

REPORT AND RECOMMENDATION OF THE  
COMMISSION ON JUDICIAL CONDUCT

APPENDIX L

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC NO. OE-157

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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
RECOMMENDATIONS FOR DISCIPLINE**

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The Commission on Judicial Conduct (“the Commission”) hereby submits the following Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline with respect to the Formal Charges issued against Judge Shelley M. Richmond Joseph (“Judge Joseph”) in the above-captioned matter, and the evidence presented at the public hearing on those charges.

The Commission submits that the evidence, including the stipulated facts, the credible testimony of witnesses, the appendices and exhibits received in evidence, establish the facts set forth herein by clear and convincing evidence; that the law compels the conclusions set forth herein; and that the facts and law warrant the recommended discipline set forth herein.

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On May 19, 2019, the Commission initiated a complaint against 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 complaint was docketed by the Commission as Complaint Number 2019-22.

The information on which the Commission initiated Complaint Number 2019-22 included the Commission’s receipt of a copy of an indictment returned by a federal grand jury on 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.

At the request of Judge Joseph’s counsel, the Commission stayed the complaint during the pendency of the criminal charges from October 2019 to September 2022.

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. The Formal Charges charged Judge Joseph with having engaged 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 M.G.L. c. 211C, sec. 2(5).

The Commission also charged Judge Joseph with having violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) by failing to comply with the law, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and by failing to avoid impropriety and the appearance of impropriety, in violation of Rule 1.2.; by failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2; by failing to perform her judicial duties competently, in violation of Rule 2.5; by failing to cooperate with other judges and court officials in the administration of court business, in violation of Rule 2.5; and by failing to cooperate and be candid and honest with judicial disciplinary authorities, in violation of Rule 2.16.

A public hearing was held on the Formal Charges against Judge Joseph, pursuant to M.G.L. c. 211C, sec. 7, and Commission Rule 10, from Monday, June 9, 2025, through Monday, June 16, 2025.

## **II. PROPOSED FINDINGS OF FACT.**

1. Judge Joseph received her Juris Doctor degree from New England School of Law in 1992.<sup>1,2</sup> 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.<sup>3</sup> After leaving the Attorney General’s Office, Judge Joseph worked for six months as an associate in a civil law firm.<sup>4</sup>
2. From October 2000 until her judicial appointment, Judge Joseph practiced with the Law Office of Joseph & Joseph in Newton, Massachusetts, specializing in criminal defense, hearings before the Registry of Motor Vehicles, and restraining orders.<sup>5,6</sup> Judge Joseph’s practice prior to becoming a judge included several years as a bar advocate, including at least two years as a bar advocate in the Newton District Court.<sup>7</sup> Over that period, Judge Joseph represented parties in many cases in Newton District Court and became familiar with the courthouse.<sup>8</sup>

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<sup>1</sup> Appendix A, p. APP003.

<sup>2</sup> Tr. Vol. IV, p. 643:24.

<sup>3</sup> Appendix A, p. APP002.

<sup>4</sup> Appendix A, p. APP002.

<sup>5</sup> Appendix A, p. APP002.

<sup>6</sup> Tr. Vol. IV, p. 644:4-15.

<sup>7</sup> Tr. Vol. IV, p. 644:14-25 and p. 645:1-13.

<sup>8</sup> Tr. Vol. IV, p. 646:8-20.

3. Judge Joseph was sworn in as a Massachusetts District Court Judge on November 2, 2017.<sup>9</sup>
4. The practice of the Administrative Office of the District Court (“AODC”) is, and as of the time of Judge Joseph’s appointment, was to provide all new District Court judges with a formal judicial orientation program that includes the judge spending the first four weeks sitting with a different senior judge each day, with a particular focus on different subject areas.<sup>10</sup> The curriculum is, and as of the time of Judge Joseph’s appointment, was established by the District Court Committee on Education (“Education Committee”), which is composed of judges, clerks, and probation officials.<sup>11</sup> The Education Committee works to identify substantive areas of law that are important to judicial decision-making in the District Court.<sup>12</sup> As part of the AODC’s practice, new judges are assigned to sit with senior judges to review the substantive areas of law identified by the Education Committee and to gain the experience and the perspective of the more experienced judge.<sup>13</sup>
5. In accordance with this practice, Judge Joseph’s training and orientation included approximately four weeks sitting with a series of senior judges to observe a variety of types of courtroom proceedings and to learn about important areas of substantive law.<sup>14</sup>
6. Judge Joseph does not recall ever seeing a judge go off the record during that four-week orientation period.<sup>15</sup>
7. The practice of the AODC is, and as of the time of Judge Joseph’s appointment, was to provide each new District Court judge with a large box of books and materials.<sup>16</sup> Each new judge received additional materials from the Supreme Judicial Court, the Flaschner Judicial Institute, and the Executive Office of the Trial Court (“EOTC”).<sup>17</sup>
8. The collection of materials provided to new judges included a copy of the then-current Massachusetts Rules of Court.<sup>18</sup> Thomson Reuters publishes a new version of the Massachusetts Rules of Court each year, and the Flaschner Institute sends a copy of each year’s version to every judge of the Massachusetts Trial Court.<sup>19</sup> This book includes the Special Rules of the District Court, which are approximately thirty pages long.<sup>20</sup> Judge Joseph was provided with a copy of the Massachusetts Rules of Court

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<sup>9</sup> Tr. Vol. IV, p. 651:10-12.

<sup>10</sup> Tr. Vol. III, p. 569:9-16.

<sup>11</sup> Tr. Vol. III, p. 569: 17-20.

<sup>12</sup> Tr. Vol. III, p. 569:20-23.

<sup>13</sup> Tr. Vol. III, p. 570:9-13.

<sup>14</sup> Tr. Vol. IV, p. 655:7-15.

<sup>15</sup> Tr. Vol. IV, p. 655:19-22.

<sup>16</sup> Tr. Vol. III, p. 571:5-9.

<sup>17</sup> Tr. Vol. III, p. 571:9-15.

<sup>18</sup> Tr. Vol. III, p. 571:16-19.

<sup>19</sup> Tr. Vol. III, p. 571:20-25.

<sup>20</sup> Tr. Vol. IV, p. 653:20-23.

- when she became a judge.<sup>21</sup> She was already familiar with this book from her work in practice.<sup>22</sup>
9. Judge Joseph did not specifically study or make an effort to familiarize herself with the rules applicable to the District Court in preparation for or after becoming a judge.<sup>23, 24</sup>
  10. District Court Special Rule 211, effective as of February 1, 1988, requires that all “courtroom proceedings, including arraignments” be recorded electronically, except “(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.”<sup>25</sup>
  11. As of 2018, a judicial mentor program was in place for new judges of the Trial Court; and in accordance with that program, the Chief Justice of each Trial Court Department assigned a mentor judge to every newly appointed judge for a two-year period.<sup>26</sup> The mentors in the judicial mentor program were chosen by the Chief Justice of the Department from among experienced judges of that Department and underwent specific training for the mentor role.<sup>27</sup> The program is designed to provide guidance to new judges, allowing them to consult with their mentor, receive support from their mentor, and review matters with them.<sup>28</sup> Part of the role of a mentor, which mentors are trained to perform, is to be available to their mentee or mentees for phone consultations at almost any time.<sup>29</sup>
  12. Judge Joseph’s training included the assignment of a mentor judge to assist her.<sup>30</sup> Judge Joseph was advised that she could ask her mentor questions at any time.<sup>31</sup>
  13. Chief Justice Paul Dawley (“Chief Justice Dawley”) served as the Chief Justice of the District Court Department from the time of his initial appointment in 2013 until he retired in 2022.<sup>32</sup> Chief Justice Dawley became an attorney in 1989.<sup>33</sup> He worked for approximately twelve years as an Assistant District Attorney with the Plymouth County District Attorney’s Office.<sup>34</sup> He was eventually promoted to Deputy First Assistant District Attorney for the Plymouth County District Attorney’s Office.<sup>35</sup> In

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<sup>21</sup> Tr. Vol. IV, p. 651:21-23.

<sup>22</sup> Tr. Vol. IV, p. 652:9-15.

<sup>23</sup> Tr. Vol. IV, p. 653:24-25 and p. 654:1-6.

<sup>24</sup> Tr. Vol. IV, p. 654:22-25 and p. 655:1-6.

<sup>25</sup> Rule 211 of the Special Rules of the District Court of Massachusetts (1988).

<sup>26</sup> Tr. Vol. III, p. 589:20-25.

<sup>27</sup> Tr. Vol. III, p. 589:25 and 590:1-3.

<sup>28</sup> Tr. Vol. III, p. 590:3-7.

<sup>29</sup> Tr. Vol. III, p. 590:14-20.

<sup>30</sup> Tr. Vol. IV, p. 656:1-7.

<sup>31</sup> Tr. Vol. IV, p. 656:8-14.

<sup>32</sup> Tr. Vol. III, p. 565:22-25 and p. 566:1.

<sup>33</sup> Tr. Vol. III, p. 565:15.

<sup>34</sup> Tr. Vol. III, p. 565:15-17.

<sup>35</sup> Tr. Vol. III, p. 565:17-18.

- 2001, Chief Justice Dawley was appointed as an Associate Justice of the Brockton District Court.<sup>36</sup> He later served as a Regional Administrative Justice and as the First Justice of the Brockton District Court.<sup>37</sup>
14. During the period when Chief Justice Dawley served as the Chief Justice of the District Court Department, the District Court held at least one District Court-wide annual educational conference each year and quarterly regional educational meetings in each region every three months.<sup>38</sup> The quarterly regional meetings included presentations on developments in certain areas of the law.<sup>39</sup> If a judge could not attend an educational conference or one of the regional meetings, a process was in place to ensure that any materials provided to judges at the meeting were sent to the judge who was unable to attend.<sup>40</sup>
  15. As of April 2, 2018, the areas of law taught at these conferences and meetings had not specifically included training regarding District Court Special Rule 211.<sup>41</sup> There was no specific training on District Court Special Rule 211 because the topics covered at these conferences and meetings were generally substantive rather than procedural, and because, in Chief Justice Dawley's view, the requirement to record all courtroom proceedings was self-evident, and judges knew of it.<sup>42</sup>
  16. On January 16, 2018, Chief Justice Dawley issued Transmittal No. 1222.<sup>43</sup> Transmittal No. 1222 was emailed to all judges of the District Court.<sup>44</sup> Judge Joseph received Transmittal No. 1222 on or about the date it was issued.<sup>45</sup> Transmittal No. 1222 informed its recipients that the AODC had distributed a revised "Information on Immigration Matters" Benchcard at a judicial education conference on December 13, 2017.<sup>46</sup> That Benchcard was revised in December 2017 to note the Supreme Judicial Court's holding in Lunn v. Commonwealth, 477 Mass. 517 (2017).<sup>47</sup> Appendix D is a copy of the Benchcard revised as of December 2017.<sup>48, 49</sup>
  17. Transmittal No. 1222 advised judges that an electronic copy of the December 2017 Benchcard was attached and should replace pages 125 and 126 of each judge's "90 Day Guide."<sup>50</sup> A 90-day guide is compiled by the Education Committee and serves

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<sup>36</sup> Tr. Vol. III, p. 565:18-20.

<sup>37</sup> Tr. Vol. III, p. 565:20-22.

<sup>38</sup> Tr. Vol. III, p. 572:1-6. (The transcript incorrectly reflects that Chief Justice Dawley used the word "orderly" here instead of "quarterly.")

<sup>39</sup> Tr. Vol. III, p. 572:7-18.

<sup>40</sup> Tr. Vol. III, p. 572:19-25.

<sup>41</sup> Tr. Vol. III, p. 605:5-10.

<sup>42</sup> Tr. Vol. III, p. 605:14-23.

<sup>43</sup> Appendix C, pp. APP009-APP013.

<sup>44</sup> Tr. Vol. III, p. 577:13-16.

<sup>45</sup> Tr. Vol. IV, p. 658:2-18.

<sup>46</sup> Appendix C, p. APP012.

<sup>47</sup> Tr. Vol. III, p. 576:6-19.

<sup>48</sup> Tr. Vol. III, p. 578:18-23.

<sup>49</sup> Appendix D, pp. APP014-APP016.

<sup>50</sup> Appendix C, p. APP012.

- as a condensed version of the materials new judges receive.<sup>51</sup> It is designed by the Education Committee to serve as a quick resource for judges on the issues they are most likely to encounter in their first 90 days on the bench.<sup>52</sup> The AODC recommended that new judges bring the 90-day guide on the bench with them.<sup>53</sup>
18. Transmittal No. 1222 advised judges that additional guidance on responding to requests from the Department of Homeland Security could be found in the Trial Court’s “Policy and Procedures Regarding Courthouse Interactions with the Department of Homeland Security,” set forth in Executive Office Transmittal 17-13, dated November 10, 2017.<sup>54</sup> Appendix B is a copy of Executive Office Transmittal 17-13, commonly referred to as “the Lunn Policy.”<sup>55, 56</sup>
19. The EOTC had issued Transmittal 17-13, by email to judges, clerks, and other management personnel, on November 10, 2017, to address implementation of the Supreme Judicial Court’s decision in Lunn v. Commonwealth.<sup>57</sup>
20. The Lunn policy provides the following specific guidance for circumstances in which an 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 DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.*<sup>58</sup>
21. The essential message of the Lunn policy for judges is that a judge should remain neutral regarding ICE, and not help or hinder ICE officials from performing their duties.<sup>59</sup>
22. Judge Joseph was unable to attend the December 13, 2017 educational conference.<sup>60</sup> Judge Joseph was unable to attend the December 2017 conference because her father had passed away, and after she returned to work “a couple of weeks” later, Judge

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<sup>51</sup> Tr. Vol. III, p. 577:19-23.

<sup>52</sup> Tr. Vol. III, p. 577:23-25 and p. 578:1.

<sup>53</sup> Tr. Vol. III, p. 578:2-5.

<sup>54</sup> Tr. Vol. III, p. 578:6-17.

<sup>55</sup> Tr. Vol. III, p. 578:18-23.

<sup>56</sup> Appendix B, pp. APP004-APP008.

<sup>57</sup> Appendix B, p. APP005.

<sup>58</sup> Appendix B, pp. APP007-APP008.

<sup>59</sup> Tr. Vol. III, p. 535:8-14.

<sup>60</sup> Tr. Vol. IV, p. 656:25 and p. 657:1-4.

Joseph did not undertake to ensure on her own that she received the materials distributed at that conference.<sup>61</sup>

23. After she received Transmittal No. 1222, Judge Joseph did not check to make sure that she had a copy of the Lunn policy, nor did she take any steps to familiarize herself with the Lunn policy.<sup>62</sup>
24. 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”).<sup>63</sup> Newton District Court has two courtrooms, and usually has one or two judges sitting.<sup>64</sup> Judge Joseph had previously sat in that court, but prior to April 2, 2018, she had sat as the sole judge there only on dates when no matters were scheduled.<sup>65</sup>
25. The First Justice of the Newton District Court was Judge Mary Elizabeth Heffernan (“Judge Heffernan”).<sup>66</sup> Judge Heffernan was appointed Acting First Justice of the Newton District Court in 2015 and was appointed permanently to that position in 2016.<sup>67</sup> At that time, Judge Heffernan sat in the First Session of the Newton District Court on most days; however, she was not present on April 2, 2018, as she was attending a funeral.<sup>68, 69</sup> Thus, Judge Joseph was the only judge sitting in that court on that date and sat in the First Session courtroom, where a list of matters was scheduled to be heard.<sup>70</sup>
26. Judge Joseph knew that criminal defendants in Newton District Court custody were kept in the lockup area in the basement of the courthouse and were brought upstairs by a court officer to the courtroom for their court appearances.<sup>71, 72</sup> The normal custom and practice in Newton District Court, subject to certain exceptions, was that a defendant would be released from custody into the courtroom.<sup>73, 74, 75, 76</sup>
27. The First Session courtroom in the Newton District Court had only one public entry/exit, which led to the courthouse lobby.<sup>77, 78</sup>

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<sup>61</sup> Tr. Vol. IV, p. 657:5-22.

<sup>62</sup> Tr. Vol. IV, p. 660:9:19.

<sup>63</sup> Tr. Vol. IV, p. 661:14-16.

<sup>64</sup> Tr. Vol. III, p. 464:11-25 and p. 465:1-13.

<sup>65</sup> Tr. Vol. IV, p. 661:17-25 and p. 662:1-7.

<sup>66</sup> Tr. Vol. III, p. 458:16-21.

<sup>67</sup> Tr. Vol. III, p. 459:19-22.

<sup>68</sup> Tr. Vol. III, p. 468:21-24.

<sup>69</sup> Tr. Vol. IV, p. 661:17-18.

<sup>70</sup> Tr. Vol. IV, p. 661:14-23.

<sup>71</sup> Tr. Vol. IV, p. 649:21-25 and p. 650:1-12.

<sup>72</sup> Appendix M, p. APP163, par. 3.

<sup>73</sup> Appendix M, p. APP163, par. 3.

<sup>74</sup> Tr. Vol. I, p. 53:5-11.

<sup>75</sup> Tr. Vol. II, p. 219:10-13.

<sup>76</sup> Tr. Vol. III, p. 416:14-25 and p. 417:1-17.

<sup>77</sup> Tr. Vol. II, p. 219:14-17.

<sup>78</sup> Tr. Vol. III, p. 481:22-25 and p. 482:1-6.

