter Mendoza expected that that would occur, based on the portions of the sidebar conversation he had heard earlier. He was disturbed by what he heard and saw, viewing it as interference with the ICE agent doing his job.

4. First Assistant Clerk Lawrence Okstein

Lawrence Okstein was (and remains) the First Assistant Clerk-Magistrate of the Newton District Court. On April 2, 2018, he was serving as the session clerk for Judge Joseph, who was sitting in the main session, Courtroom 1, on the first floor of the courthouse. The role of the session clerk includes operating the recording system.

At that time, the Newton District Court was using a system known as JAVS. The Massachusetts Trial Court in the process of a transition to a more up-to-date recording system known as For the Record (FTR), which provides direct access to each recording for clerks, judges, and other court personnel on court computers. Access to a recording on JAVS required a clerk or other person to make a copy in the form of a CD.

No other judge was in the building on April 2, 2018, and no proceedings were occurring in Courtroom 2 on the second floor.

During the morning, Clerk Okstein became aware that an ICE agent was present, waiting to take Mr. Medina-Perez into custody on a detainer if he was released from state custody. During the lunch break, Clerk Okstein informed Judge Joseph that the ICE agent was present, and also informed her that the practice in the Newton District Court, per First Justice Heffernan, was to direct the ICE agent to wait outside the courtroom. He asked her whether she would follow that practice. She told him she would do so, and instructed him to give that direction to the ICE agent. He did, and the ICE agent left the courtroom and waited in the public lobby.

Sometime thereafter, Clerk Okstein spoke with the ICE agent in the public lobby. He advised the ICE agent, in accord with his previous experience in the Newton District Court, that if Mr. Medina-Perez was released from state custody, he would come out through the public lobby. Clerk Okstein learned that the agent was alone, his back-up officer not yet having arrived, and was concerned about the presence of persons associated with the Defendant.

The afternoon session call of the Medina-Perez case proceeded as reflected in the transcript, Stipulated Appendix G, pp. APP033-APP036, APP040-043. During the sidebar conversation, Clerk Okstein was busy with paperwork and preparation for other matters, and he did not listen to or hear the conversation. He turned off the recording system when Judge Joseph directed him to do so, but he did not listen to or hear the off-the-record conversation.

At or near the end of the proceeding, Clerk Okstein telephoned Chief Court Officer Paul Scott Noe (“Chief Court Officer Noe”) in the Chief Court Officer’s office on the lower level of the courthouse and advised him that Mr. Medina-Perez was being released, and was going downstairs with his attorney. He advised Chief Court Officer Noe that the ICE agent was present alone in the main lobby and expressed concern regarding persons associated with Mr. Medina-Perez being present in the courthouse.

After the afternoon session finished, Clerk Okstein learned that Court Officer MacGregor had released Mr. Medina-Perez from the courthouse through the sallyport door.

The next day, Clerk Okstein informed First Justice Heffernan that a defendant had been released through the back of the courthouse while ICE was waiting for him in the main lobby. A day or two later, First Justice Heffernan asked Clerk Okstein to listen to the April 2, 2018 recording of the proceeding in Commonwealth v. Medina-Perez. Clerk Okstein listened to the recording and reported back to First Justice Heffernan that part of the proceeding was conducted off the record.

About a week later, Judge Joseph came to the Newton District Court and asked for a copy of the recording of the proceeding. Clerk Okstein made a copy and gave it to her.

5. Paul Scott Noe

Paul Scott Noe was Chief Court Officer of the Newton, Waltham, and Concord Divisions of the District Court. He has since retired from that role. He will describe the layout of the Newton District Courthouse, including the secure areas, and will relate usual practices in that courthouse regarding the movement of persons in custody and released from custody.

The main level (or first floor) of the courthouse, where the public entrance, public lobby, and first session courtroom are located, is above ground level. The lower level is at ground level at the rear of the building.

The secure area of the lower level includes the lockup area and three secure doors that can be opened only with security passes, each leading to the parking lot behind the building. One such door is at the sallyport, at the end of the building nearest the Newton Police Department headquarters next door. The two other secure rear doors are located off a secure hallway and are used by court personnel for access to and from the parking lot. The parking lot is shared with the Police Department. An internal secure door leads from the secure area to a public area, where the Probation Department public counter is located.

Immediately outside the sallyport door is a driveway with a fenced area around it. The gate to that fenced area is rarely closed because sheriffs' departments' transport vans are usually too large to fit in the driveway with the gate closed.

When a person in custody in the Newton District Court is released, the usual practice as of April 2, 2018, was that the person would exit from the dock, through the courtroom, into the public lobby. If the person needed to report to Probation (such as for installation of a GPS device, or to sign conditions of release), the person would get to the Probation counter in the public area of the lower level in either of two

ways: either by being escorted by a court officer back down to the lockup, through the secure hallway, and through the internal secure door to the public area, or by going through the courtroom and then down the public stairway. If the person had property being held by court officers, a court officer would bring the property up to the courtroom and give it to the person there, or, if the person was being escorted through the lockup to the public area, the court officer would give the property to the person upon the person's exit from the secure area. If the property included any item not permitted in a courthouse (such as a knife), a court officer would bring the property to the main lobby and give it to the person outside the security equipment at the main courthouse door.

