REPORT AND RECOMMENDATION OF THE COMMISSION ON JUDICIAL CONDUCT

APPENDIX N

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS. SJC NO. OE-157

COMMISSION'S RESPONSE TO RESPONDENT'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

In Response to the Respondent's Request for Findings of Fact and Conclusions of Law ("Request"), the Commission relies on its Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline, submitted on July 3, 2025. Overall, the Commission submits that the Respondent's Request urges inferences and credibility determinations that are not reasonable or plausible based on the evidence and that, in significant respects, are contrary to the evidence. The Commission will not attempt to respond to each paragraph of the Request in this document, but will address certain paragraphs that significantly misstate the evidence or the law, or that call for inferences or credibility determinations that are unreasonable or unwarranted based on the evidence.

I. COMMISSION'S RESPONSES TO REQUESTS FOR FINDINGS

Response to Paragraph 14

The testimony of Mr. Jellinek referenced by the Respondent was that Mr. Jellinek had "seen other people released out the back" so he "knew it was possible," not that he "had had clients released from the back door of [Newton District Court]."[1] Mr. Jellinek further testified that he had never seen that occur at Newton District Court with ICE in the courthouse, and he described his advocacy for that result as "right on the edge of what was okay" or "appropriate."[2]

Response to Paragraph 39

See Paragraph 43 of the Commission's Proposed Findings. The inability of Attorney Jellinek's bank to provide a seven-year-old statement within two months of his request supports no inference on any issue.

[1] Tr. Vol. I, p. 104:11-12.
[2] Tr. Vol. I, p. 104:13-15 and p. 105:1-3.

Response to Paragraphs 42 and 43

The timing and circumstances leading to Mr. Jellinek's engagement to represent Mr. Medina-Perez are not material to the issues in this matter. His inability to remember the details and timing of his interaction with Mr. Medina-Perez's friends, seven years after the fact, supports no inference and does not reflect on his credibility. His direct and candid responses to questions on these topics, including a candid acknowledgement of inconsistencies in his memory, support his overall credibility.

Response to Paragraph 65

The requested finding that dismissal of the Fugitive from Justice charge left the ICE detainer as a matter to be addressed is not accurate. The ICE detainer was not a matter for Judge Joseph to address as a judge of the Massachusetts District Court. To the contrary, as she acknowledged, her duty was to be neutral and take no action regarding ICE.[3] Her reference to ICE, at the outset of the sidebar conversation, reflected, and was reasonably understood by Attorney Jellinek as an expression of her willingness to engage with him regarding ICE.[4]

Response to Paragraphs 69 through 73

Judge Joseph's testimony that she interpreted Attorney Jellinek's statement that "the best thing for us to do is to clear the fugitive issue release him on personal and hope he can avoid ICE," as a request for more time to investigate is implausible and not credible. Nothing in that statement, or any other statement Attorney Jellinek made, could have reasonably been interpreted as a request for more time to conduct a further investigation, or to make further efforts to persuade ICE.

To the contrary, Attorney Jellinek had just informed Judge Joseph that he had spoken with the ICE officer, who was convinced that Mr. Medina-Perez was the person named in the detainer, and that after review of the Interstate Identification Index report ("Triple-I"), Attorney Jellinek was convinced to the contrary. In the context of this conversation, no reasonable judge (or experienced lawyer) could understand his statement as a request to hold his client in custody longer in the hope that he could persuade ICE. Rather, his statement was clearly an effort to persuade Judge Joseph that ICE had erroneously identified his client and was about to arrest the wrong person, and to enlist her assistance in solving that problem.

When Judge Joseph persisted in offering continued detention as a solution, even after Attorney Jellinek had explained to her why that would not solve the problem, he then asked to go off the record. Whatever experience Judge Joseph may have had previously with conversations off the record, there is no room for doubt in this context that she understood that the purpose of the request to go off the record was to discuss how the defendant could avoid ICE. Her allowance of the off-the-record conference for that purpose was improper.