On April 2, 2018, the matters that Judge Joseph presided over included criminal charges against a man using the name Jose Medina-Perez (“Defendant,” “Mr. Medina-Perez”).<sup>79</sup>

28. At approximately 10:34 a.m., on April 2, 2018, the case, Commonwealth v. Medina-Perez,<sup>80</sup> came before Judge Joseph for arraignment on a charge of being a fugitive from justice based on a warrant issued in a case of driving under the influence (DUI) in Pennsylvania,<sup>81</sup> and two misdemeanor counts of controlled substance violations.<sup>82, 83</sup>
29. The court provided a Spanish language interpreter, Eric Mendoza (“Interpreter Mendoza”), to assist the defendant in understanding the courtroom proceedings.<sup>84</sup> As of April 2, 2018, Interpreter Mendoza had worked as a “certified or vetted” interpreter for some twenty years overall<sup>85</sup> and had been working as an interpreter for the Massachusetts court system for approximately eighteen months to two years.<sup>86</sup>
30. When Commonwealth v. Medina-Perez was first called at approximately 10:34 a.m., Judge Joseph appointed the bar advocate assigned to Newton District Court on that day, Attorney Elizabeth Bostwick (“Attorney Bostwick”), to represent the defendant.<sup>87</sup> At some point on the morning of April 2, 2018, Attorney Bostwick spoke with friends of Mr. Medina-Perez, who were present at the courthouse.<sup>88</sup>
31. At Attorney Bostwick’s request, the case was put on for a series of further calls to allow her time to investigate whether Mr. Medina-Perez was the person named in the Pennsylvania warrant.<sup>89</sup>
32. During a subsequent call of Commonwealth v. Medina-Perez at approximately 12:05 p.m., the prosecutor handling the matter, Assistant District Attorney Shannon Jurgens (“ADA Jurgens”),<sup>90</sup> advised Judge Joseph that she was not seeking bail on the controlled substance charges but would request that the defendant be held without

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<sup>79</sup> The Newton District Court docket for Commonwealth v. Medina-Perez (Appendix E), as generated from the MassCourts electronic case management system, identifies the defendant as Oscar Manuel Peguero, as a result of an order issued on December 10, 2021, allowing the Commonwealth’s motion to amend the complaint to correct the defendant’s name. This document will refer to him as Mr. Medina-Perez, the name on the original complaint, or, in the context of the District Court proceeding, as “the defendant.”

<sup>80</sup> Appendix G, p. APP037.

<sup>81</sup> Appendix H, p. APP056.

<sup>82</sup> Appendix G, p. APP037.

<sup>83</sup> Appendix E, pp. APP017-APP021.

<sup>84</sup> Tr. Vol. II, p. 253:12-20.

<sup>85</sup> Tr. Vol. II, p. 248:22-25.

<sup>86</sup> Tr. Vol. II, p. 250:21-25.

<sup>87</sup> Appendix G, p. APP037.

<sup>88</sup> Tr. Vol. V, p. 826:16-25 and p. 827:1.

<sup>89</sup> Appendix H, pp. APP056, APP075-APP076, and APP082.

<sup>90</sup> Since the time of this incident, Ms. Jurgens has married, and her name is now Shannon Jurgens McDermott. She is also no longer employed as an Assistant District Attorney and instead serves as an Assistant Clerk Magistrate in the Malden District Court. For purposes of clarity, this document will refer to her as ADA Jurgens.

bail on the fugitive from justice charge, or, if he was not held without bail, that bail be set on that charge.<sup>91</sup> The case was then recessed and put on for a further call.<sup>92</sup>

33. First Assistant Clerk Magistrate Lawrence Okstein (“Clerk Okstein”) was serving as the session clerk in the First Session on April 2, 2018.<sup>93</sup> Prior to serving as First Assistant Clerk Magistrate, Clerk Okstein worked as an Assistant District Attorney for the Norfolk County District Attorney’s Office from 1993 to 1995.<sup>94</sup> He then worked in private practice from 1995 to 2014.<sup>95</sup> Since 2014, Clerk Okstein has served as an Assistant Clerk Magistrate in the Newton District Court.<sup>96</sup>
34. As of April 2, 2018, Clerk Okstein understood, correctly, that Judge Heffernan’s policy as First Justice was that, if an ICE officer (or other law enforcement officer) was present in the court to take custody of a litigant, Judge Heffernan would ask that the officer wait outside the courtroom, and take custody outside of the courtroom, so as not to interfere with the business of the court or intimidate persons present.<sup>97, 98</sup>
35. Sometime after the first call of Commonwealth v. Medina-Perez, but before the final afternoon call, Clerk Okstein brought to Judge Joseph’s attention that an ICE officer was present in the courtroom with an immigration detainer for Mr. Medina-Perez. Clerk Okstein advised Judge Joseph of Judge Heffernan’s policy that ICE officers be directed to wait outside the courtroom.<sup>99</sup>
36. Judge Joseph was initially concerned about excluding the ICE officer from the courtroom, because she knew that courtroom proceedings are open to the public.<sup>100</sup> Judge Joseph was aware of the existence of a Trial Court policy regarding ICE, but she could not find the policy.<sup>101</sup> Judge Joseph contacted an attorney at the AODC about Judge Heffernan’s policy.<sup>102</sup> The AODC attorney read the Lunn policy to her. After that conversation, Judge Joseph told Clerk Okstein to ask the ICE officer to step outside of the courtroom, and that she would follow Judge Heffernan’s policy.<sup>103</sup> Clerk Okstein told her that he would do so.<sup>104</sup>
37. ICE Officer Richard Simmons (“ICE Officer Simmons”) was present at Newton District Court with a civil immigration detainer that authorized him to take custody of

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<sup>91</sup> Appendix G, pp. APP039-APP040.

<sup>92</sup> Appendix G, p. APP040.

<sup>93</sup> Tr. Vol. II, p. 345:21-25 and p. 346:1-3.

<sup>94</sup> Tr. Vol. II, p. 334:18-19.

<sup>95</sup> Tr. Vol. II, p. 334:20-21.

<sup>96</sup> Tr. Vol. II, p. 334:22-25.

<sup>97</sup> Tr. Vol. II, p. 344:18-25 and p. 345:1-4.

<sup>98</sup> Tr. Vol. III, p. 467:3-25 and p. 468:1-4.

<sup>99</sup> Tr. Vol. II, p. 346:4-25 and p. 347:1.

<sup>100</sup> Tr. Vol. IV, p. 670:24-25 and p. 671:1-11.

<sup>101</sup> Tr. Vol. IV, p. 671:12-15.

<sup>102</sup> Tr. Vol. IV, p. 671:16-25 and p. 672:1-11.

<sup>103</sup> Tr. Vol. IV, p. 672:12-22.

<sup>104</sup> Tr. Vol. IV, p. 672:23-24.

- Mr. Medina-Perez if he were released from Massachusetts state custody.<sup>105</sup> The detainer stated that ICE had probable cause to believe that Mr. Medina-Perez was a deportable alien based on a final order of removal previously issued against him.<sup>106</sup> ICE Officer Simmons also had a warrant of removal for the defendant, stating that Mr. Medina-Perez 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 Mr. Medina-Perez for removal from the United States.<sup>107</sup> ICE Officer Simmons was in the courtroom during the morning.<sup>108</sup> ICE Officer Domenico Federico (“ICE Officer Federico”) arrived in the afternoon and met ICE Officer Simmons in main lobby of the courthouse.<sup>109</sup>
38. Clerk Okstein spoke with ICE Officer Simmons and advised him that the preference of the court was that he wait outside the courtroom, and that, if he intended to take custody of Mr. Medina-Perez, that he do so outside of the courtroom.<sup>110, 111</sup> ICE Officer Simmons then asked Clerk Okstein if he could wait in the courthouse front lobby, and Clerk Okstein advised him that he could.<sup>112</sup> ICE Officer Simmons also asked Clerk Okstein where Mr. Medina-Perez would exit if he were released from state custody, and Clerk Okstein pointed to the front of the building, “right in the hallway,” as he testified.<sup>113</sup> Clerk Okstein advised ICE Officer Simmons that if Mr. Medina-Perez were released from state custody, he would be released either through the courtroom or brought back down to lockup and released into the courthouse, exiting the courthouse by coming up a set of stairs into the lobby and then leaving the building through the main courthouse exit.<sup>114</sup>
39. ADA Jurgens also spoke with the ICE officer, who showed her his paperwork for Mr. Medina-Perez.<sup>115</sup> Later, ADA Jurgens saw the ICE officer waiting outside the courtroom in the front lobby, and she understood that he was waiting there because Judge Joseph had asked someone to ask him to wait outside the courtroom.<sup>116</sup>
40. During a recess in the First Session on April 2, 2018, Mr. Medina-Perez’s friends who were present at the courthouse approached Attorney David Jellinek (“Attorney Jellinek”) and asked him to represent Mr. Medina-Perez instead of Attorney Bostwick.<sup>117</sup>

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<sup>105</sup> Appendix Q, pp. APP300-APP301.

<sup>106</sup> Appendix F, p. APP023.

<sup>107</sup> Appendix Q, p. APP301.

<sup>108</sup> Appendix O, p. APP283.

<sup>109</sup> Appendix P, p. APP287.

<sup>110</sup> Tr. Vol. II, p. 347:2-20.

<sup>111</sup> Appendix O, p. APP284.

<sup>112</sup> Tr. Vol. II, p. 347:21-24.

<sup>113</sup> Tr. Vol. II, p. 347:25 and p. 348:1-3.

<sup>114</sup> Appendix O, p. APP284.

<sup>115</sup> Tr. Vol. II, p. 221:14-18.

<sup>116</sup> Tr. Vol. II, p. 222:3-19.

<sup>117</sup> Tr. Vol. I, p. 55:10-14.

41. Attorney Jellinek was at the Newton District Court on April 2, 2018, for another purpose; however, at the time of the public hearing on this matter, Attorney Jellinek could no longer recall the purpose for which he had come to court that day.<sup>118,119</sup>
42. Attorney Jellinek advised Mr. Medina-Perez's friends that Attorney Bostwick was a capable attorney, but when they persisted, Attorney Jellinek agreed to represent Mr. Medina-Perez and accepted a \$1,000 fee for his services for that day.<sup>120</sup> Such substitution of retained counsel for appointed counsel is a frequent occurrence in Massachusetts court sessions.<sup>121, 122</sup>
43. During the public hearing, Attorney Jellinek testified that he believed that the \$1,000 fee he accepted was paid to him by check.<sup>123</sup> During the federal investigation into Mr. Medina-Perez's avoidance of ICE, federal prosecutors never asked Attorney Jellinek for any bank records.<sup>124</sup> In April of 2025, two months prior to his testimony during the public hearing, Special Counsel asked Attorney Jellinek to try to obtain a copy of his April 2018 bank statement, and Attorney Jellinek made a request to his bank at that time.<sup>125</sup> As of the date of Attorney Jellinek's testimony on June 9, 2025, he had not received the requested statement from his bank.<sup>126</sup>
44. Attorney Jellinek graduated from Boston College Law School in 2000 and has practiced law continuously since that time.<sup>127</sup> After working for a year as a clerk for the Arizona State Court of Appeals, Attorney Jellinek returned to practice in Massachusetts as a bar advocate representing criminal defendants for the Committee for Public Counsel Services ("CPCS").<sup>128</sup> In 2006, Attorney Jellinek took a position with the legal affairs office of the Boston Police Department.<sup>129</sup> In 2008, Attorney Jellinek started his own private law firm, but approximately seventy-five percent of his practice continued to be bar advocate work.<sup>130</sup> Attorney Jellinek continued to regularly perform bar advocate work as of the date of his testimony.<sup>131</sup>
45. As of April 2, 2018, Attorney Jellinek continued to serve as a bar advocate in the Newton District Court and regularly had duty days in that court during which he would be appointed to represent criminal defendants.<sup>132</sup> Attorney Jellinek also took

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<sup>118</sup> Tr. Vol. I, p. 54:9-25 and p. 55:1-2.

<sup>119</sup> Tr. Vol. I, p. 182:9-19.

<sup>120</sup> Tr. Vol. I, p. 56:3-15.

<sup>121</sup> Tr. Vol. V, p. 837:6-14.

<sup>122</sup> Appendix H, p. APP047.

<sup>123</sup> Tr. Vol. I, p. 141:8-11.

<sup>124</sup> Tr. Vol. I, p. 141:12-17.

<sup>125</sup> Tr. Vol. I, p. 144:2-9.

<sup>126</sup> Tr. Vol. I, p. 144:10-12.

<sup>127</sup> Tr. Vol. I, p. 45:14-15.

<sup>128</sup> Tr. Vol. I, p. 45:15-18.

<sup>129</sup> Tr. Vol. I, p. 45:18-20.

<sup>130</sup> Tr. Vol. I, p. 45:20-25 and p. 46:1-7.

<sup>131</sup> Tr. Vol. I, p. 46:8-9.

<sup>132</sup> Tr. Vol. I, p.46:16-23.

- private criminal cases in the Newton District Court and in other courts, and served as a member of the Newton District Court's Drug Court team.<sup>133</sup>
46. As of April 2, 2018, the Drug Court session in the Newton District Court was run by Judge Heffernan most of the time.<sup>134</sup> The Drug Court session was for criminal defendants who had a lot of difficulty and needed extra support.<sup>135</sup> Attorney Jellinek viewed it as analogous to an extra level of probation.<sup>136</sup> The Drug Court session took place in Newton District Court most Tuesdays in the afternoon from 2:00 p.m. to 4:00 p.m.<sup>137</sup>
47. Because of the extent of his work in the Newton District Court, Attorney Jellinek became familiar with Judge Heffernan and the courthouse staff.<sup>138</sup>
48. After agreeing to represent Mr. Medina-Perez on April 2, 2018, Attorney Jellinek began to familiarize himself with the matters that brought Mr. Medina-Perez to the Newton District Court that day.<sup>139</sup> He learned that Mr. Medina-Perez was charged with being a fugitive from justice based on a warrant out of Pennsylvania and with misdemeanor drug possession charges.<sup>140</sup> Attorney Jellinek also learned that an ICE officer was present and had an immigration detainer for Mr. Medina-Perez.<sup>141</sup>
49. Attorney Jellinek reviewed the evidence in support of the fugitive from justice charge against Mr. Medina-Perez and determined that, while the Pennsylvania warrant had been verified by fingerprints, the photograph and information of the individual sought on the Pennsylvania warrant did not match what he had observed of Mr. Medina-Perez that day.<sup>142</sup>
50. Because the Pennsylvania warrant appeared to identify Mr. Medina-Perez incorrectly as the person being sought, Attorney Jellinek then undertook to investigate whether the ICE detainer also incorrectly sought Mr. Medina-Perez.<sup>143</sup>
51. Attorney Jellinek approached the ICE officer in the courtroom to discuss the basis for ICE's determination that Mr. Medina-Perez was the person named in the detainer.<sup>144</sup> Attorney Jellinek tried to persuade the ICE officer that he was seeking the wrong person.<sup>145</sup> The ICE officer showed Attorney Jellinek a video on his cell phone that he

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<sup>133</sup> Tr. Vol. I, p.46:23-25 and p. 47:1.

<sup>134</sup> Tr. Vol. I, p. 47:2-4.

<sup>135</sup> Tr. Vol. I, p. 47:4-6.

<sup>136</sup> Tr. Vol. I, p. 47:6-7.

<sup>137</sup> Tr. Vol. I, p. 47:7-10.

<sup>138</sup> Tr. Vol. I, p. 47:24-25 and p. 48:1-6.

<sup>139</sup> Tr. Vol. I, p. 56:16-20.

<sup>140</sup> Tr. Vol. I, p. 56:23-25 and p. 57:1-9.

<sup>141</sup> Tr. Vol. I, p. 57:11-14.

<sup>142</sup> Tr. Vol. I, p. 57:22-25 and p. 58:1.

<sup>143</sup> Tr. Vol. I, p. 58:1-10.

<sup>144</sup> Tr. Vol. I, p. 58:10-14.

<sup>145</sup> Tr. Vol. I, p. 58:15-16.

- believed confirmed that Mr. Medina-Perez was the person ICE was seeking.<sup>146</sup> Neither was able to persuade the other to change his mind regarding whether the detainer accurately sought custody of Mr. Medina-Perez.<sup>147</sup>
52. Attorney Jellinek also spoke with ADA Jurgens and learned that she had determined that the Pennsylvania warrant was not for Mr. Medina-Perez.<sup>148</sup> ADA Jurgens advised Attorney Jellinek that she intended to move to dismiss the fugitive from justice charge.<sup>149</sup> ADA Jurgens also advised Attorney Jellinek that, as she had previously told Judge Joseph, she did not intend to request bail on the misdemeanor drug charges against Mr. Medina-Perez.<sup>150</sup>
53. Attorney Jellinek reviewed the Interstate Identification Index report (“Triple I”) for Mr. Medina-Perez, and the information he reviewed on the Triple I crystallized Attorney Jellinek’s belief that the ICE detainer incorrectly sought Mr. Medina-Perez.<sup>151</sup> The Triple I showed that there were twelve or thirteen individuals all tied to the same FBI number and set of fingerprints, with different physical characteristics.<sup>152</sup> The people who approached Attorney Jellinek and hired him that day showed Attorney Jellinek a birth certificate with a raised seal on it, which indicated that Mr. Medina-Perez had been born in Puerto Rico.<sup>153</sup> Attorney Jellinek became increasingly concerned because this evidence caused him to believe that ICE was incorrectly seeking Mr. Medina-Perez, and Attorney Jellinek knew that it was hard for a person to get out of ICE custody once in it.<sup>154</sup>
54. During the court’s lunch recess, Attorney Jellinek spoke with Court Officer Wesley MacGregor (“Court Officer MacGregor”) in the First Session courtroom about his concerns related to Mr. Medina-Perez and the ICE detainer.<sup>155</sup> No one else was present when this conversation took place.<sup>156</sup> Attorney Jellinek told Court Officer MacGregor that he was concerned that ICE was seeking the wrong person, and Court Officer MacGregor asked if there was anything he could do to help.<sup>157</sup> Attorney Jellinek responded that, if Mr. Medina-Perez left the courthouse through the front, ICE was going to detain him, and there was nothing that could be done about that.<sup>158</sup>
55. Court Officer MacGregor said that he was allowed to let Mr. Medina-Perez leave through the basement of the courthouse if he had permission to do so.<sup>159</sup> Court

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<sup>146</sup> Tr. Vol. I, p. 58:17-20.