The practice of the Newton District Court was not to release anyone from custody through the sallyport door, or the other secure doors at the lower level, because those doors lead directly to the parking lot where Newton police officers park their vehicles, so that such release would risk interaction between a police officer and a person the officer had arrested. The rare exception, when a person might be released through a back door, was when necessary to ensure separate departure of parties to a restraining order.

On April 2, 2018, Chief Court Officer Noe arrived at the Newton District Court in the afternoon. He went into the first session courtroom and saw only one person present, Court Officer Michael Walsh ("Court Officer Walsh"). Court Officer Walsh told Chief Court Officer Noe that there was only one person in custody whose case was still pending. That remaining person was Mr. Medina-Perez, and Attorney Jellinek was downstairs in the lockup with the Defendant at the time.

Chief Court Officer Noe went out to the courthouse lobby and introduced himself to the ICE agent. Chief Court Officer Noe learned that a second ICE agent was in a vehicle parked in front of the courthouse. Chief Court Officer Noe offered to bring the ICE agents to the lockup, but advised that they would not be able to bring a vehicle into the sallyport driveway because a sheriff's transport van was there to transport another person in custody.

Chief Court Officer Noe gave the ICE agent the option to wait for the Defendant in a vehicle outside of the sallyport area or to wait for the Defendant in the courthouse lobby, while pointing toward a door that comes from downstairs into the courthouse lobby and advising the ICE officer that the Defendant would come through that door after he was released from custody. Chief Court Officer Noe confirmed that the ICE officer intended to wait for the Defendant in the courthouse lobby.

Chief Court Officer Noe then went back down to his office. Chief Court Officer Noe received a call from Clerk Okstein, who told him that the Defendant was being released. Clerk Okstein told him that the Defendant was required to go down to the Probation Department after his release. Clerk Okstein also told him that the Defendant had friends at the courthouse and asked him to assist the ICE agent waiting for the Defendant in the courthouse lobby.

Chief Court Officer Noe then immediately went to the probation counter and spoke with an employee of the Probation Department, who told him that the Defendant did not need to meet with Probation. Chief Court Officer Noe then went upstairs and spoke with the ICE officer. Chief Court Officer Noe asked the ICE officer where the Defendant was, but the ICE Officer said he did not know.

Chief Court Officer Noe then radioed Court Officer McGregor, but Court Officer McGregor did not answer. Chief Court Officer Noe then called Court Officer McGregor on the phone and asked him where the Defendant was. After a lengthy pause, Court Officer McGregor told him that he had released the Defendant out through the back of the courthouse. Chief Court Officer Noe asked Court Officer McGregor why he released the Defendant through the back, but Court Officer McGregor just repeated that he had released the Defendant out through the back of the courthouse and then hung up the phone.

In response to Chief Court Officer Noe's inquiries over the next several days as to why he had done that, Court Officer MacGregor gave varying and inconsistent answers, including that he did not have the detainer, that the judge was on the bench, and that he thought the judge wanted him to do that. On April 20, 2018, Chief Court Officer Noe gave Court Officer MacGregor a written warning for his conduct.

On April 3 or 4, 2018, Chief Court Officer Noe prepared and showed to First Justice Heffernan a memorandum to all court officers directing that all persons released from custody go through the public lobby of the courthouse.

6. First Justice Mary Elizabeth Heffernan

First Justice Heffernan was (and remains) the First Justice of the Newton Division of the District Court. In that capacity, she is the administrative head of the court, with the duties and responsibilities set forth in M. G. L. c. 211B, sec. 10A. First Justice Heffernan had established a practice that ICE officers present to take a person into custody would be directed to wait outside the courtroom. That practice was discontinued sometime after April 2, 2018.

First Justice Heffernan was not present in the courthouse on April 2, 2018, and was not answering her cell phone, because she was attending a funeral. The next morning, Clerk Okstein, Chief Court Officer Noe, and David Jellinek all individually informed her that an incident had occurred in which a person had been allowed to exit the building through the sallyport exit, thereby evading ICE agents seeking to take him into custody. These conversations were brief, and none of them alerted her that part of the courtroom proceeding had occurred off the record.

On April 4, 2018, Judge Joseph was again sitting in Newton, this time in the second session courtroom on the second floor, which was where a visiting judge would usually sit when the First Justice was present and sitting in the first session. First Justice Heffernan went to Judge Joseph's lobby and inquired about the incident.

Judge Joseph told First Justice Heffernan 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 charge. Judge Joseph advised First Justice Heffernan that the Defendant was released on personal recognizance.

Judge Joseph did not disclose that she had conducted part of the hearing off the record. First Justice Heffernan did not inquire on that point, having received no information to indicate that any part of the proceeding had occurred off the record. Judge Joseph also did not disclose that, during the off-the-record conversation, she had granted the defense counsel's request to return to the lockup area with the Defendant after his release from custody, or that the defense counsel had said that he thought he could have his client released through the sallyport exit if he could return to the lockup area.

Later that day or the next day, First Justice Heffernan spoke with Regional Administrative Justice Stacey Fortes ("Chief Justice Fortes")¹⁰ about the incident. Chief Justice Fortes asked her to obtain the recording of the proceeding, and to summarize the information in an email.