[3] Tr. Vol. IV, p. 661:4-5.
[4] Tr. Vol. I, p. 70:6-12, p. 71:18-25 and p. 72:1-13.

Judge Joseph's contention that she interpreted Attorney Jellinek's statement as a request for more time to investigate, and that she was attempting to give him as much time as she had given Attorney Bostwick to investigate the Pennsylvania warrant, is indeed a new theory. Her position in her interview with Special Counsel on June 6, 2023, was that she sought to "pause" the ICE arrest to allow time for a "quick" attorney-client conference before the defendant was taken "directly into ICE custody."[5] Moreover, the idea that she intended to allow Attorney Jellinek as much time as she had allowed Attorney Bostwick is implausible and not credible; the two attorneys were on the same side of the case, both representing the defendant, and could have shared any information pertinent to his defense.

Response to Paragraphs 74 through 80

Respondent's contention that ordering the defendant detained overnight, for the purpose of keeping him out of ICE custody, would have been "reasonable and proper," is implausible and legally incorrect. Her contention that such an order would not "unreasonably hinder ICE in the performance of its duties" is contrary to her stated intention to delay the defendant's release overnight to avoid an ICE arrest. As Judge Joseph herself testified, there are many factors to be considered with respect to detention, or bail, for a person charged with being a Fugitive from Justice;[6] ICE is not among the permissible factors established by Massachusetts law, General Laws Chapter 276, Sections 57 and 58.

Certainly a judge has authority to deny a prosecutor's motion to dismiss a charge (although the prosecutor could file a *nolle prosequi* pursuant to M. R. Crim P. 16), but a decision to deny a motion to dismiss for the purpose of keeping a defendant out of ICE custody would be an abuse of power that would improperly hinder ICE in the performance of its duties regardless of any consent of counsel.

Setting a bail that the defendant would be unable to post on a misdemeanor charge unlikely to result in incarceration, for the purpose of keeping the defendant out of ICE custody, would be a similar abuse of power. See Brangan v. Commonwealth, 477 Mass. 691 (2017).[7]

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[5] Appendix N, pp. APP215-APP216.

[6] Tr. Vol. IV, p. 667:14-25 and p. 668:1-21.

[7] In Brangan v. Commonwealth, 477 Mass. 691 (2017), the Supreme Judicial Court addressed the issue of bail and its impact on a defendant's due process rights. The petitioner, Jahmal Brangan, was held in jail for more than three and one-half years because he was unable to post bail in the amount ordered by a superior court judge following his arrest and indictment for armed robbery while masked. On appeal from a judgment of a single justice denying his petition for relief under G. L. c. 211, § 3, Brangan contended that the bail order violated his right to due process because the judge failed to give adequate consideration to his financial resources, and set bail in an amount so far beyond his financial means that it resulted in his long-term detention pending resolution of his case. Id., 477 Mass. at 693.

The Supreme Judicial Court held:

> "[I]n setting the amount of bail, whether under G. L. c. 276, § 57 or § 58, a judge must consider a defendant's financial resources, but is not required to set bail in an amount the defendant can afford if other relevant considerations weigh more heavily than the defendant's ability to provide the necessary security for his appearance at trial. Where, based on the judge's consideration of all the circumstances, including

Contrary to Respondent's suggestion, the testimony of retired Superior Court Judge Carol Ball did not support the proposition that a judge can properly keep a defendant in custody without legal basis as long as the defendant's counsel consents. As Judge Ball acknowledged, some legal basis for custody must be reflected on the mittimus that orders the sheriff or other custodian to receive and hold the defendant.[8]

Response to Paragraph 81

Respondent points out an entry in the docket in the Medina-Perez case indicating that, in December of 2021, after more than three years on default, the defendant was held overnight "due to identity issues." In that circumstance, it was entirely appropriate for the court to set bail, and to consider the defendant's criminal history, particularly any history of defaults, in doing so. If there was doubt about whether the criminal history before the court matched the person before the court, a judge might order brief detention without bail, during which the prosecutor and/or law enforcement authorities would investigate that question. No comparable circumstances occurred before Judge Joseph.