<sup>147</sup> Tr. Vol. I, p. 58:21-24.

<sup>148</sup> Tr. Vol. I, p. 59:7-10.

<sup>149</sup> Tr. Vol. I, p. 59:11-16.

<sup>150</sup> Tr. Vol. I, p. 59:18-22.

<sup>151</sup> Tr. Vol. I, p. 61:7-11.

<sup>152</sup> Tr. Vol. I, p. 61:12-21.

<sup>153</sup> Tr. Vol. I, p. 61:22-25 and p. 62:1.

<sup>154</sup> Tr. Vol. I, p. 62:1-6.

<sup>155</sup> Tr. Vol. I, p. 62:7-17.

<sup>156</sup> Tr. Vol. I, p. 63:2-5.

<sup>157</sup> Tr. Vol. I, p. 63:8-11.

<sup>158</sup> Tr. Vol. I, p. 63:11-13.

<sup>159</sup> Tr. Vol. I, p. 63:13-15.

Officer MacGregor explained to Attorney Jellinek that, if Attorney Jellinek could get Mr. Medina-Perez back down to the lockup area after he was released from state custody, and if Judge Joseph gave permission, he would be able to let Mr. Medina-Perez exit through the sallyport of the courthouse.<sup>160</sup>

56. As of April 2, 2018, the sallyport was a fenced-in area directly adjacent to the courthouse, accessible through a secure door from the lockup, with an exit gate leading into a parking lot between the Newton District Court and the Newton Police Department.<sup>161</sup> The fenced-in area was for vans that were transporting people in custody to pull into.<sup>162</sup> Only one vehicle could fit into the sallyport area at a time.<sup>163</sup>

57. A sallyport is typically secured to keep the public from gaining access to the area or to prevent a detainee from escaping while being transported to or from the courthouse.<sup>164</sup>

58. As of April 2, 2018, the exit gate for the sallyport at the Newton District Court was a fence on an electronic runner that locked up.<sup>165</sup> Because the exit gate frequently jammed, it was typically left open.<sup>166, 167</sup>

59. As of April 2, 2018, the usual practice in the Newton District Court was to release a criminal defendant who was in custody out of the prisoner dock in the courtroom and into the courtroom gallery, after the judge had ordered that defendant's release from state custody.<sup>168, 169, 170</sup>

60. Due to the small size of Newton District Court, Court Officers typically knew whether a defendant would be released from custody before bringing the person from the lockup into the courtroom.<sup>171</sup>

61. As of April 2, 2018, a defendant being released from custody would sometimes not exit the prisoner dock into the courtroom gallery, and would instead return downstairs to the lockup area, if he or she needed to retrieve property or needed to check in with the Probation Department, which was located in the basement of the courthouse.<sup>172</sup> However, at other times, if a defendant being released from custody had property downstairs but did not need to check in with the Probation Department, a court officer

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<sup>160</sup> Tr. Vol. I, p. 63:16-18.

<sup>161</sup> Tr. Vol. III, p. 409:21-25 and p. 410:1-5.

<sup>162</sup> Tr. Vol. III, p. 410:6-10.

<sup>163</sup> Tr. Vol. III, p. 414:23-25 and p. 415:1-6.

<sup>164</sup> Tr. Vol. III, p. 410:11-17.

<sup>165</sup> Tr. Vol. III, p. 410:17-19.

<sup>166</sup> Tr. Vol. III, p. 410:19-22.

<sup>167</sup> Tr. Vol. III, p. 415:14-24.

<sup>168</sup> Tr. Vol. I, p. 53:5-11.

<sup>169</sup> Tr. Vol. II, p. 219:10-17.

<sup>170</sup> Tr. Vol. III, p. 416:14-25 and p. 417:1-17.

<sup>171</sup> Tr. Vol. III, p. 421:3-15.

<sup>172</sup> Tr. Vol. I, p. 53:11-19.

- would bring the property upstairs for the defendant, and the defendant would then exit the prisoner dock into the courtroom.<sup>173</sup>
62. Chief Court Officer Paul Scott Noe (“Chief Court Officer Noe”) was promoted from Court Officer to Chief Court Officer in 2015, and as of April 2, 2018, he was responsible for supervising Court Officers in the Concord, Waltham, and Newton District Courts.<sup>174</sup>
63. As of April 2, 2018, Chief Court Officer Noe was not aware of anyone ever being released from custody in the Newton District Court through the sallyport.<sup>175</sup> In Chief Court Officer Noe’s view, it was not appropriate to release persons from custody through the sallyport because such persons would be released directly into the parking lot for the Newton Police Department.<sup>176</sup>
64. On April 2, 2018, Chief Court Officer Noe first arrived at the Newton District Court sometime in the afternoon.<sup>177</sup> A short time after his arrival, Chief Court Officer Noe introduced himself to the ICE officer waiting in the courthouse lobby and told the ICE officer that Mr. Medina-Perez was going to be released and should be coming into the front lobby of the courthouse soon.<sup>178</sup> Chief Court Officer Noe advised the ICE officer that he could either go to the sallyport to pick up Mr. Medina-Perez or wait in the courthouse lobby.<sup>179</sup> Chief Court Officer Noe also advised the ICE officer that there was already a van in the sallyport at that time, so the ICE officer would not be able to park his vehicle there.<sup>180</sup> The ICE officer told Chief Court Officer Noe that he would wait in the lobby as long as Mr. Medina-Perez would be exiting through the lobby.<sup>181</sup> Chief Court Officer Noe then left the ICE officer and went to his office.<sup>182</sup>
65. As of April 2, 2018, there was no written policy for how to release people from custody in the Newton District Court.<sup>183</sup>
66. However, as of April 2, 2018, Attorney Jellinek had previously seen other people released from custody through the sallyport of the Newton District Court, so he believed that Court Officer MacGregor’s suggestion was possible.<sup>184</sup>
67. Attorney Jellinek knew that, as of April 2, 2018, ICE was generally asked to wait outside the First Session courtroom in the front lobby of the courthouse, and he knew

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<sup>173</sup> Tr. Vol. II, p. 220:9-16.

<sup>174</sup> Tr. Vol. III, p. 400:1-5.

<sup>175</sup> Tr. Vol. III, p. 417:25 and p. 418:1-3.

<sup>176</sup> Tr. Vol III, p. 418:8-11.

<sup>177</sup> Tr. Vol. III, p. 420:2-5.

<sup>178</sup> Tr. Vol. III, p. 422:23-25 and p. 423:1-2.

<sup>179</sup> Tr. Vol. III, p. 423:2-5.

<sup>180</sup> Tr. Vol. III, p. 423:5-15.

<sup>181</sup> Tr. Vol. III, p. 423:16-19.

<sup>182</sup> Tr. Vol. III, p. 424:8.

<sup>183</sup> Tr. Vol III, p. 418:20-24.

<sup>184</sup> Tr. Vol. I, p. 104:9-12.

- that, beginning during the lunch break, the ICE officer was waiting in the front lobby.<sup>185</sup> On that basis, Attorney Jellinek was hopeful that Mr. Medina-Perez would be able to avoid ICE if Attorney Jellinek could obtain Judge Joseph's permission for Mr. Medina-Perez to return to the lockup after she released him from state custody and her permission for him to be released from the back of the courthouse through the sallyport.<sup>186, 187</sup>
68. At some point prior to the final call of the Medina-Perez matter, the ICE officer asked Clerk Okstein if Mr. Medina-Perez was going to be released and requested that Clerk Okstein ask Judge Joseph if he could go to the lockup area to take custody of him.<sup>188</sup> Clerk Okstein told the ICE officer that he would ask Judge Joseph.<sup>189</sup>
69. The final hearing before Judge Joseph in Commonwealth v. Medina-Perez, on April 2, 2018, began at approximately 2:48 p.m.<sup>190</sup>
70. Attorney Bostwick returned after the lunch break and learned that Attorney Jellinek had been retained to represent Mr. Medina-Perez.<sup>191</sup> In Attorney Bostwick's experience, it was not unusual for a defendant to retain a private attorney to replace a court-appointed attorney.<sup>192</sup> Attorney Bostwick still had duties as the attorney for the day and remained in the courtroom, sitting inside the bar enclosure, in a position fully visible from the judge's bench, during the final call of the Medina-Perez matter.<sup>193, 194</sup>
71. When the final hearing began, Attorney Jellinek requested a sidebar conference due to the complexity of the issues in the case.<sup>195</sup> Judge Joseph granted that request and conducted a recorded sidebar conference with Attorney Jellinek and ADA Jurgens.<sup>196</sup> The sidebar conference began before Mr. Medina-Perez was brought into the courtroom.<sup>197</sup> Interpreter Mendoza was present nearby.<sup>198</sup>
72. At the outset of the recorded sidebar conference, Judge Joseph said, "It's my understanding that ICE is here."<sup>199</sup> ADA Jurgens then advised Judge Joseph that she no longer believed that Mr. Medina-Perez was the same person subject to the Pennsylvania warrant, that she planned to make a motion to dismiss the fugitive from

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<sup>185</sup> Tr. Vol. I, p. 64:2-17.

<sup>186</sup> Tr. Vol. I, p. 64:24-25 and p. 65:1-9.

<sup>187</sup> Tr. Vol. I, p. 63:22-25 and p. 64:1-2.

<sup>188</sup> Tr. Vol. II, p. 348:7-13.

<sup>189</sup> Tr. Vol. II, p. 348:14-15.

<sup>190</sup> Appendix G, p. APP040.

<sup>191</sup> Tr. Vol. V, p. 830:5-12.

<sup>192</sup> Tr. Vol. V, p. 837:6-14.

<sup>193</sup> Tr. Vol. V, p. 830:21-25, p. 831:1-25, and p. 832:1-2.

<sup>194</sup> Tr. Vol. V, p. 837:15-19.

<sup>195</sup> Tr. Vol. I, p. 67:4-11.

<sup>196</sup> Appendix G, p. APP040.

<sup>197</sup> Appendix G, p. APP040.

<sup>198</sup> Tr. Vol. II, p. 252:12-25 and p. 253:1-8.

<sup>199</sup> Appendix G, p. APP040.

- justice charge, and that she would not seek bail on the remaining controlled substance charges.<sup>200</sup>
73. The sidebar conference included discussion of whether Mr. Medina-Perez was the person who was the subject of the ICE detainer, and the presence of the ICE officer who, at that time, was still waiting in the front area of the courthouse to take Mr. Medina-Perez into custody if he was released from state custody.<sup>201</sup> Attorney Jellinek 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.”<sup>202</sup>
74. After hearing this information, Judge Joseph wanted to help Attorney Jellinek with his concern relating to ICE.<sup>203</sup> Judge Joseph said, “The other alternative is if you need more time to figure this out – hold until tomorrow.”<sup>204</sup> Attorney Jellinek explained that “if he’s bailed out . . . ICE will pick him up.”<sup>205</sup> Judge Joseph responded, “ICE is gonna get him?” . . . What if we detain him?”<sup>206</sup>
75. During the public hearing in this matter, Judge Joseph’s testimony included a claim that, despite ADA Jurgens’s belief that the Pennsylvania warrant was not for Mr. Medina-Perez and ADA Jurgens’ stated intention to move to dismiss the fugitive from justice charge, Judge Joseph thought it was appropriate to detain Mr. Medina-Perez without bail to give Attorney Jellinek more time to investigate the validity of the immigration detainer.<sup>207, 208</sup>
76. During the public hearing in this matter, Judge Joseph claimed that she viewed detaining Mr. Medina-Perez overnight in jail as analogous to holding him in custody at the courthouse while his case was suspended for a further call.<sup>209</sup>
77. During the public hearing in this matter, Judge Joseph’s testimony included a claim that she believed it was appropriate for her to order that Mr. Medina-Perez be detained in jail overnight on the fugitive from justice charge, despite being told that he was not the person being sought by the underlying warrant, if Attorney Jellinek agreed to that result.<sup>210, 211</sup>

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<sup>200</sup> Appendix G, pp. APP041-APP042.

<sup>201</sup> Appendix G, p. APP041.

<sup>202</sup> Appendix G, p. APP041.

<sup>203</sup> Tr. Vol. IV, p. 678:4-11.

<sup>204</sup> Appendix G, p. APP041.

<sup>205</sup> Appendix G, p. APP041.

<sup>206</sup> Appendix G, p. APP041.

<sup>207</sup> Tr. Vol. IV, p. 685:6-25, p. 686:1-25, p. 687:1-25, and p. 688:1-7.

<sup>208</sup> Tr. Vol. IV, p. 690:21-23.

<sup>209</sup> Tr. Vol. IV, p. 758:20-25 and p. 759:1-9.

<sup>210</sup> Tr. Vol. IV, p. 692:8-23.

<sup>211</sup> Tr. Vol. IV, p. 775:6-25, p. 776:1-25, and p. 777:1.

78. Attorney Jellinek did not want Mr. Medina-Perez to be detained, and he was not seeking further time to investigate Mr. Medina-Perez's identity.<sup>212</sup> However, Judge Joseph's responses to Attorney Jellinek's concerns caused Attorney Jellinek to form a reasonable belief that Judge Joseph shared his concern that ICE would arrest the wrong person and that she was trying to help him find a solution to that problem.<sup>213</sup>
79. During the public hearing in this matter, Judge Joseph testified that she did feel that she had a responsibility to the defendant, the attorneys, the district attorney's office, and ICE to determine who Mr. Medina-Perez was.<sup>214</sup>
80. ADA Jurgens' understanding of the conversation about ICE to this point was that Judge Joseph and Attorney Jellinek were discussing options for Mr. Medina-Perez not to be taken into custody by ICE that day.<sup>215</sup> ADA Jurgens felt that the topic of ICE was outside of her role.<sup>216</sup> ADA Jurgens did not believe that Judge Joseph and Attorney Jellinek were having a proper conversation, and the conversation made ADA Jurgens feel uncomfortable.<sup>217</sup>
81. In response to Judge Joseph's suggestion that she order Mr. Medina-Perez detained, Attorney Jellinek asked, "Are we on the record?"<sup>218</sup> Judge Joseph then said to Clerk Okstein, "Can we go off the record for a moment?"<sup>219</sup> Clerk Okstein, who had been attending to other tasks, said, "What's that?"<sup>220</sup> Judge Joseph repeated, "Are we on the record?"<sup>221</sup> Attorney Jellinek said, "Can we go off the record for a minute." Clerk Okstein then turned off the courtroom recording system.<sup>222</sup>
82. Attorney Jellinek asked to go off the record at this point because he knew that, during the next phase of his conversation with Judge Joseph, he was going to ask her for something that was on the edge of what was acceptable or appropriate.<sup>223</sup> Attorney Jellinek preferred to make his request off the record because he was trying to protect both himself and Judge Joseph.<sup>224</sup> However, Attorney Jellinek planned to ask Judge Joseph for the same thing whether she granted his request to go off the record or not.<sup>225</sup>

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<sup>212</sup> Tr. Vol. I, p. 159:11-18.

<sup>213</sup> Tr. Vol. I, p. 71:18-25.

<sup>214</sup> Tr. Vol. IV, p. 695:2-7.

<sup>215</sup> Tr. Vol. II, p. 231:6-24.

<sup>216</sup> Tr. Vol. II, p. 232:23.

<sup>217</sup> Tr. Vol. II, p. 232:19-25 and p. 233:1-5.

<sup>218</sup> Appendix G, p. APP041.

<sup>219</sup> Appendix G, p. APP041.

<sup>220</sup> Appendix G, p. APP041.

<sup>221</sup> Appendix G, p. APP041.

<sup>222</sup> Appendix G, p. APP041.

<sup>223</sup> Tr. Vol. I, p. 72:14-20.

<sup>224</sup> Tr. Vol. I, p. 72:21-25.

<sup>225</sup> Tr. Vol. I, p. 72:25 and p. 73:1-8.