First Justice Heffernan asked Clerk Okstein to listen to the recording. He reported back to her that part of the proceeding had occurred off the record. First Justice Heffernan shared that information with Chief Justice Fortes, and, at Chief Justice Fortes's request, on April 5, 2018, she prepared an email summarizing the information she had received as she understood it. First Justice Heffernan's email summary combined the information she had received from four sources: Clerk Okstein, David Jellinek, Chief Court Officer Noe, and Judge Joseph. She did not attempt to delineate the sources of the various pieces of information in her summary, and she does not recall the source of each. Her summary was influenced by her initial misapprehension of the location of the proceeding; based on the usual practice that a visiting judge would sit in the second session on the second floor, she initially thought that the proceeding had occurred there.

The second session has no dock. A person in custody would be brought to the courtroom by way of a secure elevator. If released from custody, either to exit the building or to report to the Probation Department, the person would use the public stairway. A person released in the first session would usually be released directly from the dock into the courtroom or would be escorted to the Probation Department, if necessary, to sign conditions of release. In First Justice Heffernan's experience, no defendant is ever released through the sallyport door.

In First Justice Heffernan's experience as a judge of the District Court since 2013, all courtroom proceedings are conducted on the record. In her view, no legitimate reason exists to conduct a courtroom proceeding off the record.

¹⁰ Judge Fortes is currently serving as the Chief Justice of the District Court Department.

7. Regional Administrative Justice Stacey Fortes

Judge Stacey Fortes, now Chief Justice of the District Court, was, as of April 2, 2018, the Regional Administrative Justice (RAJ) for Region 4. At that time, she also served as the First Justice of the Lowell District Court.

Chief Justice Fortes first learned about the April 2, 2018 incident in Newton from First Justice Heffernan, and requested that First Justice Heffernan obtain the recording of the proceeding. First Justice Heffernan reported back to her that part of the proceeding had occurred off the record. Chief Justice Fortes asked First Justice Heffernan to summarize the incident in an email. She received First Justice Heffernan's summary by email on April 5, 2018.

On a date between then and April 20, 2018, Judge Joseph was sitting in the Lowell District Court. At Chief Justice Fortes's request, Judge Joseph came to Chief Justice Fortes's lobby during the lunch break. Chief Justice Fortes advised Judge Joseph that it was her understanding that a portion of the April 2, 2018, hearing in the Medina-Perez matter had not been recorded. Judge Joseph responded by 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 a discussion at sidebar relating to the Defendant's identity. Judge Joseph did not explicitly acknowledge that she had conducted part of the hearing off the record, and she did not disclose that, during the off-the-record conversation, she had granted defense counsel's request to return to the lockup 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 sallyport exit if he could return to the lockup area. Chief Justice Fortes informed Judge Joseph of District Court Special Rule 211 and emphasized to her that all courtroom proceedings must be recorded. In Chief Justice Fortes's experience as a judge of the District Court since 2006, all courtroom proceedings are conducted on the record. In her view, no legitimate reason exists to conduct a courtroom proceeding off the record.

On April 20, 2018, Chief Justice Fortes notified then-Chief Justice of the District Court Department Paul Dawley ("Chief Justice Dawley"), forwarding to him First Justice Heffernan's email summary of April 5, 2018, and telling him that she had spoken with the judge involved and could provide further information. Soon thereafter, Chief Justice Dawley's assistant scheduled a meeting with Chief Justice Fortes and Judge Joseph for May 8, 2018, in Chief Justice Dawley's office

At the meeting on May 8, 2018, Chief Justice Dawley took the lead, and Chief Justice Fortes observed. Chief Justice Dawley expressed concerns about events in the Medina-Perez matter on April 2, 2018, particularly that the recording had been shut off, and that a defendant had been released from the back of the courthouse and evaded ICE. 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. This was the first time Chief Justice Fortes had heard Judge Joseph acknowledge having directed that the recording system be shut off.

When Chief Justice Dawley 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 explain why a discussion of the Defendant's identity should be off the record. She 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, or his statement to the effect that he believed he could have the Defendant released through the rear of the courthouse.

Chief Justice Dawley asked Judge Joseph a series of questions about whether she had anything to do with the Defendant's release from the rear of the courthouse on April 2, 2018, or any responsibility for it or awareness of it. She strongly denied that she had anything to do with it, or any responsibility for it.

8. Former Chief Justice Paul Dawley

Paul Dawley was Chief Justice of the District Court from 2013 until his retirement in 2022. He will explain the practices of the District Court regarding judicial education, including the orientation of new judges and the assignment of a mentor to each new judge.

Chief Justice Dawley learned of the April 2, 2018 incident from Chief Justice Fortes's email of April 20, 2018. He directed his assistant to schedule a meeting in his office with Chief Justice Fortes and Judge Joseph. The meeting occurred on May 8, 2018. Before the meeting, he had received and listened to the recording of the April 2, 2018 proceeding.

In Chief Justice Dawley's experience as a judge of the District Court from 2001 to 2022, all courtroom proceedings were recorded, except in rare instances of a discussion with counsel regarding matters personal to counsel (such as illness), or a discussion regarding a defendant's service as an informant. An *in-camera* hearing regarding a witness's claim of Fifth Amendment privilege, pursuant to Commonwealth v. Martin, 423 Mass. 496 (1996), would not be recorded on the regular courtroom recording system, but a record would be made of it, such as by the use of a handheld recording device.