Response to Paragraph 82

It is not plausible or credible that Judge Joseph "assumed" that Attorney Jellinek intended to "deal with the ICE issue in another forum," after he had told her that "the best thing for us to do is to clear the fugitive issue release him on personal and hope he can avoid ICE," and after an off the record conversation of that topic.

> the record of defaults and other factors relevant to the likelihood of the defendant's appearance for trial, neither alternative nonfinancial conditions nor a bail amount the defendant can afford will adequately assure his appearance for trial, the judge may set bail at a higher amount, but no higher than necessary to ensure the defendant's appearance for trial. We conclude further that where it appears that a defendant lacks the financial resources to post the amount of bail set, such that his indigency likely will result in a long-term pretrial detention, the judge must provide written or orally recorded findings of fact and a statement of reasons for the bail decision."

Id., 477 Mass. at 694.

The Supreme Judicial Court further held:

> "[T]he factors that a judge is to consider when conducting a bail hearing are '(1) the nature and circumstances of the offense charged, (2) the accused's family ties, (3) his *financial resources*, (4) his length of residence in the community, (5) his character and mental condition, (6) his record of convictions and appearances at court proceedings or of any previous flight to avoid prosecution or (7) any failure to appear at any court proceedings'" (emphasis added).

Id., 477 Mass. at 698.

[8] Tr. Vol. V, p. 851:7-21. The transcript incorrectly recorded Judge Ball as saying "minimus." She actually said the word "mittimus."

Response to Paragraph 91 and 92

These requested findings rely on implausible and unreasonable inferences, and unwarranted suggested determinations of credibility. Respondent's current position appears to be that the entire conversation off the record consisted of Attorney Jellinek saying that he did not want more time, and requesting that he and his client be allowed to go downstairs – apparently with no explanation. This would hardly take 52 seconds.

Nor is this contention consistent with Respondent's apparent position that an attorney going to the lock-up with a client after an order of release, with the interpreter if needed, is common and uncontroversial, and would not require court permission. If that were so, and if Judge Joseph and Attorney Jellinek believed it to be so, he would have had no purpose in asking to go off the record. Knowing that the ICE officer was not in the courtroom, he could have made that request on the record, confident that it would be granted. To the contrary, as Attorney Jellinek testified, he requested to go off the record for the purpose of obtaining Judge Joseph's permission to proceed as he had discussed with Court Officer MacGregor.[9]

Response to Paragraphs 104 and 105

The Commission agrees that ADA Jurgens was a credible witness. It does not follow that Attorney Jellinek's testimony was not credible. ADA Jurgens did not testify that Attorney Jellinek and Judge Joseph did not make the statements that he testified to. Rather, ADA Jurgens testified that she does not remember such statements. She also testified that she did not believe that a defendant would be released from custody out the back.[10] ADA Jurgens testified that she does remember Judge Joseph saying words to the effect of "what can we do?" That statement, which does not appear on the record and so must have been off the record, must have referred to the defendant's problem with ICE, since no topic related to the state charges remained to be addressed.

Response to Paragraph 106

Attorney Jellinek's testimony that he would have said what he did to Judge Joseph if she had refused to go off the record supports his credibility. As Attorney Jellinek testified, he believed that his client was not the person named in the detainer.[11] Based on his conversation with Court Officer MacGregor, Attorney Jellinek believed that release out the back would not violate any rule or policy. As he further testified, if Judge Joseph had rejected his proposed solution, he would have accepted her refusal.[12] In Attorney Jellinek's view, his role was to advocate for his client's interest as strenuously as he could,[13] taking advantage of a judge's grant of his request, or accepting its denial.

[9] Tr. Vol. I, p. 72:14-20.
[10] Tr. Vol. II, p. 241:5-21.
[11] Tr. Vol. I, p. 58:10-22.
[12] Tr. Vol. I, p. 75:20-23.
[13] Tr. Vol. I, p. 90:20-25.