83. Judge Joseph’s grant of his request to go off the record added to Attorney Jellinek’s reasonable belief that Judge Joseph might be sympathetic to what he planned to say to her.<sup>226</sup>
84. Judge Joseph did not ask Attorney Jellinek for any explanation for his request to confer off the record and did not consider any reason or justification for doing so.<sup>227</sup> During her sworn interview with Special Counsel on June 6, 2023, Judge Joseph claimed that she thought Attorney Jellinek might have intended to tell her why Attorney Bostwick had not come back after the lunch recess, despite the fact that Attorney Bostwick was present in the courtroom at the time, sitting within the bar enclosure, and within Judge Joseph’s field of vision from the bench.<sup>228, 229</sup>
85. In violation of District Court Special Rule 211, Judge Joseph then conducted an unrecorded sidebar conference with counsel regarding the case, lasting approximately fifty-two seconds.<sup>230, 231, 232</sup>
86. Judge Joseph has no specific recollection of ever observing a judge go off the record during an arraignment.<sup>233, 234</sup>
87. As of the time of the April 2, 2018 proceedings, Attorney Jellinek’s experience was that it had been “a while” since he had been a participant in an off-the-record discussion with a judge.<sup>235</sup>
88. As of April 2, 2018, ADA Jurgens had never before experienced a judge going off the record in the course of a matter, and ADA Jurgens was concerned about it.<sup>236</sup> ADA Jurgens had been practicing law since 2015, and nearly all of her experience at that point was as an Assistant District Attorney.<sup>237</sup>
89. In Clerk Okstein’s experience in Newton District Court as of April 2, 2018, he had never before witnessed a judge go off the record to discuss the substance of a case.<sup>238</sup>
90. During her twelve years as a judge, Judge Heffernan’s practice has been that everything is recorded.<sup>239</sup> Judge Heffernan has never turned off the courtroom

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<sup>226</sup> Tr. Vol. I, p. 73:9-14.

<sup>227</sup> Tr. Vol. IV, p. 680:2-19.

<sup>228</sup> Tr. Vol. IV, p. 680:20-25 and p. 681:1-7.

<sup>229</sup> Tr. Vol. V, p. 831:23-25 and p. 832:1-2.

<sup>230</sup> Appendix G, p. APP041.

<sup>231</sup> Appendix K.

<sup>232</sup> Tr. Vol. IV, p. 682:1-7.

<sup>233</sup> Tr. Vol. IV, p. 681:17-25.

<sup>234</sup> Appendix N, p. APP179.

<sup>235</sup> Tr. Vol. I, p. 81:13-19.

<sup>236</sup> Tr. Vol. II, p. 232:10-18.

<sup>237</sup> Tr. Vol. II, p. 213:15-25.

<sup>238</sup> Tr. Vol. II, p. 351:19-25.

<sup>239</sup> Tr. Vol. III, p. 461:6-10.

- recording or directed the clerk to do so.<sup>240</sup> Judge Heffernan is not aware of any legitimate reason for a judge to turn off a courtroom recording.<sup>241</sup>
91. Chief Justice of the District Court Stacey Fortes (“Chief Justice Fortes”)<sup>242</sup> has served as a judge for over eighteen years and has never gone off the record in the courtroom.<sup>243</sup> Chief Justice Fortes’ view is that there is no legitimate reason for a judge to go off the record in the courtroom.<sup>244</sup>
92. In former Chief Justice Dawley’s experience, the only appropriate times for a judge to go off the record were when someone, usually a lawyer, wanted to speak with him about a personal, non-case related matter (such as the attorney’s need for accommodation for a health condition); or counsel accompanied by law enforcement wanted to speak with him about a situation involving a defendant serving as a confidential informant.<sup>245</sup>
93. Retired Judge Bonnie H. MacLeod (“Judge MacLeod”) was appointed a District Court Judge in 1989.<sup>246</sup> Judge MacLeod was then appointed as a Superior Court Judge in 2002.<sup>247</sup> Judge MacLeod retired as a judge in June of 2016.<sup>248</sup> While serving as a Superior Court Judge, Judge MacLeod did not go off the record in criminal cases when discussing the substance of a case with the parties.<sup>249</sup> Judge MacLeod made exceptions to protect the safety of a confidential informant<sup>250</sup> and to discuss health or similar matters.<sup>251</sup> In Judge MacLeod’s experience, if she granted an attorney’s request to speak off the record but then determined that the subject matter was not appropriate for an off-the-record discussion, she would immediately go back on the record and put whatever the attorney said on the record.<sup>252</sup>
94. Retired Judge Carol Ball (“Judge Ball”) was appointed to the Superior Court in 1996.<sup>253</sup> Before her judicial appointment, Judge Ball had an active law practice, including appearances in the District Court, where she observed some judges conducting conferences regarding cases off the record.<sup>254</sup> Judge Ball has not

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<sup>240</sup> Tr. Vol. III, p. 463:8-11.

<sup>241</sup> Tr. Vol. III, p. 463:12-14.

<sup>242</sup> At the time of this incident, Chief Justice Fortes served as a Regional Administrative Justice. Since the time of this incident, Chief Justice Fortes has been appointed as the Chief Justice of the District Court. For purposes of clarity, this document will refer to her as Chief Justice Fortes.

<sup>243</sup> Tr. Vol. III, p. 533:14-19.

<sup>244</sup> Tr. Vol. III, p. 533:20-25.

<sup>245</sup> Tr. Vol. III, p. 582:5-25 and p. 583:1-3.

<sup>246</sup> Tr. Vol. V, p. 786:25 and p. 787:1.

<sup>247</sup> Tr. Vol. V., p. 790:6-7.

<sup>248</sup> Tr. Vol. V, p. 786:18-21.

<sup>249</sup> Tr. Vol. V, p. 811:21-25.

<sup>250</sup> Tr. Vol. V, p. 794:11-25

<sup>251</sup> Tr. Vol. V, p. 795:24-25 and p. 796:1-14.

<sup>252</sup> Tr. Vol. V, p. 797:13-23.

<sup>253</sup> Tr. Vol. V, p. 840:22-25.

<sup>254</sup> Tr. Vol. V, p. 841:5-11.

- appeared in the District Court since 1995.<sup>255</sup> While on the Superior Court, Judge Ball made a regular practice of having conferences with attorneys off-the-record.<sup>256</sup> Judge Ball considered such conferences to be a productive method for discussing pleas and resolving cases.<sup>257</sup> Judge Ball retired in May 2015, before the Supreme Judicial Court revised Rule 12(b) of the Massachusetts Rules of Criminal Procedure to require that all plea conferences be recorded.<sup>258</sup>
95. Retired Judge Severin B. Singleton, III (“Judge Singleton”) was appointed a District Court Judge in 1989, and he retired from that position in 2014.<sup>259</sup> During his time as a judge, Judge Singleton was aware that other judges would occasionally go off the record. Judge Singleton frowned upon going off the record, and he would do so only after the requesting party provided him with an explanation for the request, so that he could determine that it was appropriate to go off the record.<sup>260</sup>
96. During the unrecorded sidebar conference in the Medina-Perez matter, Attorney Jellinek told Judge Joseph that he was very concerned that ICE was seeking the wrong individual; that he had spoken with the court officer; that the court officers were allowed to let Mr. Medina-Perez out through the sallyport of the courthouse, if Attorney Jellinek could get him downstairs; and that ICE was waiting for Mr. Medina-Perez in the front lobby, so leaving through the sallyport might be a way for Mr. Medina-Perez to avoid being taken into custody by ICE.<sup>261</sup> Judge Joseph responded by stating words to the effect of, “That’s what we’ll do,” or “We’ll proceed that way.”<sup>262</sup>
97. During the unrecorded sidebar conference, Judge Joseph and Attorney Jellinek specifically discussed that ICE was waiting in the front courthouse lobby at the time and that allowing Mr. Medina-Perez to go downstairs to the lockup after his release from state custody would, therefore, allow him to avoid being taken into custody by ICE.<sup>263</sup> ADA Jurgens recalls that, at some point during the sidebar conference, Judge Joseph and Attorney Jellinek specifically discussed the fact that ICE was waiting in the front lobby of the courthouse at the time.<sup>264</sup>
98. In Attorney Jellinek’s view, Judge Joseph needed to grant Attorney Jellinek permission to return to the lockup area with Mr. Medina-Perez after she had ordered Mr. Medina-Perez released from state custody.<sup>265</sup> If Judge Joseph had not granted Attorney Jellinek’s request to return to the lockup with Mr. Medina-Perez, Mr.

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<sup>255</sup> Tr. Vol. V, p. 856:5-7.

<sup>256</sup> Tr. Vol. V, p. 843:20-22.

<sup>257</sup> Tr. Vol. V, p. 842:19-25 and p. 843:1-8.

<sup>258</sup> Tr. Vol. V, p. 843:9-12.

<sup>259</sup> Tr. Vol. V, p. 865:21-25 and p. 866:1-5.

<sup>260</sup> Tr. Vol. V, p. 866:12-25.

<sup>261</sup> Tr. Vol. I, p. 73:15-24.

<sup>262</sup> Tr. Vol. I, p. 73:25 and p. 74:1-3.

<sup>263</sup> Tr. Vol. I, p. 74:7-12.

<sup>264</sup> Tr. Vol. II, p. 236:20-25.

<sup>265</sup> Tr. Vol. I, p. 75:1-10.

Medina-Perez would have instead been released from the prisoner dock and into the First Session courtroom that day, and he would have been taken into custody by ICE.<sup>266, 267</sup>

99. However, Judge Joseph agreed to Attorney Jellinek's plan to return to the lockup with Mr. Medina-Perez and have him released through the sallyport.<sup>268</sup>
100. Judge Joseph's responses to Attorney Jellinek during the unrecorded sidebar conference caused Attorney Jellinek to reasonably believe that he had Judge Joseph's blessing to proceed with the plan to have Mr. Medina-Perez released through the sallyport.<sup>269</sup> Attorney Jellinek would not have proceeded with his plan unless he believed that Judge Joseph had given the plan her blessing.<sup>270</sup>
101. Attorney Jellinek did not believe that ADA Jurgens fully understood what he and Judge Joseph discussed during the unrecorded sidebar conference.<sup>271</sup> Attorney Jellinek believed that, after ADA Jurgens had dealt with the matters that she had responsibility for, she was no longer focused on the portion of his conversation with Judge Joseph that related to ICE.<sup>272</sup>
102. Clerk Okstein was occupied with other tasks and did not pay attention to the conversation at sidebar, except when he was asked to go off the record.<sup>273</sup>
103. ADA Jurgens did not participate in the discussion regarding ICE at sidebar, other than saying that ICE was not her role as a prosecutor.<sup>274</sup> ADA Jurgens was present and listening, but she focused her attention on her responsibilities.
104. From what ADA Jurgens did hear during the unrecorded sidebar conference, she understood that Judge Joseph and Attorney Jellinek continued to discuss ICE and ways to help Mr. Medina-Perez avoid being taken into custody by ICE that day.<sup>275</sup> ADA Jurgens heard Judge Joseph ask Attorney Jellinek a question to the effect of "What can we do?"<sup>276</sup> ADA Jurgens then heard Attorney Jellinek respond to Judge Joseph with an answer to the effect that "It's all set," or that he had a plan to help Mr. Medina-Perez avoid ICE that day, along with a request that Mr. Medina-Perez be brought back downstairs to the lockup after he was released from custody.<sup>277, 278, 279</sup>

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<sup>266</sup> Tr. Vol. I, p. 75:11-16.

<sup>267</sup> Tr. Vol. I, p. 155:7-14.

<sup>268</sup> Tr. Vol. I, p. 73:25 and p. 74:1-12.

<sup>269</sup> Tr. Vol. I, p. 75:17-19.

<sup>270</sup> Tr. Vol. I, p. 75:20-25 and p. 76:1-2.

<sup>271</sup> Tr. Vol. I, p. 88:23-25, p. 89:1, p. 89:21-25, and p. 90:1-5.

<sup>272</sup> Tr. Vol. I, p. 108:24-25 and p. 109:1-4.

<sup>273</sup> Tr. Vol. II, p. 350:4-6, p. 350:13-25, and p. 351:1-6.

<sup>274</sup> Tr. Vol. II, p. 230:4-14.

<sup>275</sup> Tr. Vol. II, p. 233:22-24 and p. 314:1-4.

<sup>276</sup> Tr. Vol. II, p. 236:8-12.

<sup>277</sup> Tr. Vol. II, p. 236:12-13.

<sup>278</sup> Tr. Vol. II, p. 234:23-25 and p. 235:1-5.

<sup>279</sup> Tr. Vol. II, p. 314:21-25; and p. 315:1-19.

What ADA Jurgens heard made her feel uncomfortable.<sup>280</sup> ADA Jurgens found the discussion to be weird or “sketchy.”<sup>281</sup>

105. All the participants in the sidebar conversation knew that ICE was still waiting for Mr. Medina-Perez in the front lobby at that time.<sup>282</sup>
106. During the sidebar conference, Interpreter Mendoza was closer to the discussion than he had been earlier because Mr. Medina-Perez was not yet in the dock; it was the end of the day; and a decision was being made that he expected he would have to convey to Mr. Medina-Perez.<sup>283</sup> Interpreter Mendoza could not hear everything the parties said, but he did hear that a decision was made that Mr. Medina-Perez would be allowed to leave through a back door.<sup>284</sup> Interpreter Mendoza heard that Attorney Jellinek spoke much more than ADA Jurgens.<sup>285</sup> Interpreter Mendoza formed the impression that Judge Joseph was not happy about the presence of ICE officers or their intention to take Mr. Medina-Perez into custody.<sup>286</sup> Interpreter Mendoza also heard Judge Joseph say words to the effect that rather than leave the courtroom the usual way through the front, Mr. Medina-Perez should be let go out of the back of the courthouse.<sup>287</sup>
107. In his experience as of April 2, 2018, Interpreter Mendoza had never seen ICE take custody of someone in the lockup area of the Newton District Court.<sup>288</sup> He had no knowledge of the Lunn policy.<sup>289</sup>
108. The discussion at sidebar, both on and off the record, made clear to Judge Joseph that Attorney Jellinek intended to continue to help Mr. Medina-Perez avoid being taken into custody by ICE that day.<sup>290, 291, 292</sup>
109. It was also clear to Judge Joseph that, in granting Attorney Jellinek’s request to return to the lockup with Mr. Medina-Perez after he was released from state custody, she would assist Attorney Jellinek’s effort to help Mr. Medina-Perez avoid being taken into custody by ICE.<sup>293, 294, 295</sup>

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<sup>280</sup> Tr. Vol. II, p. 236:14-16.

<sup>281</sup> Tr. Vol. II, p. 313:22-25.

<sup>282</sup> Tr. Vol. II, p. 317:3-9.

<sup>283</sup> Tr. Vol. II, p. 284:6-10.

<sup>284</sup> Tr. Vol. II, p. 284:10-14.

<sup>285</sup> Tr. Vol. II, p. 255:7-12.

<sup>286</sup> Tr. Vol. II, p. 255:13-25 and p. 256:1-7.

<sup>287</sup> Tr. Vol. II, p. 256:24-25 and p. 257:1-3.

<sup>288</sup> Tr. Vol. II, p. 279:3-15.

<sup>289</sup> Tr. Vol. II, p. 268:21-25 and p. 269:1-10.

<sup>290</sup> Tr. Vol. IV, p. 684:2-25 and p. 685:1-5.

<sup>291</sup> Tr. Vol. IV, p. 694:7-22.

<sup>292</sup> Tr. Vol. IV, p. 698:8-11.

<sup>293</sup> Tr. Vol. IV, p. 696:4-10.

<sup>294</sup> Tr. Vol. I, p. 73:25 and p. 74:1-3.

<sup>295</sup> Tr. Vol. II, p. 256:15-25 and p. 257:1-3.

110. When the courtroom recorder was turned on again at approximately 2:51 p.m., the hearing in Commonwealth v. Medina-Perez continued in open court.<sup>296</sup> After the unrecorded sidebar conference had ended, there was no subsequent discussion of the previously expressed concerns that ICE would be taking the defendant into custody or that the ICE officer might be incorrectly seeking Mr. Medina-Perez on the detainer.<sup>297</sup>
111. During the public hearing in this matter, Judge Joseph falsely testified that everything that she discussed during the unrecorded sidebar conference had also been discussed on the record either before or after the unrecorded sidebar conference.<sup>298</sup>
112. When the unrecorded sidebar conference ended and the courtroom recorder was turned back on, Attorney Jellinek stated in open court that the lawyers had concluded that the defendant was not the person named in the Pennsylvania warrant.<sup>299</sup> ADA Jurgens confirmed that.<sup>300</sup> ADA Jurgens also stated that she was moving to dismiss the fugitive from justice charge and that she was not seeking bail on the misdemeanor drug charges.<sup>301</sup>
113. Attorney Jellinek 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.”<sup>302</sup> When Attorney Jellinek said this, he meant that he wanted to go back downstairs with Mr. Medina-Perez so that he could have a brief conversation with him and so that Mr. Medina-Perez could be allowed to leave through the sallyport.<sup>303</sup>
114. Judge Joseph responded to Attorney Jellinek’s request to go down to the lockup with Mr. Medina-Perez by stating, “That’s fine. Of course.”<sup>304</sup>
115. After Mr. Medina-Perez was arraigned and advised of certain statutory rights, Clerk Okstein reminded Judge Joseph of the presence of the ICE officer in the courthouse and advised her that the ICE officer wanted to visit the lockup.<sup>305</sup> Judge Joseph responded, “That’s fine. I’m not gonna allow them to come in here. But he’s been released on this.”<sup>306</sup> Despite having already informed Clerk Okstein that the ICE officer could not enter the courtroom and despite knowing that the ICE officer was not present in the courtroom, Judge Joseph chose to repeat that instruction again at this time.<sup>307, 308</sup>

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<sup>296</sup> Appendix G, p. APP041.

<sup>297</sup> Tr. Vol. IV, p. 698:8-10.

<sup>298</sup> Tr. Vol. IV, p. 683:17-25 and p. 684:1-12.

