

REPORT AND RECOMMENDATION OF THE
COMMISSION ON JUDICIAL CONDUCT

APPENDIX R

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC NO. OE-157

OBJECTIONS ON BEHALF OF THE COMMISSION ON JUDICIAL CONDUCT
TO THE HEARING OFFICER'S REPORT

On behalf of Commission on Judicial Conduct, Special Counsel submits the following three objections to the Hearing Officer's Report. Special Counsel does not raise any objections to the Hearing Officer's credibility determinations, inferences, or findings of fact; these are the role of the Hearing Officer. Special Counsel's objections are limited to the Hearing Officer's misinterpretations or misapplications of the Code of Judicial Conduct in three respects, as set forth below.

I. The Hearing Officer erred in concluding that Judge Joseph's instruction to turn off the courtroom audio recording system during a substantive discussion in the *Medina-Perez* matter, in violation of District Court Special Rule 211, was not a violation of the Code of Judicial Conduct.

Rule 1.1 of the Code of Judicial Conduct provides that a judge "shall comply with the law." The "Terminology" section of the Code defines "law" to include court rules issued by . . . a Chief Justice of a Trial Court Department." District Court Special Rule 211 was issued by the then Chief Justice of the District court on December 31, 1987, became effective on February 1, 1988, and has been in effect ever since. Accordingly, Judge Joseph's violation of Rule 211 was a clear violation of Rule 1.1 of the Code of Judicial Conduct.

Judge Joseph's ignorance of Rule 211 does not absolve or mitigate the violation. To the contrary, her ignorance of Rule 211 was itself a violation of Rule 2.5(A) of the Code, which

requires a judge to “perform judicial . . . duties competently.” It was Judge Joseph’s responsibility to familiarize herself with the rules of the District Court and to abide by them.

The “Scope” section of the Code, part 6, provides, “Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline.” If Judge Joseph’s violation of Rule 211 stood alone, no discipline might be necessary. Here, however, her violation of Rule 211 was a central aspect of the conduct that, as the Hearing Officer found, created an appearance of bias. Moreover, the violation of Rule 211 gave rise to the factual dispute that necessitated the public hearing; if Judge Joseph had stayed on the record, as Rule 211 requires, there could have been no factual dispute, and no hearing would have been necessary to resolve it. In this context, the violation of Rule 211 had a substantial and adverse effect on the judicial system, bringing the Massachusetts judiciary into disrepute, and undermining public confidence in the judiciary.

Moreover, Judge Joseph’s conduct in conferring with counsel off the record during a criminal proceeding was directly contrary to the guidance the Supreme Judicial Court has provided to Trial Court judges in a series of pronouncements between 1992 and 2007, and then in a rule change in 2015. Three years before the event at issue here, the SJC revised M. R. Crim. P. 12(b) to require that so-called “lobby conferences,” in which a judge discusses with counsel a potential plea, be recorded. As the Hearing Officer noted, that rule did not technically apply to this proceeding, which was not a lobby conference. But that hardly makes the rule change irrelevant. To the contrary: although in times past some judges and lawyers had treated lobby conferences as an exception to the general requirement that criminal proceedings be on the record, the SJC’s revision to Rule 12(b) in 2015 sent a clear message that if any such exception had ever existed, it existed no longer.

Before the 2015 rule change, the SJC had expressed its broader message about the importance of recording in criminal proceedings in a series of decisions between 1992 and 2007, during nearly all of which Judge Joseph was a practicing lawyer. *Commonwealth v. Fanelli*, 412 Mass. 497, 501 (1992); *Commonwealth v. Serino*, 436 Mass. 408, 412 n.2 (2002); *Murphy v. The Boston Herald*, 449 Mass. 42, 57, n. 15 (2007). The SJC's comment in *Murphy* is particularly apt here: "If there ever was a case that demonstrates the need for lobby conferences, where cases or other court matters are discussed, to be recorded, this is the case. This litigation, with all its unfortunate consequences for those involved, might not have occurred if the critical lobby conference . . . had been transcribed. We trust that the lesson learned here will be applied by trial judges to prevent unnecessary problems that often arise from unrecorded lobby conferences." That the off-the-record conference in this case occurred during an arraignment, rather than as a lobby conference, is immaterial. Judge Joseph should have known and observed the lesson that the SJC so clearly expressed in *Murphy*.