At the meeting on May 8, 2018, Chief Justice Dawley expressed to Judge Joseph his concerns about the events of April 2, 2018, particularly that the recording had been shut off, and that a defendant had been released from the back of the courthouse and

evaded ICE. Judge Joseph responded by acknowledging that she had directed the session clerk to turn off the courtroom recording, and apologizing for having done so.

When Chief Justice Dawley 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. She did not explain why a conversation about the Defendant's identity should be off the record. 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 she did not disclose defense counsel's statement to the effect that he believed he could have the Defendant released through the rear of the courthouse.

Chief Justice Dawley asked Judge Joseph a series of questions about whether she had anything to do with the Defendant's release from the rear of the courthouse on April 2, 2018, or any responsibility for it or awareness of it. She strongly denied that she had anything to do with it, or any responsibility for it.

Chief Justice Dawley accepted Judge Joseph's denial and treated the discussion as a teaching occasion. He emphasized to Judge Joseph the importance of conducting all courtroom proceedings on the record, and also the importance of consulting experienced judges, including her mentor, whenever questions arose. Later in May 2018, Chief Justice Dawley changed Judge Joseph's mentor assignment with a view toward providing her with closer supervision and training.

After the federal grand jury investigation began, Chief Justice Dawley received information from officials in the Massachusetts Trial Court administration to the effect that reports were circulating that off-the-record proceedings occurred more frequently than Chief Justice Dawley believed to be the case. He directed all RAJs to speak with each judge in their region and report back to him. The reports he received satisfied him that such events were, as he believed, rare.

9. Judge Shelley M. Richmond Joseph

The Commission expects to examine Judge Joseph regarding the matters set forth in the Formal Charges, the statements in her response to the Formal Charges, and her statements in her interview under oath with Special Counsel, the transcript of which is stipulated Appendix N.

B. LIST OF EXHIBITS

Submitted herewith is a Stipulation of the parties, with accompanying Appendices A through U. The parties have stipulated that the records in Appendices A through R are to be

admitted in evidence substantively. The parties have stipulated that the records in Appendices S and T are to be admitted for identification, and may be used for impeachment, refreshing recollection, or as otherwise permitted by the applicable law of evidence. Appendix U is a set of twenty-five photographs that the parties have agreed are to be admitted for identification.

The Stipulation and its Appendices are in Adobe PDF format and include bookmarks that identify the contents of each lettered Appendix and provide assistance with navigation through the document. The pages of the Appendix are paginated sequentially, in red in the upper right corner of each page, for ease of reference.

C. STATEMENT OF THE COMMISSION’S CONTENTIONS

The Commission on Judicial Conduct relies on the facts and conclusions set forth in the Formal Charges filed with the SJC against Judge Joseph in connection with Commission Complaint Number 2019-22 on December 2, 2024.

The Commission replies as follows to the numbered (or labeled) paragraphs of Judge Joseph’s Response to the Formal Charges, insofar as those paragraphs dispute or otherwise go beyond agreement to the accuracy of the content of the numbered paragraphs in the Formal Charges. Where Judge Joseph has responded only that a paragraph of the Formal Charges is “accurate,” this statement replies, “Stipulated.”

- Reply to General Statement

The Commission makes no reply to Judge Joseph’s “General Statement,” but relies on its introduction to the Formal Charges (the first four paragraphs of the Formal Charges) and the detailed recitation of facts and charges set forth thereafter.

- Replies to Responses to Specific Allegations¹¹

1. The summary of Judge Joseph’s professional background set forth in Paragraph 1 is a

¹¹ The numbered replies in this section correspond to the numbering of the responses in Judge Joseph’s Response to the Formal Charges.

fair recitation of the information provided by Judge Joseph in her resume, Stipulated Appendix A, at pp. APP001-APP003.

2. Stipulated.
3. Stipulated.
4. The first two sentences are stipulated. The Commission agrees that Judge Joseph's assigned mentor was changed twice during the period between her appointment and February of 2019.

As to whether she received "close supervision and training" from her mentor judge during the period when her mentor was the First Justice in the court where she was assigned to sit, the Commission expects to present evidence that the Chief Justice of the District Court made that assignment in May of 2018 for the purpose of providing Judge Joseph with close supervision and training. As to whether Judge Joseph "regularly consulted with colleagues," the Commission lacks information from which to reply.

5. Stipulated.

As to whether Judge Joseph believed, as she states, that other District Court judges "sometimes" act in violation of Rule 211, the Commission is not in a position to reply regarding her subjective belief. The Commission notes that, as Judge Joseph acknowledged in her sworn interview with Special Counsel (Stipulated Appendix N, at p. APP188 (Transcript p. 17)), any practice of off-the-record discussions regarding potential guilty pleas (which was not the nature of the proceeding in this case) ended with the 2015 revision of Rule 12(b)(2) of the Massachusetts Rules of Criminal Procedure, which was revised to require that all such discussions be recorded.