<sup>299</sup> Appendix G, p. APP041.

<sup>300</sup> Appendix G, pp. APP041-APP042.

<sup>301</sup> Appendix G, p. APP042.

<sup>302</sup> Appendix G, p. APP042.

<sup>303</sup> Tr. Vol. I, p. 76:25 and p. 77:1-6.

<sup>304</sup> Appendix G, p. APP042.

<sup>305</sup> Tr. Vol. II, p. 355:23-25 and p. 356:1-10.

<sup>306</sup> Appendix G, APP042.

<sup>307</sup> Tr. Vol. IV, p. 702:1-7.

<sup>308</sup> Tr. Vol. IV, p. 703:12-25.

116. In the context of the matter, and with everyone’s knowledge that ICE was waiting in the main lobby unable to see or hear the proceedings, while the defendant was ordered released and allowed to go downstairs, Clerk Okstein, Attorney Jellinek, and ADA Jurgens reasonably interpreted Judge Joseph’s response to mean that ICE would not be allowed to go to the lockup area.<sup>309, 310, 311, 312</sup>
117. During the public hearing in this matter, Judge Joseph testified that she did mean that ICE would not be allowed to enter the courtroom or to enter the lockup through the courtroom.<sup>313</sup> Judge Joseph claimed that she believed the ICE officers could have gone to the lock-up by other means.
118. As of April 2, 2018, a person seeking to go to the lockup other than through the prisoner dock in the First Session courtroom would need to either go around the outside of the building and hope to get someone’s attention by knocking on the exterior of the sally-port door, or be escorted through a series of secure doors inside the courthouse.<sup>314, 315</sup>
119. Attorney Jellinek reasonably believed that Judge Joseph’s response to Clerk Okstein meant that she understood that Attorney Jellinek would be going downstairs with Mr. Medina-Perez, that the ICE officers would remain in the front lobby, and that Mr. Medina-Perez would be released through the sallyport.<sup>316</sup>
120. After Judge Joseph set a date for pretrial conference, Court Officer MacGregor asked whether Mr. Medina-Perez had been released from state custody.<sup>317</sup> Clerk Okstein confirmed that Mr. Medina-Perez had been ordered released.<sup>318</sup> Judge Joseph then said, “He is,” and reiterated that Attorney Jellinek had “asked if the interpreter can accompany him downstairs, um, to further interview him – and I’ve allowed that to happen.”<sup>319</sup>
121. The proceedings in Commonwealth v. Medina-Perez then concluded at approximately 2:54 p.m.<sup>320</sup>
122. Court Officer MacGregor then escorted Mr. Medina-Perez to the downstairs lockup area of the Newton District Court, accompanied by Attorney Jellinek and Interpreter Mendoza.<sup>321</sup>

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<sup>309</sup> Tr. Vol. I, p. 202:15-25.

<sup>310</sup> Tr. Vol. I, p. 203:16-19.

<sup>311</sup> Tr. Vol. II, p. 239:3-13.

<sup>312</sup> Tr. Vol. II, p. 356:11-21.

<sup>313</sup> Tr. Vol. IV, p. 762:14-21.

<sup>314</sup> Tr. Vol. II, p. 384:24-25 and p. 385:1-8.

<sup>315</sup> Tr. Vol. II, p. 388:8-25 and p. 389:1-10.

<sup>316</sup> Tr. Vol. I, p. 77:14-20.

<sup>317</sup> Appendix G, p. APP043.

<sup>318</sup> Appendix G, p. APP043.

<sup>319</sup> Appendix G, p. APP043.

<sup>320</sup> Appendix G, p. APP043.

<sup>321</sup> Tr. Vol. I, p. 78:12-14.

123. In ADA Jurgens' experience as of April 2, 2018, it was unusual for a defendant and an interpreter to return to the lockup together after a defendant had been released from state custody.<sup>322</sup> In ADA Jurgens' experience, it was also unusual for a defendant and the defendant's attorney to return to the lockup area for a further interview after the defendant had been ordered released from custody.<sup>323</sup>
124. In Clerk Okstein's experience as of April 2, 2018, he had never before seen an interpreter go down into the lockup after a defendant had been ordered released as Interpreter Mendoza did that day.<sup>324</sup>
125. In Interpreter Mendoza's experience as of April 2, 2018, it was unusual for him to return to lockup with a defendant after that defendant had been released from state custody.<sup>325</sup>
126. In Judge Heffernan's experience as of April 2, 2018, if a person in custody was being released and did not need to go back downstairs, that person would be released directly into the courtroom from the prisoner dock.<sup>326</sup> In Judge Heffernan's experience, if a person being released from custody had property, the person would either bring the property upstairs himself or herself, or a court officer would bring it up.<sup>327</sup>
127. In Clerk Okstein's experience as of April 2, 2018, he had never seen ICE take custody of someone from the lockup area of the Newton District Court.<sup>328</sup> Clerk Okstein had only seen ICE take custody of someone outside the front door of the courthouse.<sup>329</sup>
128. As Interpreter Mendoza returned to the lockup area with Mr. Medina-Perez, Attorney Jellinek asked him if he was "good with all this," and Interpreter Mendoza responded that it was not for him to make a decision or judgment on what the judge decides and that he was just there to interpret and be unbiased.<sup>330</sup>
129. Once back downstairs in the lockup area, Attorney Jellinek spoke with Mr. Medina-Perez for approximately fifteen to thirty seconds.<sup>331</sup>
130. Court Officer MacGregor then released Mr. Medina-Perez through the sallyport exit.<sup>332, 333</sup>

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<sup>322</sup> Tr. Vol. II, p. 238:22-25 and p. 239:1-2.

<sup>323</sup> Tr. Vol. II, p. 240:3-6.

<sup>324</sup> Tr. Vol. II, p. 355:4-16.

<sup>325</sup> Tr. Vol. II, p. 257:19-25 and p. 258:1.

<sup>326</sup> Tr. Vol. III, p. 465:14-24.

<sup>327</sup> Tr. Vol. III, p. 466:3-11.

<sup>328</sup> Tr. Vol. II, p. 342:18-21.

<sup>329</sup> Tr. Vol. II, p. 342:9-17.

<sup>330</sup> Tr. Vol. II, p. 258:2-8.

<sup>331</sup> Tr. Vol. I, p. 78:16-20.

<sup>332</sup> Tr. Vol. I, p. 78:12-15.

131. Interpreter Mendoza felt that he had lost faith in the justice system due to the events he witnessed on April 2, 2018.<sup>334</sup>
132. After the proceedings on Commonwealth v. Medina-Perez had concluded for the day, ADA Jurgens exited the courtroom and spoke with the ICE officer who was waiting in the courthouse lobby.<sup>335</sup> ADA Jurgens advised the ICE officer that Mr. Medina-Perez would be coming up a stairway into the front courthouse lobby after his release from custody, because, to her knowledge, that was the only way out of the lockup for a person not in custody.<sup>336</sup>
133. At that time, Clerk Okstein also exited the courtroom and advised the ICE officer that Judge Joseph would not allow him to go down to the lockup area, but that Mr. Medina-Perez would be coming up into the courthouse lobby and exiting through the front door.<sup>337</sup>
134. Clerk Okstein then called Chief Court Officer Noe, who was in his office downstairs, and expressed to him that he would be more comfortable if Chief Court Officer Noe came upstairs and stayed with the ICE officer to ensure that there was no confrontation with Mr. Medina-Perez and his friends.<sup>338</sup> Clerk Okstein placed this call after the proceedings in the Commonwealth v. Medina-Perez had concluded, when he believed that Mr. Medina-Perez, Attorney Jellinek, and Interpreter Mendoza were back downstairs in the lockup.<sup>339</sup>
135. After Clerk Okstein's call to him, Chief Court Officer Noe went upstairs to the courthouse lobby.<sup>340</sup> Chief Court Officer Noe found the ICE officer still waiting for Mr. Medina-Perez and asked the ICE officer where Mr. Medina-Perez was.<sup>341</sup> The ICE officer informed Chief Court Officer Noe that Mr. Medina-Perez had not yet come upstairs into the lobby.<sup>342</sup>
136. Chief Court Officer Noe then looked through the glass of the doors into the First Session courtroom and saw that there was nobody on the bench.<sup>343</sup> Chief Court Officer Noe called the lockup Court Officer, Court Officer MacGregor, on his radio twice, but Court Officer MacGregor did not respond.<sup>344</sup>

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<sup>333</sup> Tr. Vol. II, p. 258:22-25 and p. 259:1-3.

<sup>334</sup> Tr. Vol. II, p. 259:4-13.

<sup>335</sup> Tr. Vol. II, p. 240:23-25 and p. 241:1-2.

<sup>336</sup> Tr. Vol. II, p. 241:15-21.

<sup>337</sup> Tr. Vol. II, p. 359:4-15.

<sup>338</sup> Tr. Vol. II, p. 360:5-12.

<sup>339</sup> Tr. Vol. II, p. 360:13-20.

<sup>340</sup> Tr. Vol. II, p. 361:2-3.

<sup>341</sup> Tr. Vol. III, p. 425:3-11.

<sup>342</sup> Tr. Vol. III, p. 425:12.

<sup>343</sup> Tr. Vol. III, p. 425:12-14.

<sup>344</sup> Tr. Vol. III, p. 425:14-16.

137. Chief Court Officer Noe then went over to the phone at the security desk and called the lockup.<sup>345</sup> Court Officer MacGregor answered the phone, and Chief Court Officer Noe asked him what had happened to Mr. Medina-Perez.<sup>346</sup> After a delay, Court Officer MacGregor responded that Mr. Medina-Perez had been released out through the back of the courthouse.<sup>347</sup>
138. Sometime after Chief Court Officer Noe arrived in the lobby to wait with the ICE officer, Clerk Okstein left the ICE officer in the courthouse lobby and returned a short time later to find him still waiting for Mr. Medina-Perez.<sup>348</sup> By 4:30 p.m. that day, Mr. Medina-Perez had still not exited into the lobby, and it became clear to Clerk Okstein that Mr. Medina-Perez would not be coming out into the lobby.<sup>349</sup> Around that same time, Clerk Okstein also saw Attorney Jellinek exit the courthouse through the lobby.<sup>350</sup>
139. Because Mr. Medina-Perez had been released through the sallyport exit, he succeeded in avoiding being taken into custody by the ICE officers waiting to take him into custody pursuant to the detainer and Warrant of Removal.<sup>351</sup>
140. When ADA Jurgens learned that Mr. Medina-Perez had been allowed to exit through the sallyport door, so that he could avoid the ICE officer, she inferred that he had been released out the back. As she saw Attorney Jellinek leaving the courthouse, she said to him words to the effect that she knew what he had done and that “it was not the right thing to do.” Attorney Jellinek did not respond to her. Shortly thereafter, ADA Jurgens telephoned her supervisor to report what had happened.
141. In ADA Jurgens’s view, Judge Joseph’s conduct in assisting Mr. Medina-Perez to avoid ICE was “a misguided attempt to do what she thought was right.”<sup>352</sup>
142. As he left the courthouse, Attorney Jellinek saw Attorney Bostwick and spoke with her.<sup>353</sup> Attorney Jellinek told Attorney Bostwick that he had gotten Mr. Medina-Perez released from the back of the courthouse and that, as a result, Mr. Medina-Perez was able to avoid being taken into custody by ICE.<sup>354</sup> He told her that he had achieved the right result for Mr. Medina-Perez and was pleased with that result.<sup>355</sup> Attorney Bostwick indicated that she did not agree.<sup>356</sup>

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<sup>345</sup> Tr. Vol. III, p. 425:16-18.

<sup>346</sup> Tr. Vol. III, p. 425:18-22.

<sup>347</sup> Tr. Vol. III, p. 425:22-25 and p. 426:1-2.

<sup>348</sup> Tr. Vol. II, p. 362:13-25 and p. 363:1.

<sup>349</sup> Tr. Vol. II, p. 363:2-6.

<sup>350</sup> Tr. Vol. II, p. 363:6-11.

<sup>351</sup> Appendix Q, p. APP320.

<sup>352</sup> Tr. Vol. II, p. 243:19-25 and p. 244:1-3.

<sup>353</sup> Tr. Vol. I, p. 79:17-22.

<sup>354</sup> Tr. Vol. I, p. 79:22-23.

<sup>355</sup> Tr. Vol. I, p. 79:24-25.

<sup>356</sup> Tr. Vol. I, p. 79:25 and p. 80:1-2.

143. After April 2, 2018, Chief Court Officer Noe spoke with Court Officer MacGregor again regarding Mr. Medina-Perez's release through the sallyport.<sup>357</sup> He received varying explanations from Court Officer MacGregor regarding why he had released Mr. Medina-Perez through the sallyport.<sup>358</sup> Court Officer MacGregor's explanations included that he did not have a detainer in hand, that he did not want to bring Mr. Medina-Perez up through the courtroom because the judge was on the bench, and that he had a feeling that Judge Joseph wanted Mr. Medina-Perez to be released.<sup>359</sup>
144. On April 3, 2018, Judge Heffernan was present at the Newton District Court.<sup>360</sup>
145. On April 3, 2018, Attorney Jellinek was present in the Newton District Court for its Tuesday Drug Court session.<sup>361</sup> Attorney Jellinek asked to speak with Judge Heffernan in the judge's lobby on the second floor, where the Drug Court session was held.<sup>362</sup>
146. During that conversation, Attorney Jellinek gave Judge Heffernan brief information about what had happened in Commonwealth v. Medina-Perez the day before.<sup>363, 364</sup> Attorney Jellinek told Judge Heffernan that he had represented a defendant whose identity they did not know; that ICE was also in the building, wishing to effect service on him; and that the defendant was let out of the back of the courthouse.<sup>365, 366</sup> Attorney Jellinek told Judge Heffernan that he had requested that Judge Joseph allow him to go downstairs with Mr. Medina-Perez, but Attorney Jellinek did not tell Judge Heffernan anything about going off the record during the proceedings in the Medina-Perez matter.<sup>367</sup> Judge Heffernan ended the conversation quickly, appearing to Attorney Jellinek to be in a rush.<sup>368, 369</sup> Judge Heffernan told him that she already knew about the matter and not to worry about it and thanked him for telling her.<sup>370</sup> Their conversation ended with Judge Heffernan thanking Attorney Jellinek and then going downstairs.<sup>371</sup>
147. Attorney Jellinek chose to approach Judge Heffernan on April 3, 2018 and tell her about events from the prior day because she was the presiding judge, because he understood that some people did not think what had happened was proper, and

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<sup>357</sup> Tr. Vol. III, p. 426:8-10.

<sup>358</sup> Tr. Vol. III, p. 426:11-13.

<sup>359</sup> Tr. Vol. III, p. 426:16-25 and p. 427:1-7.

<sup>360</sup> Tr. Vol. III, p. 469:4-6.

<sup>361</sup> Tr. Vol. I, p. 80:3-8.

<sup>362</sup> Tr. Vol. I, p. 80:9-15.

<sup>363</sup> Tr. Vol. I, p. 80:15-17.

<sup>364</sup> Tr. Vol. III, p. 469:7-25 and p. 470:1-5.

<sup>365</sup> Tr. Vol. I, p. 125:12-25 and p. 126:1-2.

<sup>366</sup> Tr. Vol. III, p. 498:18-21.

<sup>367</sup> Tr. Vol. III, p. 470:6-10.

<sup>368</sup> Tr. Vol. I, p. 80:15-22.

<sup>369</sup> Tr. Vol. I, p. 194:19-21.

<sup>370</sup> Tr. Vol. I, p. 80:15-22.

<sup>371</sup> Tr. Vol. III, p. 470:23-25.

- because ICE was angry with the result.<sup>372</sup> Attorney Jellinek expected that Judge Heffernan would hear about what had happened on April 2, 2018.<sup>373</sup> Attorney Jellinek did not mention speaking with Judge Joseph off the record or his conversation with Court Officer MacGregor, because he did not view either as relevant.<sup>374, 375</sup>
148. On April 3, 2018, Chief Court Officer Noe also approached Judge Heffernan to advise her about the events that had taken place in Commonwealth v. Medina-Perez.<sup>376, 377</sup> Chief Court Officer Noe told Judge Heffernan that someone had gone out the back door of the courthouse and ICE was waiting in the front and they were not happy.<sup>378</sup> Chief Court Officer Noe showed Judge Heffernan a memo he had prepared regarding where defendants should be released.<sup>379</sup> They discussed the memo, and Judge Heffernan told him to post it clearly in the first floor lobby for the public to see.<sup>380</sup> Exhibit 2 is a copy of Chief Court Officer Noe's memo, which was dated April 4, 2018.<sup>381</sup>
149. On April 3, 2018 or April 4, 2018, Clerk Okstein also approached Judge Heffernan to advise her about the events that had taken place in Commonwealth v. Medina-Perez.<sup>382</sup> Clerk Okstein informed Judge Heffernan that, on April 2, 2018, there had been an issue with a person leaving the court not through the front door, and the ICE agent was waiting and was not able to take him into custody.<sup>383</sup> Clerk Okstein also informed Judge Heffernan that, at some point during the April 2, 2018, proceedings on Commonwealth v. Medina-Perez, the courtroom recorder was off.<sup>384</sup>
150. On April 4, 2018, Judge Joseph was sitting in the Second Session in Newton District Court, and Judge Heffernan went to Judge Joseph's lobby to speak with her.<sup>385</sup> Judge Heffernan asked Judge Joseph about the report she had received from Attorney Jellinek regarding the events that had taken place in Commonwealth v. Medina-Perez on April 2, 2018.<sup>386, 387</sup>

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<sup>372</sup> Tr. Vol. I, p. 80:25 and p. 81:1-6.