Response to Paragraph 110

This proposed finding is not supported by Interpreter Mendoza's testimony. He did not recall the number of conversations he had with the attorneys for Mr. Medina-Perez, as he did not remember the genders of the attorneys in the case at the various times in the course of the day, because that was not important to him.[14]

Response to Paragraphs 115 through 118

Interpreter Mendoza has no bias, and no reason to misstate what he heard. His testimony was clear that what he heard was not merely the word "release," but rather, that the defendant would be released out the back. He remembered what he heard, because it caused him to feel disappointed in the court, and to "lose faith in the system a little."[15] Whether Attorney Bostwick was closer to or further from the sidebar than Interpreter Mendoza is not established in the evidence. Her inability to hear the conversation from her seat does not support any inference as to Interpreter Mendoza's ability to hear what he testified he heard from his location.

Response to Paragraph 122

This requested finding misstates Judge Heffernan's testimony at the cited pages.[16] The substance of her testimony at these pages was that a judge has no role with respect to ICE; that an attorney-client conference should not occur in the lock-up if the defendant is no longer in custody; and that, if the Lunn policy were as counsel represented in her questions, then ICE should take custody in the lock-up, although Judge Heffernan testified that, in her experience, that had never happened in the Newton District Court.

Response to Paragraph 133

This requested finding ignores the time necessary, after the conclusion of the hearing, for defense counsel and the interpreter to approach the dock; for the court officer to open the dock to allow them to enter;[17] for the court officer to escort the group, with the defendant still in shackles, through a second secure door, down a flight of stairs, through another secure door, and into a location in the lock-up where attorney-client communication could occur; for Interpreter Mendoza to interpret the communication between attorney and client; and then for the court officer to remove the defendant's shackles and to open the secure door and allow the defendant to exit. Attorney Jellinek estimated the communication as 15-30 seconds. Interpreter Mendoza estimated it as couple of minutes.[18] Neither claimed certainty as to these time estimates. A total of seven minutes for this entire process, from the end of the

[14] Tr. Vol. II, p. 280:19-25 and p. 281:1-2.
[15] Tr. Vol. II, p. 259:12-13.
[16] Tr. Vol. III, pp. 520-522.
[17] The door from the courtroom to the dock, and the second door from the dock to the landing that leads to the stairway, both use a physical key, not an electronic key card. Tr. Vol. III, p. 407:18-25 and p. 408:1-2.
[18] Tr. Vol. II, p. 258:17-18.

court proceeding to the defendant's exit, is entirely plausible, and fully consistent with Attorney Jellinek's and Interpreter Mendoza's testimony.

Response to Paragraph 144

The victim-witness advocate to whom ADA Jurgens referred in her testimony was Michael Owens.[19]

Response to Paragraph 148

This requested finding misstates Clerk Okstein's testimony. He did not testify that his interpretation of Judge Joseph's statement that "I'm not going to allow them to come in here" was a misunderstanding. He interpreted her statement to mean that she would not allow ICE to go to the lock-up, and conveyed that interpretation to the ICE Officer. Both Attorney Jellinek and ADA Jurgens shared Clerk Okstein's interpretation,[20] which was consistent with previous practice in the Newton District Court. Their interpretation was reasonable in the circumstances.

Response to Paragraph 149

At no point did Judge Joseph state to Clerk Okstein, or to anyone, that ICE was permitted to go to lock-up, and Clerk Okstein, Attorney Jellinek, and ADA Jurgens, all reasonably interpreted Judge Joseph's statements to Clerk Okstein as not permitting ICE into lockup.[21]

Response to Paragraph 151

This requested finding misstates Attorney Jellinek's testimony regarding Court Officer MacGregor's statement to him. Attorney Jellinek testified that Court Officer MacGregor said he could release a person out the back if the person was downstairs and if he had permission – that is, the judge's permission.[22] To fulfill those conditions, Attorney Jellinek requested, off the record, that Judge Joseph allow the defendant to go downstairs, and explained that if she allowed that, he thought he could have his client released from the back.[23] She gave her approval off the record.[24]