That change in rule and practice occurred two years before Judge Joseph's appointment, while she was practicing as a criminal defense lawyer. As Judge Joseph also acknowledged in her sworn interview with Special Counsel (Stipulated Appendix N, at pp. APP186-APP187 (Transcript pp. 15-16)), she has no specific recollection of ever observing a judge conduct an off-the-record discussion during an arraignment.

Judge Joseph also acknowledged in her sworn interview (Stipulated Appendix N, at p. APP179 (Transcript p. 8)), that she has no specific memory of observing a judge conduct an off-the-record discussion during the four-week period of orientation when she sat with a series of other judges.

6. Stipulated.
7. Stipulated.
8. Stipulated.

A complete copy of the Lunn policy is Stipulated in Appendix B, at pp. APP004-APP008.

9. Stipulated.

As to the statement in Judge Joseph's additional sentence, the Commission will not offer evidence to the contrary.

10. The first sentence is stipulated.

As to the provision of a revised bench card at the December 13, 2017, educational conference, the Commission refers to District Court Transmittal No. 1222, Stipulated Appendix C, at pp.APP009-APP013, issued on January 16, 2018, which recites that the attached revised bench card was distributed at that conference.

The attached benchcard bears the notation "AODC Rev 12/17," alerting the reader that this benchcard is revised from any earlier version. "AODC" stands for Administrative Office of the District Court.

11. Stipulated.

As to Judge Joseph's additional sentences, the Commission is not in a position to comment on Judge Joseph's subjective awareness, except to say that, as indicated in the previous reply, her receipt and review of Transmittal No. 1222 and the benchcard attached to it should have alerted her to the revision.

12. Stipulated.

13. Stipulated.

As to Judge Joseph's additional statements, the Commission does not dispute her description of the 3rd and 4th calls.

The Commission is not in a position to comment on Judge Joseph's subjective belief, expectation, surprise, or puzzlement.

The Commission notes that it is not unusual in criminal sessions in Massachusetts courts for friends or family members of an indigent defendant to retain counsel to replace appointed counsel.

14. Stipulated.

15. Stipulated.

The Commission does not dispute the identity of appointed counsel.

16. The Commission understands Judge Joseph's response to Paragraph 16 of the Formal Charges to indicate that she agrees with the facts set forth in that paragraph.

As to the additional facts stated in her Response, the Commission does not dispute that the record of the 3rd and 4th calls so reflects.

17. The first two sentences of Paragraph 17 are stipulated.

As to the advice Judge Joseph received from the Administrative Office of the District Court,¹² the Commission has no independent information, but will not offer evidence to the contrary. As to the last sentence of Judge Joseph's response to Paragraph 17, the Commission refers to paragraph 8 of the Statement of Facts to which Judge Joseph agreed with the United States Attorney, in which she stipulated that she "directed a court clerk to request that the ICE officer remain outside the courtroom in accordance with the practice of the presiding justice in Newton District Court." Stipulated Appendix M, at p. APP164.

18. As set forth above, the Commission expects that Attorney Jellinek will testify that persons associated with the Defendant retained him. The transcript of the afternoon call of the case (Stipulated Appendix G, at pp. APP031-APP043) reflects that he had entered an appearance for the Defendant. The Commission has not alleged, and does not intend to present evidence, regarding whether Judge Joseph had any knowledge as to how or when Attorney Jellinek was retained.

19. The first, fourth, fifth, sixth, and last sentences of Paragraph 19 are stipulated.

As to the remainder of Paragraph 19, as set forth above, the Commission will present the testimony of Attorney David Jellinek, Interpreter Eric Mendoza, and Assistant District Attorney Shannon Jurgens (now Assistant Clerk Shannon Jurgens McDermott).

The Commission does not allege that Judge Joseph was aware of Attorney Jellinek's plan with the court officer prior to her off-the-record conversation with Attorney Jellinek during the hearing. As indicated above, the Commission will offer evidence that Attorney Jellinek made Judge Joseph aware, during their off-the-record conversation, that he believed that if she allowed him and the Defendant to go downstairs to the lockup with the interpreter after ordering the Defendant released, the Defendant could be released through the rear of the courthouse.

Regarding the location of the interpreter and his access to the sidebar conversation, the transcript of the afternoon session reflects that the Defendant was not in the courtroom when the sidebar conversation began. As indicated above, the Commission will offer the testimony of Interpreter Mendoza that while waiting for

¹² The Commission interprets Judge Joseph's reference to the Executive Office of the Trial Court as intended to reference the Administrative Office of the District Court.

the Defendant to be brought to the courtroom, he was in a location where he was able to and did hear some of the sidebar conversation.

20. The transcript of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez is Stipulated Appendix G, at pp. APP029-APP043. The recordings of those proceedings are stipulated Appendices I (enhanced recordings) and J (original recording).

As to Judge Joseph's knowledge of where the ICE agent(s) had been directed to wait, the Commission refers to Paragraph 8 of the Statement of Facts to which Judge Joseph agreed with the United States Attorney, in which she stipulated that she "directed a court clerk to request that the ICE officer remain outside the courtroom in accordance with the practice of the presiding justice in Newton District Court."

21. The transcript of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez is Stipulated Appendix G, at pp. APP029-APP043.

The recordings of those proceedings are Stipulated Appendices I (enhanced recordings) and J (original recording).