<sup>373</sup> Tr. Vol. I, p. 123:8-11.

<sup>374</sup> Tr. Vol. I, p. 81:7-10.

<sup>375</sup> Tr. Vol. I, p. 82:22-25 and p. 83:1-11.

<sup>376</sup> Tr. Vol. III, p. 443:18-25 and p. 444:1-10.

<sup>377</sup> Tr. Vol. III, p. 471:1-3.

<sup>378</sup> Tr. Vol. III, p. 471:4-7.

<sup>379</sup> Tr. Vol. III, p. 471:8-10.

<sup>380</sup> Tr. Vol. III, p. 471:11-15.

<sup>381</sup> Tr. Vol. III, p. 446:19-25 and p. 447:1-14.

<sup>382</sup> Tr. Vol. III, p. 471:16-25 and p. 472:1-2.

<sup>383</sup> Tr. Vol. II, p. 364:5-11.

<sup>384</sup> Tr. Vol. II, p. 364:12-19.

<sup>385</sup> Tr. Vol. III, p. 472:3-15.

<sup>386</sup> Tr. Vol. III, p. 472:17-25.

<sup>387</sup> Tr. Vol. III, p. 472:3-15.

151. During the public hearing on this matter, Judge Joseph claimed that she first learned that Mr. Medina-Perez had avoided ICE on April 2, 2018, during her April 4, 2018 meeting with Judge Heffernan.<sup>388</sup>
152. During her April 4, 2018 meeting with Judge Heffernan, Judge Joseph did not advise Judge Heffernan that she had conducted part of the hearing off the record.<sup>389, 390</sup> Judge Heffernan did not ask Judge Joseph about going off the record because she assumed that everyone knew that a judge should never go off the record.<sup>391</sup> Judge Heffernan recalls that, during this meeting, Judge Joseph told her that she had authorized Attorney Jellinek to go downstairs with Mr. Medina-Perez after he was released from custody.<sup>392</sup>
153. On April 4, 2018 or April 5, 2018, Judge Heffernan telephoned Chief Justice Fortes, who was then serving as Regional Administrative Justice, regarding the events in Commonwealth v. Medina-Perez, which occurred on April 2, 2018.<sup>393</sup>
154. Chief Justice Fortes was first appointed as a judge in December 2006.<sup>394</sup> As of April 2018, Chief Justice Fortes served as the Regional Administrative Justice for the region that included Newton, and she also served as the First Justice of the Lowell District Court.<sup>395</sup>
155. Chief Justice Fortes asked Judge Heffernan to prepare a synopsis of what had happened and to get a copy of the courtroom recording of the April 2, 2018 proceedings in the Medina-Perez matter.<sup>396</sup> Clerk Okstein obtained a copy of the audio recording for Judge Heffernan and reported to her that there was a blank spot of almost a minute.<sup>397</sup>
156. Judge Heffernan prepared the requested synopsis and sent it to Chief Justice Fortes in an April 5, 2018 email.<sup>398, 399</sup> Judge Heffernan's email synopsis reflected information that she had received from Attorney Jellinek, Clerk Okstein, Judge Joseph, and Chief Court Officer Noe, without delineation of the sources of each piece of information.<sup>400</sup> The contents of the synopsis Judge Heffernan prepared for Chief Justice Fortes also reflected her misunderstanding that the event had occurred in the second-floor courtroom, which has no prisoner dock.<sup>401</sup>

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<sup>388</sup> Tr. Vol. IV, p. 706:19-25.

<sup>389</sup> Tr. Vol. III, p. 473:4-5.

<sup>390</sup> Tr. Vol. IV, p. 707:1-12.

<sup>391</sup> Tr. Vol. III, p. 473:6-10.

<sup>392</sup> Tr. Vol. III, p. 473:17-20.

<sup>393</sup> Tr. Vol. III, p. 476:6-11.

<sup>394</sup> Tr. Vol. III, p. 530:8-9.

<sup>395</sup> Tr. Vol. III, p. 530:12-23.

<sup>396</sup> Tr. Vol. III, p. 476:15-21.

<sup>397</sup> Tr. Vol. III, p. 476:20-25 and p. 477:1-8.

<sup>398</sup> Tr. Vol. III, p. 477:9-25 and p. 478:1-5.

<sup>399</sup> Appendix V, pp. APP540-APP541.

<sup>400</sup> Tr. Vol. III, p. 510:21-24.

<sup>401</sup> Tr. Vol. III, p. 474:21-25 and p. 475:1-14.

157. On a date between April 5, 2018 and April 20, 2018, Judge Joseph was sitting in the Lowell District Court.<sup>402</sup> On a date during that period, Chief Justice Fortes spoke with Judge Joseph in Lowell regarding the events in Commonwealth v. Medina-Perez, which occurred on April 2, 2018.<sup>403</sup>
158. Chief Justice Fortes asked to meet with Judge Joseph during the lunch recess in Lowell on this day.<sup>404</sup> During this meeting, Chief Justice Fortes told Judge Joseph about the report she had received from Judge Heffernan that part of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez were not recorded and asked Judge Joseph what had happened.<sup>405</sup> Chief Justice Fortes told Judge Joseph that her understanding from Judge Heffernan was that a portion of the hearing was not recorded.<sup>406</sup> In response to Chief Justice Fortes' inquiry about what happened that caused a portion of the hearing not to be recorded, Judge Joseph did not admit at any point during this meeting that she had told the clerk to turn off the recording system.<sup>407</sup> Judge Joseph did not apologize for instructing the clerk to go off the record during this meeting and never specifically acknowledged that a portion of the proceedings on April 2, 2018 were not recorded.<sup>408</sup>
159. However, during her sworn interview with Special Counsel on June 6, 2023, Judge Joseph claimed that, during her meeting with Chief Justice Fortes in Lowell, she immediately acknowledged to Chief Justice Fortes that part of the April 2, 2018 proceedings in the Medina-Perez matter was not recorded.<sup>409, 410</sup>
160. During her meeting with Judge Joseph in Lowell, Chief Justice Fortes provided Judge Joseph with a copy of District Court Special Rule 211 and reviewed it with her.<sup>411</sup> During this meeting, Judge Joseph told Chief Justice Fortes that she already knew that all court proceedings must be recorded.<sup>412</sup>
161. On April 20, 2018, Chief Justice Fortes forwarded to Chief Justice Dawley the email synopsis she had received from Judge Heffernan on April 5, 2018, with her own email indicating that she had spoken with the judge involved.<sup>413</sup> This was the first information Chief Justice Dawley received about the April 2, 2018 incident.<sup>414</sup> These emails appear at APP540-APP541 in Appendix V.<sup>415</sup>

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<sup>402</sup> Tr. Vol. III, p. 541:1-4.

<sup>403</sup> Tr. Vol. III, p. 540:1-8.

<sup>404</sup> Tr. Vol. III, p. 542:19-22.

<sup>405</sup> Tr. Vol. III, p. 542:23-25 and p. 543:1-3.

<sup>406</sup> Tr. Vol. III, p. 559:2-4.

<sup>407</sup> Tr. Vol. III, p. 544:1-7.

<sup>408</sup> Tr. Vol. III, p. 558:8-22.

<sup>409</sup> Tr. Vol. IV, p. 710:2-7.

<sup>410</sup> Appendix N, p. APP222.

<sup>411</sup> Tr. Vol. III, p. 546:5-9.

<sup>412</sup> Tr. Vol. III, p. 546:17-22.

<sup>413</sup> Appendix V, pp. APP540-APP541.

<sup>414</sup> Tr. Vol. III, p. 591:9-12.

<sup>415</sup> Tr. Vol. III, p. 590:21-25 and p. 591:1-4. (The transcript incorrectly reflects that Special Counsel asked the witness about "Appendix B" but her questions were in reference to "Appendix V.")

162. Chief Justice Dawley arranged for his assistant to schedule a meeting in his office for May 8, 2018, with Judge Joseph and Chief Justice Fortes, notifying both of the topic of this meeting in advance.<sup>416</sup>
163. Among the statutory responsibilities of the Chief Justice of each Trial Court Department is disciplining judges of the Department.<sup>417</sup>
164. As of the date of his May 8, 2018 meeting with Judge Joseph, Chief Justice Dawley had listened to the audio recordings of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez.<sup>418</sup>
165. As of the date of this May 8, 2018 meeting, Judge Joseph had also listened to the audio recordings, and she knew that the recording showed that she had instructed the clerk to turn off the record.<sup>419</sup>
166. Chief Justice Dawley had also reviewed the email summary from Judge Heffernan, with the cover email from Chief Justice Fortes.<sup>420</sup> Chief Justice Dawley had not heard the enhanced recording of the April 2, 2018 proceedings<sup>421</sup> in the Medina-Perez matter, did not have any transcription of those proceedings, and had not received any information about the proceedings from any other source.<sup>422</sup>
167. At the beginning of the May 8, 2018 meeting, Chief Justice Dawley asked Judge Joseph if she had an opportunity to listen to the recording of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez, and he told her that he was concerned about some things in the recording.<sup>423</sup> Chief Justice Dawley asked Judge Joseph if she had instructed the clerk to go off the record, and Judge Joseph responded with words to the effect, “Yes, I did, and I shouldn’t have done that.”<sup>424, 425</sup> This was the first time Chief Justice Fortes heard Judge Joseph admit that part of the proceeding in the Medina-Perez matter was not recorded because she had instructed the clerk to turn the courtroom recorder off.<sup>426</sup> Judge Joseph also responded that she was not aware that there was a rule that required non-administrative courtroom proceedings to be recorded.<sup>427</sup>
168. When Chief Justice Dawley asked Judge Joseph why she had directed that the courtroom recorder be shut off, Judge Joseph was less than fully candid. She did not

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<sup>416</sup> Appendix V, pp. APP535-APP536.

<sup>417</sup> Tr. Vol. III, p. 566:24-25 and p. 567:1.

<sup>418</sup> Tr. Vol. III, p. 597:7-13.

<sup>419</sup> Tr. Vol. IV, p. 716:5-23.

<sup>420</sup> Tr. Vol. III, p. 592:5-9.

<sup>421</sup> The enhanced recording and transcript were generated well after this date, in connection with the Federal grand jury investigation. Stipulation par. 7, and Appendices G and J.

<sup>422</sup> Tr. Vol. III, p. 598:2-17.

<sup>423</sup> Tr. Vol. III, p. 549:22-25 and p. 550:1-2.

<sup>424</sup> Tr. Vol. III, p. 550:3-7.

<sup>425</sup> Tr. Vol. III, p. 600:2:15.

<sup>426</sup> Tr. Vol. III, p. 550:8-14.

<sup>427</sup> Tr. Vol. III, p. 600:10-12.

tell Chief Justice Dawley about her concern that ICE was incorrectly seeking Mr. Medina-Perez on an immigration detainer, that she was concerned that ICE would take custody of Mr. Medina-Perez before his attorney had a chance to confer with him, that she wanted to pause ICE taking him into custody, or that she wanted Mr. Medina-Perez's attorney to have an opportunity to explain his rights to him before ICE took him into custody.<sup>428, 429</sup> Instead, Judge Joseph responded with words to the effect that the defense attorney wanted to speak with her off the record because the defense attorney was concerned that the identity of his client was not the same individual for whom there was an out-of-state warrant.<sup>430, 431</sup>

169. Judge Joseph was less than fully candid with Chief Justice Dawley in this conversation when she told him that the subject matter of the non-recorded conversation at sidebar was only her and the defense counsel still talking about the defendant's identity, the out-of-state warrant for Mr. Medina-Perez from Pennsylvania, and defense counsel's request to return to the lockup with his client. Judge Joseph failed to disclose to Chief Justice Dawley that the unrecorded conversation included a discussion of ICE and a way for Mr. Medina-Perez to avoid ICE custody that day.
170. During this meeting, Chief Justice Dawley asked Judge Joseph directly whether she had anything to do with the defendant going out the back, and she strongly denied that she had any role.<sup>432, 433</sup> Chief Justice Dawley's final question to Judge Joseph was whether she had anything to do at all with the defendant leaving the courthouse through the rear door, and she again strongly and adamantly denied any role.<sup>434</sup> These denials were false.
171. In paragraph 32 of her Response to the Formal Charges issued in this matter, Judge Joseph admitted that her assent to allow defendant, defense counsel, and the interpreter to go to the lockup had the unintended effect of assisting in what happened, but Judge Joseph failed to make any such admission or acknowledgment in response to Chief Justice Dawley's questions.<sup>435</sup>
172. During a subsequent federal investigation into Judge Joseph's actions on April 2, 2018, Attorney Jellinek learned that he would be subpoenaed to testify before a grand jury.<sup>436</sup> Attorney Jellinek was uncertain whether he would have had a Fifth Amendment right to refuse to speak with federal prosecutors because, in his view, he was advocating for his client, as a defense lawyer, and trying to help him.<sup>437</sup>

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<sup>428</sup> Tr. Vol. III, p. 551:4-20.

<sup>429</sup> Tr. Vol. III, p. 602:1-25 and p. 603:1:7.

<sup>430</sup> Tr. Vol. III., p. 600:16-25 and p. 601:1:4.

<sup>431</sup> Tr. Vol. IV, p. 717:8-21.

<sup>432</sup> Tr. Vol. III, p. 603:8-19.

<sup>433</sup> Tr. Vol. IV, p. 718:18-23.

<sup>434</sup> Tr. Vol. III, p. 603:19-22.

<sup>435</sup> Tr. Vol. IV, p. 723: 5-25 and p. 724:1:16.

<sup>436</sup> Tr. Vol. I, p. 84:1-10.

<sup>437</sup> Tr. Vol. I, p. 84:17-25 and p. 85:1-6.

173. Attorney Jellinek met with federal prosecutors for a proffer session on November 8, 2018, and he received a proffer letter.<sup>438, 439</sup> That proffer letter advised Attorney Jellinek that, if he cooperated with the federal investigation, he could still be prosecuted, but that he could not be prosecuted based on any statements he made during the proffer session.<sup>440, 441</sup>
174. Attorney Jellinek met with federal prosecutors again on January 17, 2019, and he received an immunity agreement.<sup>442</sup> Attorney Jellinek understood that the immunity agreement promised that he would not be prosecuted for what had happened with Mr. Medina-Perez, but as a condition of that agreement, he had to cooperate fully with federal prosecutors and testify to the grand jury truthfully.<sup>443</sup> The immunity agreement also required that Attorney Jellinek must not attempt to protect any person or entity through false information or omission, or falsely implicate a person or entity.<sup>444, 445</sup> Attorney Jellinek believed that he would be prosecuted, both for the underlying matter and for perjury, if the federal prosecutors believed that he made a false statement.<sup>446</sup>
175. After investigation, a federal grand jury returned indictments against Judge Joseph in 2019.<sup>447</sup>
176. 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.<sup>448</sup> Based on that agreement, the United States Attorney moved to dismiss the charges against her, and the United States District Court ordered a dismissal on September 23, 2022.<sup>449</sup>
177. The events in connection with the Medina-Perez case, 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 confidence in the judiciary.<sup>450</sup>

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<sup>438</sup> Tr. Vol. I, p. 86:3-8.

<sup>439</sup> Exhibit AA.

<sup>440</sup> Tr. Vol. I, p. 86:12-15.

<sup>441</sup> Exhibit AA.

<sup>442</sup> Tr. Vol. I, p. 86:16-21.

<sup>443</sup> Tr. Vol. I, p. 87:1-6.

<sup>444</sup> Exhibit AA.

<sup>445</sup> Tr. Vol. I, p. 188:17-22.

<sup>446</sup> Tr. Vol. I, p. 87:7-17.

<sup>447</sup> Tr. Vol. IV, p. 646:21-24.

<sup>448</sup> Appendix M, p. APP157.

<sup>449</sup> Appendix M, pp. APP156-APP158.

<sup>450</sup> Tr. Vol. II, p. 259:4-13.

178. During her sworn interview with Special Counsel on June 6, 2023, when asked about events in the Medina-Perez case on April 2, 2018, Judge Joseph attributed her decision to allow the defendant and his counsel to return downstairs to an effort to “pause” the ICE arrest so as to allow time for an attorney-client conference.<sup>451</sup> Judge Joseph denied that Attorney Jellinek 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.<sup>452</sup> Despite ultimately admitting to an unwitting role in the defendant’s avoidance of ICE in paragraph 32 of her Response to the Formal Charges, during her June 6, 2023, sworn interview with Special Counsel, Judge Joseph denied that she had said or done anything to facilitate the defendant’s avoidance of ICE.<sup>453</sup> During that interview, Judge Joseph further denied that she had said or done 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 on that day.<sup>454</sup> These denials were false.

### **III. PROPOSED CONCLUSIONS OF LAW**

#### **1. JUDGE JOSEPH VIOLATED RULE 1.1, RULE 1.2, AND RULE 2.2 OF THE CODE OF JUDICIAL CONDUCT**

Canon 1, Rule 1.1 requires that “[a] judge shall comply with the law, including the Code of Judicial Conduct.”

Canon 1, 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 4 to Rule 1.2 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.”

Comment 4 to Rule 1.2 also defines “improprieties” as including “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).”

Canon 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.”

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<sup>451</sup> Appendix N, p. APP216.

<sup>452</sup> Appendix N, pp. APP214-APP215.