Special Counsel does not contend that Judge Joseph's violation of Rule 1.1, by failing to abide by the clear requirements of District Court Rule 211, or that her violation of Rule 2.5(A), by failing to familiarize herself with Rule 211, warrants discipline greater than a public reprimand, as the Hearing Officer recommends. But it is essential to public trust and confidence in the judiciary that the reprimand specifically and unequivocally convey that the conduct for which it is issued includes these violations.

II. The Hearing Officer erred in concluding that Judge Joseph's suggestion to detain the Defendant overnight was a mere "error of law."

As the Hearing Officer found, and the undisputed facts establish, during the recorded portion of the April 2, 2018, proceeding at issue, Judge Joseph twice suggested that the Defendant be detained overnight. She did so after the Assistant District Attorney had told her,

with respect to the Fugitive from Justice charge, “I don’t think it’s him.” Thus, although the Fugitive from Justice charge had not yet been formally dismissed, Judge Joseph was fully aware that it would not be prosecuted and would not provide a lawful basis for detention.¹ The ADA had also told Judge Joseph earlier that the Commonwealth would not seek bail on the two non-violent misdemeanors pending against the Defendant, which were subject to a statutory presumption of release on personal recognizance.²

As the Hearing Officer recognized, as provided in Comment 3 to Rule 2.2 of the Code of Judicial Conduct, a judge’s good faith error of law is not misconduct subject to discipline. Although the Hearing Officer cites Judge Joseph’s suggestions to detain the Defendant overnight as among the facts giving rise to the appearance of bias, he characterizes this conduct as mere error of law, not subject to discipline. The conduct does not fit that characterization.

Judge Joseph’s suggestions to detain the Defendant overnight occurred in the context of a discussion about ICE, defense counsel’s argument that the Defendant was not the person identified in the ICE detainer and warrant, and the possibility that ICE might arrest the wrong

¹ Even if the charge were to be prosecuted, pretrial detention without bail for such a charge is authorized only when certain factors exist, including that the underlying offense is violent. M.G.L. c. 276, sec. 20D, provides that a person charged as a Fugitive from Justice 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. In this case, the underlying offense for which Pennsylvania had issued a warrant was the non-violent misdemeanor of operating under the influence.

² M.G.L. c. 276, sec. 58 governs the setting of bail at arraignments and provides that “when a person is held under arrest or committed either with or without a warrant for an offense other than an offense punishable by death, or, upon the motion of the commonwealth, for an offense enumerated in section fifty-eight A or for any offense on which a warrant of arrest has been issued by the superior court,” the court shall “hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail on his personal recognizance without surety unless said justice, clerk or assistant clerk, bail commissioner or master in chancery determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person before the court.”

person. In context, there can be no question that these suggestions reflect not a mere error of law, but a proposal to use a state criminal charge for an illegitimate purpose: to keep the Defendant in state, rather than federal custody.

The Hearing Officer points out that the proposed detention of the Defendant would not have affected his liberty, since, if he were not in state custody, he would have been in federal custody. But federal custody was not a legitimate concern of a state court judge. Her proper role was to address the state charges before her. The potential arrest of the Defendant by ICE was not part of Judge Joseph's role.

The Hearing Officer cites Judge Heffernan's agreement, in response to a question on cross-examination, that she would not want ICE to "take the wrong person."^{3, 4} He does not, however, acknowledge Judge Heffernan's testimony that she "would certainly not get involved" in the issue of the ICE detainer.⁵ It was Judge Joseph's duty, just as Judge Heffernan testified, to refrain from getting involved in the ICE matter: that is, to be neutral as between the Defendant and ICE. The determination of whether the Defendant was the right person for the detainer and warrant was not before her; that determination was for another forum. Her suggestions to detain the Defendant were not a mere error of law, but a proposal to violate her duty, and contributed substantially to the appearance of bias in violation of Rules 1.1 and 1.2 of the Code of Judicial Conduct.