Court Officer MacGregor was in the courtroom and in a position to hear the statements made in open court. He received confirmation from both the clerk and the judge that the defendant was ordered released, and then received confirmation directly from Judge Joseph that she had "allowed" Attorney Jellinek's request that he and the defendant go downstairs, with the interpreter, "to further interview him."[25] In that context, Court Officer MacGregor

[19] Tr. Vol. II, p. 326:17.
[20] Tr. Vol. I, p. 202:15-25 and p. 203:1-22; Tr. Vol. II, p. 239:3-13; and Tr. Vol. II, p. 356:11-21.
[21] Tr. Vol. I, p. 202:15-25 and p. 203:1-22; Tr. Vol. II, p. 239:3-13; and Tr. Vol. II, p. 356:11-21.
[22] Tr. Vol. I, p. 63:6-25 and p. 64:1-6.
[23] Tr. Vol. I, p. 73:15-24.
[24] Tr. Vol. I, p. 73:25 and p. 74:1-3.
[25] Appendix G, p. APP043.

could reasonably understand her statement, at that time, as indicating that she had given permission for him to act as he had told Attorney Jellinek he could.

Response to Paragraphs 155 and 156

Attorney Jellinek had no reason to discuss the off-the record conversation with either ADA Jurgens or Attorney Bostwick, or anyone else, after the fact. As he testified, his preference was to make his request of Judge Joseph in the privacy of an off-the-record conversation at sidebar, for his own protection and that of the judge.[26] He made a decision to take the risk of doing so in the presence of ADA Jurgens, recognizing that she was relatively new in her role in Newton, and focused on her responsibilities, which did not include ICE.[27] When her later comment suggested that she had not anticipated the result, no response from him would have served any interest of his or his client's.

Response to Paragraphs 160

Chief Court Officer Noe testified that Court Officer MacGregor told him, among his various explanations, that he "had a feeling" that Judge Joseph wanted him to release the defendant out the back.[28] Court Officer MacGregor's impression was reasonable based on Judge Joseph's statements in open court, in light of previous practice in the Newton District Court.

Response to Paragraphs 163 and 164

Attorney Jellinek and First Justice Heffernan have different memories of a brief conversation that occurred more than seven years ago. Two days later, when Judge Heffernan attempted to summarize that conversation and three other conversations in her email, she did not delineate the sources of the various pieces of information, and no longer remembers the sources of each. As she acknowledged in her testimony, her understanding of what she was told reflected a misapprehension as to the location where the proceeding occurred.[29] The differences in accounts of the conversation between Attorney Jellinek and Judge Heffernan support no inference, and no credibility judgment other than that each has provided his or her honest recollection.

Response to Paragraph 175

There is no evidence that Judge Heffernan has received any "after-acquired information," other than learning of the indictment, nor would her view as to the significance of any such information have any bearing on the issues to be decided.

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[26] Tr. Vol. I, p. 72:1-25 and p. 73:1-5.
[27] Tr. Vol. I, p. 89:21-25; Tr. Vol. I, p. 90:1-5; and Tr. Vol. I, p. 108:24-25 and p. 109:1-4.
[28] Tr. Vol. III, p. 427:4-7.
[29] Tr. Vol. III, p. 474:21-25 and p. 475:1-7.

Response to Paragraph 178

Contrary to this requested finding, the Commission has made no suggestion as to the source of the statement in Judge Heffernan's email that the defendant and counsel were going to Probation. This statement might have come from any of Judge Heffernan's sources, or from her own inference, based on her erroneous understanding that the proceedings occurred in the second session courtroom, from which the stairway would lead to the Probation area, where a defendant would go if released on conditions. The only significance of this erroneous statement is that it does not supply a reasonable or legitimate reason for the defendant and his counsel to go downstairs after he was ordered released without conditions.