<sup>453</sup> Tr. Vol. IV, p. 724:17-25 and p. 725:1-2.

<sup>454</sup> Appendix N, p. APP248.

The sequence of events during the above-described April 2, 2018 proceedings in the Medina-Perez matter created a clear and convincing basis for a reasonable person to conclude that Judge Joseph engaged in conduct that created an appearance of impropriety and a lack of impartiality, in violation of Rule 1.2; that she had an actual bias, in violation of Rule 2.2; and that she had created an appearance of bias, in further violation of Rule 2.2. Judge Joseph also failed to follow the law, in violation of Rule 1.1, by failing to adhere to the requirements of District Court Special Rule 211.

During the proceedings in the Medina-Perez matter, Judge Joseph intentionally worked to assist Attorney Jellinek in his efforts to help Mr. Medina-Perez avoid being taken into custody by ICE, despite the Lunn policy, which, as of April 2, 2018, generally required that judges neither assist nor hinder federal authorities.<sup>455</sup> Judge Joseph also involved herself, despite issues related to ICE not being within her proper role.<sup>456</sup> Indeed, it was Judge Joseph who first brought up the issue of ICE being present that day, despite it not being a proper area of concern for her.<sup>457</sup>

After Judge Joseph alerted him to the presence of ICE in court that day, Attorney Jellinek responded by advising Judge Joseph of his plan to help Mr. Medina-Perez avoid ICE, stating on the record, “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.”<sup>458</sup>

After hearing this information, Judge Joseph offered to help Attorney Jellinek with his concern relating to ICE, stating, “The other alternative is if you need more time to figure this out – hold until tomorrow.”<sup>459</sup> During the public hearing, Judge Joseph admitted that she wanted to help Attorney Jellinek.<sup>460</sup>

To assist Attorney Jellinek, Judge Joseph went as far as to offer to hold Mr. Medina-Perez without bail on the fugitive from justice charge, despite the ADA Jurgen’s conclusion that the underlying warrant incorrectly named Mr. Medina-Perez, and despite having no lawful authority to order that Mr. Medina-Perez be detained without bail in these circumstances.<sup>461, 462, 463, 464, 465, 466, 467</sup>

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<sup>455</sup> Tr. Vol. IV, p. 660:23-25 and p. 661:1-7.

<sup>456</sup> Tr. Vol. III, p. 523:3-25.

<sup>457</sup> Appendix G, p. APP040.

<sup>458</sup> Appendix G, p. APP041.

<sup>459</sup> Appendix G, p. APP041.

<sup>460</sup> Tr. Vol. IV, p. 678:4-11.

<sup>461</sup> Appendix G, p. APP041.

<sup>462</sup> Tr. Vol. IV, p. 685:6-25, p. 686:1-25, p. 687:1-25, and p. 688:1-7.

<sup>463</sup> Tr. Vol. IV, p. 690:21-23.

<sup>464</sup> Tr. Vol. IV, p. 758:20-25 and p. 759:1-9.

<sup>465</sup> Tr. Vol. IV, p. 692:8-23.

<sup>466</sup> Tr. Vol. IV, p. 775:6-25, p. 776:1-25, and p. 777:1.

When Attorney Jellinek rebuffed Judge Joseph’s suggestion that she order Mr. Medina-Perez’s unlawful detention, she then granted his request to go off the record, without being given any basis for doing so, and despite the clear prohibition in District Court Special Rule 211, requiring that non-administrative courtroom proceedings be conducted on the record.<sup>468, 469, 470</sup>

Judge Joseph then engaged in a 52-second-long unrecorded sidebar conference immediately after she and Attorney Jellinek could be heard strategizing ways for Mr. Medina-Perez to “avoid” ICE custody that day.<sup>471</sup>

**By involving herself in an ICE issue in which she had no proper role, by suggesting that she would be willing to unlawfully detain the defendant to help him avoid ICE, and by then going off the record, in direct violation of District Court Special Rule 211, during a discussion of ways to help the defendant “avoid” being taken into custody by ICE that day, Judge Joseph engaged in conduct that would and did create in reasonable minds a perception of impropriety and lack of impartiality, in violation of Rule 1.2. She also failed to comply with the law, demonstrated actual bias, and created an appearance of bias, in violation of Rule 2.2.**

**Her failure to follow District Court Special Rule 211 also constituted a violation of her duty, under Rule 1.1, to comply with the law.<sup>472</sup>**

**Moreover, pursuant to Comment 4 to Rule 1.2, Judge Joseph’s violation of Rule 211 alone constituted a violation of Rule 1.2: “Improprieties 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).”**

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<sup>467</sup> 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.

<sup>468</sup> 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.”

<sup>469</sup> Tr. Vol. IV, p. 680:2-19.

<sup>470</sup> Tr. Vol. IV, p. 682:1-7.

<sup>471</sup> Appendix G, pp. APP040-APP041.

<sup>472</sup> The Code specifically defines “Law” as including “court rules and standing orders issued by the Supreme Judicial Court, the Appeals Court, the Chief Justice of the Trial Court, or a Chief Justice of a Trial Court Department, as well as statutes, constitutional provisions, and decisional law.”

## 2. JUDGE JOSEPH VIOLATED RULE 2.5 OF THE CODE OF JUDICIAL CONDUCT

Canon 2, Rule 2.5 requires that “[a] judge shall perform judicial and administrative duties competently, diligently, and in a timely manner.

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.” Comment 2 to Rule 2.5 instructs judges that they “should seek the necessary resources to discharge all adjudicative and administrative responsibilities.”

As already noted above, during the April 2, 2018 proceedings in the Medina-Perez matter, Judge Joseph instructed Clerk Okstein to turn off the courtroom recorder in a clear, direct violation of District Court Special Rule 211. In her testimony during the public hearing, Judge Joseph admitted that, after she became a judge, she did not specifically study or make an effort to familiarize herself with the rules applicable to the District Court.<sup>473, 474</sup>

However, during her meeting with Chief Justice Fortes at the Lowell District Court, Judge Joseph told Chief Justice Fortes that she already knew that all court proceedings must be recorded, despite her unfamiliarity with the specific rule that required it, District Court Special Rule 211.<sup>475</sup>

**Whether Judge Joseph knowingly failed to follow District Court Special Rule 211 or was merely negligent in failing to familiarize herself with the rules of the District Court, when she instructed Clerk Okstein to turn off the courtroom recorder, Judge Joseph failed to perform her judicial duties competently, in violation of Rule 2.5.**

Rule 2.5 also requires that “[a] judge shall cooperate with other judges and court officials in the administration of court business.”

During both the recorded and unrecorded portions of their sidebar conference, Judge Joseph and Attorney Jellinek strategized ways to help Mr. Medina-Perez avoid ICE custody.<sup>476, 477</sup>

During the unrecorded portion of the sidebar conference, Judge Joseph agreed to a plan in which she would specifically allow Attorney Jellinek to return to the lockup with Mr. Medina-Perez and Interpreter Mendoza to help facilitate Attorney Jellinek’s

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<sup>473</sup> Tr. Vol. IV, p. 653:24-25 and p. 654:1-6.

<sup>474</sup> Tr. Vol. IV, p. 654:22-25 and p. 655:1-6.

<sup>475</sup> Tr. Vol. III, p. 546:17-22.

<sup>476</sup> Tr. Vol. I, p. 74:7-12.

<sup>477</sup> Tr. Vol. II, p. 236:20-25.

plan to have Mr. Medina-Perez “avoid” ICE and leave through the back of the courthouse.<sup>478, 479, 480, 481, 482, 483, 484</sup>

When the hearing in Commonwealth v. Medina-Perez continued in open court, Attorney Jellinek 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.”<sup>485</sup> Judge Joseph responded to Attorney Jellinek’s request to go down to the lockup with Mr. Medina-Perez by stating, “That’s fine. Of course.”<sup>486</sup>

After Mr. Medina-Perez was arraigned and advised of certain statutory rights, Clerk Okstein reminded Judge Joseph of the presence of ICE officers in the courthouse and advised her that the ICE officers wanted to visit the lockup.<sup>487</sup> Judge Joseph responded, “That’s fine. I’m not gonna allow them to come in here. But he’s been released on this.”<sup>488</sup>

Clerk Okstein reasonably understood Judge Joseph’s response to mean that the ICE officer was not allowed to come into the courtroom to go down into the lockup; but she was releasing Mr. Medina-Perez, that he was free to leave, and that whatever happened after that was between Mr. Medina-Perez and ICE.<sup>489, 490</sup>

**However, Judge Joseph did not advise Clerk Okstein or any other court personnel that she had agreed to help with Attorney Jellinek’s plan for Mr. Medina-Perez to avoid ICE that day, and in doing so, Judge Joseph failed to cooperate with court officials in the administration of court business, in further violation of Rule 2.5.**

### 3. JUDGE JOSEPH VIOLATED RULE 2.16 OF THE CODE OF JUDICIAL CONDUCT

Canon 2, Rule 2.16 requires that “[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary authorities.”

On April 4, 2018, Judge Joseph met with Judge Heffernan at the Newton District Court. During that meeting, Judge Heffernan asked Judge Joseph about the report she had received that a defendant was released from the back of the courthouse on April

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<sup>478</sup> Tr. Vol. I, p. 73:25 and p. 74:1-3.

<sup>479</sup> Tr. Vol. II, p. 233:22-24 and p. 314:1-4.

<sup>480</sup> Tr. Vol. II, p. 236:8-13.

<sup>481</sup> Tr. Vol. II, p. 234:23-25 and p. 235:1-5.

<sup>482</sup> Tr. Vol. II, p. 314:21-25; and p. 315:1-19.

<sup>483</sup> Tr. Vol. II, p. 256:15-25 and p. 257:1-3.

<sup>484</sup> Tr. Vol. II, p. 284:11-14.

<sup>485</sup> Appendix G, p. APP042.

<sup>486</sup> Appendix G, p. APP042.

<sup>487</sup> Tr. Vol. II, p. 355:23-25 and p. 356:1-10.

<sup>488</sup> Appendix G, p. APP042.

<sup>489</sup> Tr. Vol. II, p. 356:11-21.

<sup>490</sup> Tr. Vol. II, p. 383:5-12.

2, 2018, while ICE was waiting in the front, and that ICE was not happy about that result.<sup>491, 492</sup>

Despite being presented with those facts, Judge Joseph failed to disclose to Judge Heffernan that she had conducted part of the proceeding off the record.

On a date between April 4, 2018 and April 20, 2018, Judge Joseph met with Chief Justice Fortes at the Lowell District Court.<sup>493</sup>

During this meeting, Chief Justice Fortes told Judge Joseph about the report she had received from Judge Heffernan that part of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez were not recorded and asked Judge Joseph what had happened.<sup>494</sup> Chief Justice Fortes told Judge Joseph that her understanding from Judge Heffernan was that a portion of the hearing was not recorded.<sup>495</sup> In response to Chief Justice Fortes' inquiry about what happened that caused a portion of the hearing not to be recorded, Judge Joseph did not admit at any point during this meeting that she had told the clerk to turn off the recording system.<sup>496</sup> Judge Joseph did not apologize for instructing the clerk to go off the record during this meeting and never specifically acknowledged that a portion of the proceedings on April 2, 2018 were not recorded.<sup>497</sup>

However, during her sworn interview with Special Counsel on June 6, 2023, Judge Joseph claimed that, during her meeting with Chief Justice Fortes in Lowell, she immediately acknowledged to Chief Justice Fortes that part of the April 2, 2018 proceedings in the Medina-Perez matter was not recorded.<sup>498, 499</sup>

On May 8, 2018, Judge Joseph met with Chief Justice Dawley and Chief Justice Fortes. Prior to the May 8, 2018 meeting, Chief Justice Dawley notified both Chief Justice Fortes and Judge Joseph what the meeting would be about.<sup>500</sup> As of the date of this May 8, 2018 meeting, Judge Joseph had listened to the audio recording and knew that the recording showed that she had instructed the clerk to turn off the record.<sup>501</sup>

At the beginning of the May 8, 2018 meeting, Chief Justice Dawley asked Judge Joseph if she had an opportunity to listen to the recording of the April 2, 2018 proceedings in Commonwealth v. Medina-Perez, and he told her that he was

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<sup>491</sup> Tr. Vol. III, p. 472:17-25.

<sup>492</sup> Tr. Vol. III, p. 472:3-15.

<sup>493</sup> Tr. Vol. III, p. 540:1-8.

<sup>494</sup> Tr. Vol. III, p. 542:23-25 and p. 543:1-3.

<sup>495</sup> Tr. Vol. III, p. 559:2-4.

<sup>496</sup> Tr. Vol. III, p. 544:1-7.

<sup>497</sup> Tr. Vol. III, p. 558:8-22.

<sup>498</sup> Tr. Vol. IV, p. 710:2-7.

<sup>499</sup> Appendix N, p. APP222.

<sup>500</sup> Tr. Vol. III, p. 549:21-22.

<sup>501</sup> Tr. Vol. IV, p. 716:5-23.

concerned about some things in the recording.<sup>502</sup> Chief Justice Dawley asked Judge Joseph if she had instructed the clerk to go off the record, and Judge Joseph responded with words to the effect, “Yes, I did, and I shouldn’t have done that.”<sup>503, 504</sup> This was the first time Chief Justice Fortes heard Judge Joseph admit that part of the proceeding in the Medina-Perez matter was not recorded because she had instructed the clerk to turn the courtroom recorder off.<sup>505</sup> Judge Joseph also responded that she was not aware that there was a rule that required non-administrative courtroom proceedings to be recorded.<sup>506</sup>

When Chief Justice Dawley asked Judge Joseph why she had directed that the courtroom recorder be shut off, Judge Joseph was less than fully candid when she failed to respond by telling him about her concern that ICE was incorrectly seeking Mr. Medina-Perez on an immigration detainer, that she was concerned that ICE would take custody of Mr. Medina-Perez before his attorney had a chance to confer with him, that she wanted to pause ICE taking him into custody, or that she wanted Mr. Medina-Perez’s attorney to have an opportunity to explain his rights to him before ICE took him into custody.<sup>507, 508</sup> Instead, Judge Joseph responded with words to the effect that the defense attorney wanted to speak with her off the record because the defense lawyer was concerned that the identity of his client was not the same individual for whom there was an out-of-state warrant.<sup>509, 510</sup>

Judge Joseph was less than fully candid with Chief Justice Dawley in this conversation when she told him that the subject matter of the non-recorded conversation at sidebar consisted only of her and the defense counsel still talking about the defendant’s identity with respect to the out-of-state warrant from Pennsylvania, and defense counsel’s request to return to the lockup with his client. Judge Joseph failed to advise Chief Justice Dawley that the unrecorded conversation included a discussion of ICE and a way for Mr. Medina-Perez to avoid ICE custody that day.

During this meeting, Chief Justice Dawley asked Judge Joseph directly whether she had anything to do with the defendant going out the back, and she strongly denied that she had any role.<sup>511, 512</sup> Chief Justice Dawley’s final question to Judge Joseph was whether she had anything to do at all with the defendant leaving the courthouse

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<sup>502</sup> Tr. Vol. III, p. 549:22-25 and p. 550:1-2.

<sup>503</sup> Tr. Vol. III, p. 550:3-7.

<sup>504</sup> Tr. Vol. III, p. 600:2:15.

<sup>505</sup> Tr. Vol. III, p. 550:8-14.

<sup>506</sup> Tr. Vol. III, p. 600:10-12.

<sup>507</sup> Tr. Vol. III, p. 551:4-20.

<sup>508</sup> Tr. Vol. III, p. 602:1-25 and p. 603:1:7.

<sup>509</sup> Tr. Vol. III, p. 600:16-25 and p. 601:1:4.

<sup>510</sup> Tr. Vol. IV, p. 717:8-21.

<sup>511</sup> Tr. Vol. III, p. 603:8-19.

<sup>512</sup> Tr. Vol. IV, p. 718:18-23.

through the rear door, and she again strongly and adamantly denied any role.<sup>513</sup> These denials were false.

In paragraph 32 of her Response to the Formal Charges issued in this matter, Judge Joseph admitted that her assent to allow defendant, defense counsel, and the interpreter to go to the lockup had the unintended effect of assisting in what happened, but Judge Joseph failed to make any such admission in response to Chief Justice Dawley's questions.<sup>514</sup>

During her sworn interview with Special Counsel on June 6, 2023, when asked about events in the Medina-Perez case on April 2, 2018, Judge Joseph attributed her decision to allow the defendant and his counsel to return downstairs to an effort to "pause" the ICE arrest so as to allow time for an attorney-client conference.<sup>515</sup> Judge Joseph denied that Attorney Jellinek 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.<sup>516</sup>

During her June 6, 2023, sworn interview with Special Counsel, Judge Joseph also denied that she had said or done anything to facilitate the defendant's avoidance of ICE.<sup>517</sup> During that interview, Judge Joseph further denied that she had said or done 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 on that day.<sup>518</sup> These denials were false.

As noted above, Canon 2, Rule 2.16 specifically requires that "[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary authorities." (Emphasis added.)

Judge Joseph's failure to be candid and forthcoming during her meetings with Judge Heffernan and Chief Justice Fortes reflects on the credibility of her testimony during the public hearing. Judge Joseph's answers during those meetings indicate her intent was to avoid accepting any responsibility for part of the April 2, 2018, proceeding not being recorded or for Mr. Medina-Perez's successful avoidance of ICE.