22. As indicated above, the transcript of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez is Stipulated Appendix G, at pp. APP029-APP043.

The recordings of those proceedings are Stipulated Appendices I (enhanced recordings) and J (original recordings).

To the extent that the additional statements in Judge Joseph's Response are intended to justify her violation of Rule 211, the Commission replies that Judge Joseph had an obligation to be familiar with and to comply with all rules applicable to the court on which she sat.

23. The Commission stands on its allegation in Paragraph 23 of the Formal Charges as to the impression Judge Joseph's statements and conduct would give a reasonable observer.

Regarding Judge Joseph's statement in her Response that 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," and that her suggestion was to "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," the Commission states that Judge Joseph had no lawful authority to determine whether the Defendant was the person subject to the detainer, or to take any action regarding that determination.

Judge Joseph had no lawful authority to order the Defendant detained without bail after the Assistant District Attorney indicated that she would not proceed on the Fugitive from Justice charge, which she had concluded misidentified the Defendant.

Moreover, even if the Fugitive charge was correctly brought against the Defendant, Judge Joseph had no lawful authority to order the Defendant detained without bail on misdemeanor drug charges or on a Fugitive from Justice charge where the underlying warrant was for a non-violent crime.

Judge Joseph had no lawful authority to take any action to delay or hinder ICE in the performance of its function. Judge Joseph's only lawful role was to address the state court matters before her. Once it was determined that the Fugitive from Justice Charge would be dismissed and that no bail would be ordered on the misdemeanor charges, Judge Joseph had no remaining decisions to make and no authority other than to complete the arraignment procedure and order the Defendant released on personal recognizance in the usual manner of that Court.

24. The Commission stands on its allegation in Paragraph 24 of the Formal Charges. Judge Joseph's Response appears to take the position that the Defendant had not been released from state custody as of the time that he, his counsel and the interpreter, with Judge Joseph's permission, went downstairs to the lockup.

That position is inconsistent with Judge Joseph's statements on the record, first, her statement to Clerk Okstein that "he's been released on this," and second, in response to the court officer's inquiry as to whether "he's released," her response that "he is." Stipulated Appendix G, at p. APP036, 43.

The additional statements in Judge Joseph's Response to Paragraph 24 of the Formal Charges appear to acknowledge that she intended to delay ICE in the performance of its function.

Further, the Commission disputes Judge Joseph's statement that "the lockup was the only practical place" for an attorney-client conference. If, as Judge Joseph appears to contend, she thought that the ICE agents were or would be waiting in the lockup, then the Defendant and his attorney going to that location would not accomplish the result that she now contends she sought. To the contrary, the Defendant and his counsel going out the door of the courtroom to the front lobby, in accord with the usual practice in that court, would have enabled them to have an attorney-client conference.

25. The Commission stands on its allegation in Paragraph 25 of the Formal Charges and will present evidence in support of that allegation, as detailed above.

Regarding the direction given by Clerk Okstein to the ICE agent, at Judge Joseph's direction, the Commission refers to paragraph 8 of the Statement of Facts to which she agreed with the United States Attorney. Stipulated Appendix M, at pp. APP163-APP164.

Regarding Judge Joseph's knowledge of where the ICE agent was located, the Commission refers to Attorney Jellinek's statement, on the record, before the off-the-record conversation, that "ICE is going to pick him up if he walks out the front door." Stipulated Appendix G, at p. APP034.

26. The Commission stands on its allegation in Paragraph 26 of the Formal Charges and will present evidence in support of that allegation, as detailed above.

27. The Commission stands on its allegation in Paragraph 27 of the Formal Charges and will present evidence in support of its allegation, as detailed above.

28. Stipulated.

29. Stipulated.

30. Judge Joseph's Response to Paragraph 30 of the Formal Charges indicates that the facts set forth therein are stipulated.

As to Judge Joseph's additional statement regarding her assumption, the Commission disputes that Judge Joseph so assumed or expected.

31. The Commission stands on the allegations of Paragraph 31 of the Formal Charges and will present evidence in support of its allegations, as detailed above.

The Commission further notes that the additional statements in Judge Joseph's Response acknowledge that she intended to delay ICE in the performance of its function.

32. Judge Joseph's Response appears to stipulate that her conduct had the effect stated in Paragraph 32. The Commission disputes Judge Joseph's statement that that effect was "unintended."

The Commission further notes that Judge Joseph's Response appears to acknowledge that she intended to delay ICE in the performance of its function.

The Commission disputes that Judge Joseph "had no idea where the agents were located." As the transcript of the recorded part of the proceeding reflects, Attorney Jellinek told Judge Joseph, on the record, that "ICE is going to pick him up if he walks out the front door." Stipulated Appendix G, at p. APP034, 41.

Judge Joseph also agreed that Attorney Jellinek "stated that an ICE officer was waiting outside the courtroom with an immigration detainer for [the Defendant] and would pick up [the Defendant] if [she] released [the Defendant]" in the Statement of Facts to which she agreed with the United States Attorney, Stipulated Appendix M, at p. APP164.

33. Stipulated.

34. Judge Joseph has stipulated to the substance of the facts set forth in Paragraph 34 of the Formal Charges, in the Statement of Facts to which she agreed with the United States Attorney, Stipulated Appendix M, at p. APP164, at paragraph 12.