Response to Paragraphs 179 and 180

The minor differences in the testimony of Judge Heffernan and Chief Justice Fortes regarding their communications more than seven years ago supports no inference, and no credibility determination, other than that both testified to their honest recollection. Both testified very firmly that they consider the requirement of recording to be very important.[30] Chief Justice Fortes, in her then-role as Regional Administrative Justice, was so concerned about the possibility that a new judge may have gone off the record that she made a point of speaking with Judge Joseph about it in person, at the earliest opportunity, and preparing for the conversation by printing a copy of Rule 211 to give to Judge Joseph.[31]

Response to Paragraph 191

Chief Justice Dawley wrote the email to which this requested finding refers based solely on First Justice Heffernan's email summary of the information she had received, before he had listened to the recording of the proceeding, before his May 8, 2018, meeting with Judge Joseph, and without having any response to his question, "[w]ho was responsible for allowing the defendant to exit the courthouse via a non public entrance?"[32] His view in that context, based on the limited information available to him, has no bearing on the issues to be decided.

Response to Paragraph 198

There is no evidence that Chief Justice Dawley has received any "after-acquired information," other than learning of the indictment, and at some point learning of the existence of a transcript of the on-the-record portion of the proceeding. Nor would his view as to the significance of such information have any bearing on the issues to be decided.

Response to Paragraph 201

This requested finding urges unwarranted inferences about the three supervising judges' beliefs. Nor would any beliefs they might have, or have had, based on the limited

[30] Tr. Vol. III, p. 462:24-25 and p. 463:1-13; and Tr. Vol III, p. 533:16-25.
[31] Tr. Vol. III, p. 540:18-22; Tr. Vol. III, p. 542:20-25 and p. 543:1-3; and Tr. Vol. III, p. 546:6-11.
[32] Appendix V, pp. APP538-APP539; and Tr. Vol. III, p. 486:16-21.

information available to them, bear on the determinations to be made by the hearing officer, based on all the evidence presented.

Response to Paragraph 205

Attorney Jellinek's expression to Court Officer MacGregor of concern regarding his job, and his attendance at Court Officer MacGregor's retirement party, support no inference other than that Attorney Jellinek showed human concern that Court Officer MacGregor might suffer adverse consequences for an action that Attorney Jellinek had precipitated. Chief Court Officer Noe had made his disapproval of Court Officer MacGregor's action apparent immediately after the event, and issued a written warning within weeks.[33] By the time of the retirement party, Attorney Jellinek was aware that Court Officer MacGregor had been called to the grand jury, as he himself had been.[34] It would have served no purpose at any time for him to invite broader repercussions by sharing the content of the off-the-record conversation with anyone.

Response to Paragraph 208

This requested finding misstates the evidence in this hearing, and misconstrues the position Attorney Jellinek was in as a potential target of the grand jury investigation. At the time of his proffer and grand jury testimony (and still, as far as the record discloses), his knowledge of the investigation consisted of the fact that Court Officer MacGregor and Clerk Okstein had been subpoenaed. He had no information about who else had or would testify or be interviewed, and no access to the content of any testimony or interviews. Thus, he had no way of knowing whether anything he said would be corroborated or contradicted, or by whom. The only approach that he could expect to spare him from prosecution was to tell the truth, which is what he did. His testimony is corroborated in substantial respects by ADA Jurgens, Interpreter Mendoza, and Judge Joseph's own statements in the recorded portions of the proceeding.