As of the time of those meetings, neither Judge Heffernan, as First Justice, nor Chief Justice Fortes, as Regional Administrative Justice, held disciplinary authority. Their roles, however, included obtaining and relaying to the Chief Justice accurate information about events of which the Chief Justice needed to be aware. Judge Joseph's failure to be candid with each of them undermined their ability to perform that aspect of their roles.

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<sup>513</sup> Tr. Vol. III, p. 603:19-22.

<sup>514</sup> Tr. Vol. IV, p. 723: 5-25 and p. 724:1:16.

<sup>515</sup> Appendix N, p. APP216.

<sup>516</sup> Appendix N, pp. APP214-APP215.

<sup>517</sup> Tr. Vol. IV, p. 724:17-25 and p. 725:1-2.

<sup>518</sup> Appendix N, p. APP248.

In contrast, when Judge Joseph met with Chief Justice Dawley, Chief Justice Dawley's role included disciplinary authority.<sup>519</sup> When Judge Joseph met with Special Counsel on June 6, 2023, Special Counsel was acting on behalf of the Commission, which is designated as a judicial disciplinary entity by statute.<sup>520</sup>

**By denying that she had any involvement in Mr. Medina-Perez's successful avoidance of ICE during her meetings with Chief Justice Dawley and with Special Counsel, Judge Joseph failed to cooperate and be candid and honest with judicial disciplinary authorities, in violation of Rule 2.16.**

4. JUDGE JOSEPH COMMITTED 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 M.G.L. C. 211C, SEC. 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.

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).

a. Judge Joseph not only violated Rule 1.1, Rule 1.2, and Rule 2.2 but did so willfully.

As noted above, during the proceedings in the Medina-Perez matter, Judge Joseph did not merely assist Attorney Jellinek with his concerns related to ICE, but she did so intentionally, despite the Lunn policy and despite ICE issues not being within her proper role as a judge. As also noted above, during the sidebar conversation, it was Judge Joseph who first brought up the issue of ICE being present that day.

In her efforts to assist Attorney Jellinek, Judge Joseph went as far as to offer to hold Mr. Medina-Perez without bail on the fugitive from justice charge, despite

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<sup>519</sup> Tr. Vol. III, p. 531:18-24.

<sup>520</sup> M.G.L. c. 211C is the Commission's enabling statute. M.G.L. c. 211C, sec. 2(1) provides as follows: "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."

evidence that suggested that the underlying warrant incorrectly named Mr. Medina-Perez, and despite having no lawful authority to order that Mr. Medina-Perez be detained without bail.

Finally, when Attorney Jellinek rebuffed Judge Joseph's suggestion that she order Mr. Medina-Perez's unlawful detention, Judge Joseph then granted his request to go off the record, without being given any basis for doing so, and despite the clear prohibition in District Court Rule 211 that requires that non-administrative courtroom proceedings be conducted on the record.

Judge Joseph then engaged in a 52-second-long unrecorded sidebar conference just after she and Attorney Jellinek could be heard strategizing ways for Mr. Medina-Perez to "avoid" ICE custody that day.<sup>521</sup>

**Judge Joseph willfully engaged in conduct that failed to comply with the law, in violation of Rule 1.1. She also willfully engaged in conduct that would create in reasonable minds a perception of impropriety and a lack of impartiality, in violation of Rule 1.2; and that failed to comply with the law, created an appearance of bias, and demonstrated actual bias, in violation of Rule 2.2.**

b. Judge Joseph not only violated Rule 2.5 but did so willfully.

During the April 2, 2018 proceedings in the Medina-Perez matter, Judge Joseph instructed Clerk Okstein to turn off the courtroom recorder in a clear, direct violation of District Court Special Rule 211.

Judge Joseph instructed Clerk Okstein to shut off the courtroom recorder without asking Attorney Jellinek for any explanation for his request to go off the record, and she did not consider any reason or justification for doing so.

During her meeting with Chief Justice Fortes at the Lowell District Court, Judge Joseph told Chief Justice Fortes that she already knew that all court proceedings must be recorded, though Judge Joseph may not have been aware that the requirement was explicitly required by rule.

During her sworn interview with Special Counsel on June 6, 2023, Judge Joseph claimed that she thought Attorney Jellinek might have wanted to go off the record because he intended to tell her why Attorney Bostwick had not come back to court after the lunch recess, despite the fact that Attorney Bostwick was present in the courtroom at the time, sitting within the bar enclosure and within Judge Joseph's clear line of sight.

Judge Joseph's purported reasoning is not credible. However, even if Judge Joseph really thought that Attorney Bostwick's absence might have been the

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<sup>521</sup> Appendix G, pp. APP040-APP041.

reason that Attorney Jellinek requested to go off the record, when Judge Joseph learned that the topic Attorney Jellinek wanted to discuss was substantive and not related to Attorney Bostwick's absence, she failed to act appropriately and end the unrecorded sidebar immediately.<sup>522</sup>

**Through this conduct, Judge Joseph willfully failed to adhere to the requirement that all courtroom proceedings be recorded, and in doing so, she failed to perform her judicial duties competently, in violation of Rule 2.5.**

**As noted above, Judge Joseph did not advise Clerk Okstein or any other court personnel that she had agreed to help with Attorney Jellinek's plan for Mr. Medina-Perez to avoid ICE that day, and in doing so, Judge Joseph not only failed to cooperate with court officials in the administration of court business, in further violation of Rule 2.5, but she did so willfully.**

c. Judge Joseph not only violated Rule 2.16 but did so willfully.

During her May 8, 2018 meeting with Chief Justice Dawley and Chief Justice Fortes, Chief Justice Dawley repeatedly asked Judge Joseph whether she had anything to do with the defendant going out the back, and she strongly denied that she had any role.

During her sworn interview with Special Counsel on June 6, 2023, Judge Joseph denied that Attorney Jellinek 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. Judge Joseph also denied that she had said or done anything to facilitate the defendant's avoidance of ICE. She further denied that she had said or done 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 on that day.

Judge Joseph denied any involvement with Mr. Medina-Perez's avoidance of ICE when asked by both Chief Justice Dawley and Special Counsel despite having agreed to assist with Attorney Jellinek's plan to help Mr. Medina-Perez avoid ICE, and despite her later admission that her assent to allow the defendant, defense counsel, and the interpreter to go to the lockup had the unintended effect of assisting in what happened.

**By falsely denying that she had any involvement in Mr. Medina-Perez's successful avoidance of ICE during her meetings with Chief Justice Dawley and Special Counsel, Judge Joseph not only failed to cooperate and be candid and honest with judicial and lawyer disciplinary authorities, in violation of Rule 2.16, but she did so willfully.**

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<sup>522</sup> Tr. Vol. V, p. 797:13-23.

#### IV. RECOMMENDATIONS FOR DISCIPLINE

The Supreme Judicial Court 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 Supreme Judicial Court 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). In Morrissey, the Supreme Judicial Court also stated that public “assurance” is an important factor in what “disciplinary measures” are appropriate. Id. at 17, (“[T]he resulting disciplinary measures have served to give assurance to the public that such conduct will not be tolerated and that the judiciary itself is ever ready to carry out the corrective process when necessary.”).

##### 1. FACTORS CONSIDERED IN CONNECTION WITH A RECOMMENDATION FOR JUDICIAL DISCIPLINE.

To achieve the public “assurance” the Morrissey case calls for, the Supreme Judicial Court has historically considered the following factors in connection with determining the appropriate sanction for judicial misconduct:

- a. Did “the judge’s misconduct bring undeserved discredit to the administration of justice in the Commonwealth” (Matter of Larkin, 368 Mass. at 91-92).
- b. Do the charges relate to misconduct of a judge in acting in his official capacity (Matter of DeSaulnier (No. 4), 360 Mass. 787 (1972)).
- c. Did the judge commit a wide variety of improprieties, both on and off the bench, occurring over an extended period of time. Matter of Troy, 364 Mass. 15 (1973).
- d. Are there any aggravating or mitigating circumstances. See Matter of Killam, 388 Mass. at 624. See also Matter of Scott, 377 Mass. 364 (1979) and Matter of Markey, 427 Mass. at 808.

In connection with determining the appropriate sanction, the Supreme Judicial Court has also considered whether the sanctions imposed are “markedly disparate from judgments in comparable cases” (Matter of Barrett, 447 Mass. 453, 462 (2006)) and whether the sanction imposed will “adequately give assurance to the public that such conduct . . . will not be tolerated” (Matter of Morrissey, 366 Mass. at 17).

2. COMMISSION'S APPLICATION OF FACTORS IN CONNECTION WITH ITS RECOMMENDATION FOR DISCIPLINE.

The Commission's recommendations for discipline consider the above factors as follows:

- a. Judge Joseph's misconduct brought undeserved discredit to the administration of justice.

Given the nature and seriousness of Judge Joseph's violations of the Code, the Commission respectfully submits that her misconduct has clearly brought "undeserved discredit to the administration of justice in the Commonwealth." Matter of Larkin, 368 Mass. at 91-92.

- b. Judge Joseph's misconduct relates to actions she took in her official capacity.
- c. Judge Joseph's misconduct includes improprieties relating not just to her conduct during the April 2, 2018 proceedings in the Medina-Perez matter but also in connection with her conduct when subsequently questioned about those events during her meeting with Chief Justice Dawley on May 8, 2018, during her sworn interview with Special Counsel on June 8, 2023, and during her sworn testimony at the public hearing.
- d. There are both aggravating and mitigating factors to be considered in connection with Judge Joseph's misconduct.

In connection with this recommendation for discipline, the Commission considers the following aggravating circumstances:

- Judge Joseph's misconduct was willful, and Judge Joseph's lack of candor and dishonesty occurred over an extended period of time.
- Judge Joseph's misconduct was related to her judicial office.
- Though Judge Joseph was a new judge at the time of the April 2, 2018 incident, she already had a great deal of experience as a criminal defense lawyer, including experience in the Newton District Court.
- Judge Joseph knew or should have known that anything involving ICE would trigger scrutiny, and that the way she handled the proceedings in the Medina-Perez matter would affect public trust and confidence in the judiciary.
- In connection with both the Trial Court's and the Commission's investigation of her actions on April 2, 2018, Judge Joseph repeatedly and deliberately failed to be candid and honest when questioned by Judge Heffernan, Chief

Justice Fortes, Chief Justice Dawley, and Special Counsel. That failure extended to the public hearing in this matter.

- The nature and extent of Judge Joseph’s misconduct has raised a serious question about whether she can command the respect and authority essential to the performance of her judicial function.

In connection with this recommendation for discipline, the Commission considers the following mitigating circumstances:

- Judge Joseph has already experienced hardship due to the heightened public scrutiny and lengthy pendency of this matter, the federal indictment, and her suspension from the bench pending resolution of the federal indictment
- As of April 2, 2018, Judge Joseph had only recently been appointed as a judge.

In the present case, the Commission has also considered the merits and specific circumstances of this matter, weighing the effect of Judge Joseph’s misconduct upon the judiciary and the public’s perception of the judiciary.

In the present case, the Commission draws its recommendation for discipline directly from the Supreme Judicial Court’s past decisions in In the Matter of Robert M. Bonin, 375 Mass. 680 (1978); In Re: Thomas Estes, Supreme Judicial Court, SJC No. OE-136 (May 24, 2018); and In the Matter of Paul M. Sushchyk, Supreme Judicial Court, No. SJC-13077 (March 23, 2022).

In Matter of Bonin, former Chief Justice of the Superior Court Robert M. Bonin was charged with misconduct in relation to his attendance at an event for which the ticket sales were intended to fund the defense of criminal defendants with matters then pending before the Superior Court. Matter of Bonin, 375 Mass. at 710-711. Although the facts in Bonin were very different, the concerns about the impact of that misconduct on public perception were similar to those present in this matter. The Supreme Judicial Court held:

“The Chief Justice’s conduct was improper and created the appearance of impropriety, bias, and special influence. A judge, particularly a chief justice, must be sensitive to the impression which his conduct creates in the minds of the public. The Chief Justice has manifested an unacceptable degree of insensitivity to those special obligations which are imposed on a person in his position. He has failed to perceive that the public often does not distinguish between a chief justice as a judge and a chief justice as a person.”

Id. at 711.

The Supreme Judicial Court went on to publicly censure Chief Justice Bonin and to decide, as follows:

“We recognize that the question whether the Chief Justice should continue to serve and to receive compensation as such is one which is not assigned to the judicial department under the Constitution of the Commonwealth [citations omitted]. But we deem it appropriate, pursuant to our constitutional and statutory powers of supervision over the courts of the Commonwealth, that the suspension of the Chief Justice should extend for a reasonable time to permit the executive and legislative branches to consider, if they wish, the question of the continuance of the Chief Justice in office, on the basis of such factors as they think appropriate, including, perhaps, the record before us and the conclusions we have drawn from it. A transcript of this proceeding and the exhibits are available to the Governor and the Legislature on request. The order of suspension shall continue in effect until further order of this court, but that order will be continued only for a reasonable period, as described above.”

Id. at 711-12.

While the fact pattern is very different, the Commission respectfully submits that, in the present matter, the problems of public impact and public perception are similar enough to warrant the same discipline as the Supreme Judicial Court imposed in Bonin.

In In Re: Thomas Estes, the Supreme Judicial Court’s final decision rested heavily on its conclusion that the judge’s misconduct raised a serious question whether he could any longer command the respect and authority essential to the performance of his judicial function. The Supreme Judicial Court wrote:

“Clearly, the Judge’s misconduct has damaged the esteem of the judicial office in the public’s eye. The sanction we impose is severe not because we seek to punish the Judge severely, but because, like the Commission, we seriously question whether he can command the respect and authority essential to the performance of his judicial function. In furtherance of our duty to assure the public that Massachusetts judges are held to high standards of conduct and that the Commonwealth’s judiciary is worthy of their trust and confidence, we conclude that Judge Estes shall be and hereby is publicly censured, and that effective June 15, 2018, he shall be suspended without pay indefinitely or until further order of this court, and it is so ORDERED. A copy of this order shall be delivered to the Governor and the Legislature.”

In Re: Thomas Estes, SJC No. OE-136, Order at 5.

Like in the Estes matter, Judge Joseph’s misconduct will prevent her from ever again commanding the respect and authority essential to the performance of her judicial function.

The Commission respectfully submits that the Supreme Judicial Court's reasoning in the Estes matter should also apply to the present matter, in which Judge Joseph not only engaged in serious misconduct on April 2, 2018, but also failed to be candid and honest about her conduct when subsequently questioned by judicial disciplinary authorities.

The Commission's recommendation for discipline in this matter also draws heavily from the Supreme Judicial Court's decision in In the Matter of Paul M. Sushchyk.

In the Sushchyk matter, the Supreme Judicial Court's final decision to suspend Judge Sushchyk indefinitely without pay heavily weighed Judge Sushchyk's lack of honesty in connection with both the Trial Court's and the Commission's investigation of his conduct. In its final decision, the Supreme Judicial Court wrote:

“As this court has previously acknowledged, ‘[t]hat the standards imposed on judges are high goes without saying. Because 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. Failure on the part of even a few judges to comply with these standards serves to degrade and demean the entire judiciary and to erode public confidence in the judicial process.’ Matter of Morrissey, 366 Mass. 11, 16-17 (1974) (‘Anyone who is unwilling to accept and abide by such [high standards] should not aspire to or accept the great honor and the grave responsibility of serving on the bench’). When, as in the present case, a judge strays from those high standards, we are mindful that the discipline we impose must ‘serve[] to give assurance to the public that such conduct will not be tolerated and that the judiciary itself is ever ready to carry out the corrective process when necessary.’ Id. at 17. See In re: Estes, Sup. Jud. Ct., No. OE 136, Order, at 3 (‘Because deference to the judgments of our courts requires that courts maintain the public's trust and confidence, our disposition must assure the public that judges are held to high standards and that the judiciary is worthy of the trust and confidence necessary in a society governed by law’).”

In the Matter of Paul M. Sushchyk, No. SJC-13077, Order at 5.

As in the Judge Sushchyk matter, Judge Joseph has been repeatedly dishonest when questioned about her conduct by the Trial Court and the Commission; accordingly, her conduct merits the same discipline.

### 3. COMMISSION'S RECOMMENDATIONS FOR JUDICIAL DISCIPLINE.

Based on the evidence presented during the Formal Hearing of this matter and in consideration of the above factors, the Commission respectfully submits that the appropriate sanction for each of Judge Joseph's violations of the Rules with which she has been charged is as follows:

- a. For instructing Clerk Okstein to turn the courtroom audio recorder off during non-administrative proceedings, in violation of Commission Rules 1.1, 1.2, 2.2, and 2.5: public reprimand with conditions of monitoring for a period of time.
- b. For engaging in conduct that demonstrated actual bias, that created an appearance of bias, and that created an appearance of a lack of impartiality, in further violation of Commission Rules 1.2 and 2.2: public censure (if the Hearing Officer finds actual bias and the creation of an appearance of bias) or public reprimand (if the Hearing Officer finds only the creation of an appearance of bias) with conditions of monitoring for a period of time.
- c. For failing to disclose her plan to assist Attorney Jellinek in helping Mr. Medina-Perez avoid ICE, in further violation of Rule 2.5; and for her lack of candor, lack of cooperation, and lack of honesty with judicial disciplinary authorities, in violation of Rule 2.16: indefinite suspension without pay and referral to the legislature and the governor for removal.

Respectfully submitted,



Judith Fabricant  
Special Counsel  
Commission on Judicial Conduct

Date: July 3, 2025