³ *Report of the Hearing Officer to the Commission on Judicial Conduct*, October 31, 2025, at p. 37.

⁴ Tr. Vol. III, p. 526:23-25 and p. 527:1.

⁵ Tr. Vol. III, p. 523:15-21.

Again, Special Counsel does not contend that this conduct, in violation of Rules 1.1 and 1.2, warrants a more serious sanction than a public reprimand, as the Hearing Officer recommends. But it is essential to public trust and confidence in the judiciary that the public reprimand specifically and unequivocally convey that the conduct for which it is issued includes the suggestion to detain a defendant without legal basis, giving rise to an appearance of partiality.

III. The wording of the Hearing Officer’s proposed public reprimand does not adequately reflect the seriousness of Judge Joseph’s misconduct.

The misconduct found by the Hearing Officer, and established by the undisputed facts in the record, had a serious impact on the public trust and confidence in the judiciary that every judge is obligated to promote under Rule 1.2 of the Code of Judicial Conduct. The Commission should recommend to the Supreme Judicial Court a public reprimand that will specifically describe and condemn Judge Joseph’s misconduct.

The public reprimand should clearly indicate that the basis for the discipline being imposed includes Judge Joseph’s failure to abide by District Court Special Rule 211, when she conferred with counsel off the record, in violation of Rule 1.1 of the Code. The wording of the public reprimand should also be clear that Judge Joseph’s failure to familiarize herself with the rules of the District Court upon or after she became a judge does not absolve her violation of Rule 211 and that, on the contrary, it constitutes a further violation of the Code, because of her obligation as a judge to perform her judicial duties “competently” and “diligently.”⁶ Finally, the public reprimand should specify that Judge Joseph is being disciplined for creating an appearance of bias against ICE, through her comments and statements regarding the potential

⁶ Code of Judicial Conduct, *SJC Rule 3:09*, Canon 2, Rule 2.5(A).

ICE arrest of the Defendant, and particularly through her suggestion to detain the Defendant in state custody overnight without legal basis to do so, in violation of Rules 1.1 and 1.2 of the Code.

Accordingly, Special Counsel respectfully submits that Judge Joseph should be publicly reprimanded⁷ as follows:

Judge Shelley M. Richmond Joseph is hereby publicly reprimanded for failing to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and for creating an appearance of impropriety, through her communications with the defense counsel and assistant district attorney regarding an ICE detainer and ICE's interest in taking custody of a Defendant during that Defendant's arraignment, in violation of Rule 1.2 of the Code.

Judge Joseph is also reprimanded for failing to abide by District Court Special Rule 211, by instructing a clerk to turn off the courtroom audio recording system during the Defendant's arraignment, in violation of her duty under Rule 1.1 to comply with the law and in further violation of her duty under Rule 1.2 of the Code; and for failing to familiarize herself with the rules of the District Court upon or after becoming a judge, in violation of her duty under Rule 2.5(A) to perform her judicial duties competently and diligently.

Finally, Judge Joseph is reprimanded for proposing, in the context of the discussion about ICE and the ICE detainer, that the Defendant be detained in state custody without any lawful authority to hold the Defendant in state custody, in further violation of her duties under Rules 1.1 and 1.2 of the Code of Judicial Conduct.

⁷ Discipline of a judge in the form of public reprimand is often accompanied by a period of monitoring, to ensure that the conduct or similar conduct is not repeated. The Hearing Officer has recommended against monitoring. In light of the length of time since the conduct occurred, Special Counsel does not take a position on this question. The Trial Court has a robust program of judicial mentoring, in which the Chief Justice of each Trial Court Department assigns a trained mentor-judge to assist each new judge for a period of two years, as well as to assist other judges with particular challenges. Each Chief Justice has discretion to assign a mentor-judge to any judge of that Department at any time. In this instance, where Judge Joseph's judicial service was interrupted before the completion of her initial two-year mentor assignment, it may be appropriate that the Commission recommend that the Chief Justice of the Department to which Judge Joseph is assigned appoint a mentor-judge to assist her for a period of time.

Respectfully submitted,

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

Judith Fabricant
Special Counsel
Commission on Judicial Conduct

November 10, 2025