35. The Commission stands on its allegation in Paragraph 35 of the Formal Charges and refers to Paragraphs 8, 12, and 13 of the Statement of Facts to which Judge Joseph agreed with the United States Attorney, Stipulated Appendix M, at pp. APP163-APP164.

36. The Commission stands on its allegations in Paragraph 36 of the Formal Charges and will present evidence to support those allegations as detailed above.

The Commission notes Judge Joseph's statement that she was unaware of District Court Special Rule 211 and replies that it was her responsibility to be familiar with and to comply with all rules applicable to the Court on which she sat.

37. The Commission stands on its allegations in Paragraph 37 of the Formal Charges and will present evidence in support of those allegations as detailed above.

Regarding Judge Joseph's statement that she was unaware of the rule prohibiting off-the-record proceedings, the Commission states that it was Judge Joseph's responsibility to be familiar with and to comply with all rules applicable to the court on which she sat.

The Commission further notes that Judge Joseph's statement in response to Paragraph 37, that she "believed that the RAJ understood that" she "had directed the conference take place off the record," is inconsistent with her statement under oath, in her interview with Special Counsel, that "I acknowledged it immediately." Stipulated Appendix N, at p. APP240 (Transcript p. 69).

38. The first two paragraphs are stipulated.

As to the remainder of Paragraph 38 of Judge Joseph's Response, the Commission stands on its allegations and will present evidence as detailed above.

Regarding Judge Joseph's statements urging inferences from the conduct of the Assistant District Attorney, the Commission will present testimony of the Assistant District Attorney (Shannon Jurgens McDermott).

39. Stipulated.

40. The first sentence of Paragraph 40 is stipulated. The fact set forth in the second sentence is a fair inference from the first.

The Commission disputes that Attorney Jellinek has made any false statement regarding this matter. The Commission does not dispute that Attorney Jellinek received immunity from prosecution for his conduct in connection with the incident of April 2, 2018, based on his truthful testimony.

The Commission does not dispute that the Supreme Judicial Court ordered Judge Joseph's suspension terminated upon the dismissal of the criminal charges against her, and that she was then assigned to the Boston Municipal Court. The Commission does not contend that her sitting in that Court has involved any "incident or unfavorable publicity."

41. Paragraph 41 of Judge Joseph's Response is stipulated, except for the last sentence.

The Commission stands on its allegation as set forth in that sentence and will offer evidence as detailed above.

Regarding Judge Joseph's statements urging inferences from the conduct of the Assistant District Attorney, the Commission will present testimony of the Assistant District Attorney (Shannon Jurgens McDermott).

- Further Response¹³

The Commission replies to the numbered paragraphs of Judge Joseph's "Further Response" as follows.

1. The Commission stipulates to the first and second sentences.

The Commission has no knowledge as to the third sentence, but it will not offer evidence in contradiction.

2. The Commission stipulates to the first, second, and third sentences.

The Commission has no knowledge as to the remainder of this paragraph, but will not offer evidence in contradiction.

3. This paragraph is consistent with the transcript of the proceeding, Stipulated Appendix G, at pp. APP029-APP043.

4. The first sentence of this paragraph is consistent with the transcript of the proceedings Stipulated Appendix G, at pp. APP029-APP043.

The Commission is not in a position to comment regarding Judge Joseph's subjective belief or expectation.

5. The Commission stipulates to the facts set forth in Paragraph 5, except the reference to "ICE agents" in the plural. A single ICE agent was present in the morning, and was joined by a second agent later in the day; the Commission does not have

¹³ The numbered replies in this section correspond to the numbering of the "Further Response" included in Judge Joseph's Response to the Formal Charges.

information as to whether, in informing Judge Joseph, the clerk made reference to a single ICE agent or to “agents.”

6. The Commission does not have independent information regarding Judge Joseph’s efforts and consultation as described in Paragraph 6 but does not dispute the statements in Paragraph 6.
7. The full Lunn policy is Stipulated Appendix B, at pp. APP004-APP008.
8. The Commission does not have information as to what Judge Joseph was advised during the lunch break regarding Attorney Jellinek’s appearance, but it does not dispute the statements set forth in Paragraph 8.
9. The Commission is not in a position to comment regarding Judge Joseph’s state of mind as described in Paragraph 9, but it does not dispute the statements set forth in Paragraph 9.
10. Regarding the content of the interactions during the afternoon call of the case, the Commission relies on the transcript, Stipulated Appendix G, at pp. APP031-APP043.

Regarding the presence of the Defendant, the transcript reflects that at the time the sidebar conference began, the Defendant had not yet been brought up to the courtroom.

Regarding the location of the interpreter before the Defendant was brought up to the courtroom, the Commission will present the testimony of Interpreter Mendoza as detailed above.

11. Regarding the content of the recorded interactions during the afternoon call of the case, the Commission relies on the transcript, Stipulated Appendix G, at pp. APP031-APP043.

Regarding Judge Joseph’s views as to her responsibility, the Commission responds that, once the Assistant District Attorney indicated that she would not prosecute the Fugitive from Justice Charge, and would not seek bail on the other state charges, Judge Joseph had no responsibility or authority to determine the Defendant’s identity, and no lawful authority to order the Defendant’s detention. Any question whether the Defendant was the person named in the ICE detainer was outside the role of a state judge, and any effort to delay, hinder, or influence ICE in the performance of its function was unlawful, as was any attempt to keep the Defendant in custody for purposes related to the ICE detainer beyond the time he would otherwise be released on the state charges.