Response to Paragraph 211

Attorney Jellinek did not "retract" his statement that his communication with Judge Joseph was "subtle" such that ADA Jurgens might not have understood it. Rather, years after having used that word, he used somewhat different phrasing, describing ADA Jurgens as relatively inexperienced, and focused on her case, not on the topic of ICE and the manner of the defendant's release.[35]

Response to Paragraph 215

As Attorney Jellinek testified, no one can know what is in another's mind.[36] One can only draw inferences from what the person says and does, as he did from Judge Joseph's

[33] Tr. Vol. III, p. 426:4-7 and p. 427:11-13.
[34] Tr. Vol. I, p. 130:22-25 and p. 131:1-9.
[35] Tr. Vol. I, p. 89:21-25; Tr. Vol. I, p. 90:1-5; Tr. Vol. I, p. 108:1-6; Tr. Vol. I, p. 108:24-25 and p. 109:1-4.
[36] Tr. Vol. I, p. 164:7-10.

statements both on and off the record.[37] Interpreter Mendoza drew essentially the same inferences from what he heard.[38] ADA Jurgens did not understand that a plan was being made to release the defendant out the back, but she did infer that the Judge was improperly attempting to assist defense counsel in helping his client avoid ICE.[39]

Response to Paragraphs 216 and 217

These paragraphs contend that Attorney Jellinek embellished his account of the event after receiving immunity, including as recently as December of 2024. Respondent suggests no reason he would do so, and none appears. Once Attorney Jellinek received the immunity letter in January of 2019, he was safe from prosecution if, and only if, the United States Attorney was satisfied that he told the truth. Additional information provided in connection with this hearing could have no bearing on any potential criminal liability.

As to Attorney Jellinek's professional standing, his account of Judge Joseph's response to him in the off-the-record conversation could hardly affect any evaluation the Board of Bar Overseers might make of his professional conduct. To the contrary, as an attorney with a continuing active practice in the Newton District Court, his interest, if any, would be to maintain positive relationships with the judiciary and court personnel. Exaggeration or embellishment regarding Judge Joseph's conduct would hardly serve that interest.

Response to Paragraph 218

At the time of her conversations with the First Justice, the Regional Administrative Justice, and the Chief Justice, Judge Joseph knew what she and Attorney Jellinek had said both on and off the record, and knew the full context. The only information she did not have was what others would say about the event, if asked – which at that time she had no reason to think they would be. Her duty under Rule 2.16 of the Code of Judicial Conduct was to share the full information she had with Chief Justice Dawley, regardless of what anyone else might or might not say.

II. COMMISSION'S RESPONSE TO REQUESTS FOR CONCLUSIONS OF LAW

Response to Paragraph 1

Respondent argues that a violation of District Court Rule 211 is not misconduct, and does not warrant discipline. For the reasons set forth in the Commission's Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline, she is wrong.

Respondent appears to suggest that because there is no public record of any judge being disciplined for violation of District Court Rule 211 or another court rule, no discipline is warranted in the present case. This argument ignores the confidential nature of nearly all Commission proceedings, pursuant to G. L. c. 211C, sec. 6. Under that statutory

[37] See Commission's Proposed Finding No. 100, with record references.
[38] See Commission's Proposed Finding No. 106, with record references.
[39] See Commission's Proposed Finding No. 104, with record references.

requirement, judicial disciplinary matters become public only in rare instances and many complaints that include discipline are resolved without any public disclosure.

Moreover, whatever prior history of public or private discipline there may or may not be for a judge's violation of a court rule, it is worth generally noting that, in cases of attorney misconduct, the Supreme Judicial Court has held that "[f]undamentally,. . . '[e]ach case must be decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances.'" Matter of Foley, 439 Mass. 324, 333 (2003) (quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984)). The Commission respectfully submits that the Supreme Judicial Court's past decisions in judicial discipline cases have demonstrated the same approach.

III. CONCLUSION

Overall, the Respondent's Request distorts the evidence of material facts, calls for unreasonable inferences and unwarranted determinations of credibility, and fails to recognize and acknowledge Judge Joseph's obligations under the Code of Judicial Conduct. The Commission urges the Hearing Officer to find and rule as set forth in the Commission's Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline.

Respectfully submitted,

Judith Fabricant[40]
Special Counsel
Commission on Judicial Conduct

Date: July 10, 2025

[40] Note that Special Counsel's full name is it as appears here, with no middle initial.