12. Regarding the content of the recorded interactions during the afternoon call of the case, the Commission relies on the transcript, Stipulated Appendix G, at pp. APP031-APP036.

Regarding Judge Joseph's reference to "what [she] thought was a good suggestion for [Attorney Jellinek]'s client" "to allow David Jellinek time to investigate while keeping Medina-Perez secure in state, not federal, custody," the Commission notes that it was not the lawful role of the judge to make suggestions to assist a party in avoiding or delaying ICE custody, or to delay or influence the timing of such custody; the Judge's obligation regarding ICE was to be neutral.

13. The Commission agrees that defense counsel's inquiry regarding whether the proceeding was on the record was an implicit request to go off the record.

The Commission is not in a position to comment as to Judge Joseph's previous experience with requests to go off the record, except to say that, as she acknowledged in her sworn interview with Special Counsel, she never observed any judge go off the record while she sat with other judges during her four-week period of orientation, and she has no specific memory of a judge going off the record during an arraignment.

Regarding Judge Joseph's knowledge of District Court Special Rule 211, the Commission replies that it was Judge Joseph's obligation to be familiar with and to comply with all rules applicable to the court on which she sat.¹⁴

14. The Commission is not in a position to comment as to what Judge Joseph presently recalls regarding the off-the-record conversation.

As to any inference to be drawn from the conduct of the Assistant District Attorney, the Commission will present the testimony of the Assistant District Attorney (Shannon Jurgens McDermott).

Regarding the information Attorney Jellinek provided to Judge Joseph during the off-the-record conversation, the Commission stands on its allegations and will present the testimony of Attorney Jellinek.

15. Regarding Attorney Jellinek's need for the Judge's permission to go to the lockup with the Defendant after the Defendant had been ordered released, and whether such "occurs regularly," the Commission stands on its allegations, and will present the testimony of Attorney Jellinek as detailed above.

The Commission further notes Paragraph 3 of the Statement of Facts Judge Joseph entered into with the United States Attorney (Stipulated Appendix M, at p. APP163) in which she agreed that "the normal custom and practice in Newton District Court,

¹⁴ The Commission notes that District Court Special Rule 211 by its terms applies to the Boston Municipal Court as well as the District Court, and that the Boston Municipal Court also has its own rules requiring the recording of all proceedings: Boston Municipal Court Rule 308, regarding civil matters, and Special Rule of the Boston Municipal Court Department Sitting for Criminal Business Rule 15, both in effect since 1989.

subject to certain exceptions, was that a defendant would be released from custody into the courtroom.”

In the remainder of paragraph 15, Judge Joseph acknowledges that she acted to delay ICE in the performance of its function after she had ordered the Defendant released from state custody.

16. The Commission relies on the transcript, Stipulated Appendix G, at pp. APP034-APP035, 42-43.
17. The Commission relies on the transcript, Stipulated Appendix G, at pp. APP035-APP036, 42-43.
18. The Commission relies on the transcript, Stipulated Appendix G, at pp. APP035-APP036, 42-43.

Regarding what Judge Joseph meant in her statements after the record resumed, and what she assumed or was aware of, the Commission stands on the allegations of the Formal Charges.

19. The Commission does not contend that Judge Joseph had advance notice or had specific knowledge at any time, of an arrangement between Attorney Jellinek and Court Officer MacGregor.

The Commission does contend and will offer evidence, as detailed above, that during the off-the-record conversation, Attorney Jellinek informed Judge Joseph that, if she allowed him to accompany the Defendant down to the lockup after ordering the Defendant released, he believed he could have the Defendant released through the back.

As to whether the ICE agents “had unobstructed access to the lockup entrance either through the public stairwell or the sallyport entrance,” the Commission will offer evidence, as detailed above, as to the information provided to the ICE agents regarding the Defendant’s expected exit, as well as the information that was not available to the ICE agents as a result of their exclusion from the courtroom when Judge Joseph ordered the Defendant released and authorized him to return to the lockup with his counsel.

20. The Commission does not dispute the statements in Paragraph 20. The Commission will present the testimony of Attorney Jellinek and First Justice Heffernan regarding the conversation referred to in this paragraph.
21. The Commission stands on its allegations regarding these conversations and will present the testimony of First Justice Heffernan, former RAJ and now Chief Justice Fortes, and former Chief Justice Dawley.

22. The Commission does not dispute the statements in Paragraph 22. To the extent that the last two sentences of this paragraph suggest a comparison of the consequences of the incident as between Attorney Jellinek and Judge Joseph, such comparison reflects a failure to appreciate or acknowledge the different roles of a judge and a defense attorney.
23. Stipulated.
24. The Commission disputes the first part of the sentence in Paragraph 24 and accepts the expression of regret in the second part of the sentence.

Respectfully submitted,

A handwritten signature in blue ink that reads "Judith Fabricant". The signature is written in a cursive style.

Judith Fabricant
Special Counsel
Commission on Judicial Conduct

March 25, 2025