

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC NO. OE-157

**COMMISSION ON JUDICIAL CONDUCT'S RESPONSE TO JUDGE JOSEPH'S
OPPOSITION TO ITS REPORT AND RECOMMENDATION**

INTRODUCTION

On June 9, 10, 11, 12, 13, and 16, 2025, the Hearing Officer appointed by the Court in the above-referenced matter presided over a public hearing, pursuant to M.G.L. c. 211C, secs. 7(3) and 7(4), and Commission Rule 10. During the public hearing, the Hearing Officer heard sworn testimony from seventeen witnesses. The Hearing Officer admitted into evidence two Stipulations agreed to by the parties prior to the public hearing, along with seven additional exhibits introduced during the hearing.

On October 31, 2025, pursuant to M.G.L. c. 211C, sec. 7(8) and Commission Rule 11(A), the Hearing Officer submitted his "Report of the Hearing Officer to the Commission on Judicial Conduct" ("Hearing Officer's Report") to the Commission and to Judge Joseph.

On January 13, 2026, pursuant to G.L. c. 211C, secs. 7(9) and (10), and Commission Rule 11F, the Commission filed its Report and Recommendation with the Court.

On February 13, 2026, Judge Joseph filed an Opposition to the Commission's Report and Recommendation. In her opposition, Judge Joseph requests that the Court dismiss this matter.

ARGUMENT

A. Judge Joseph's request for dismissal is not consistent with the factual findings and conclusions made by the Hearing Officer.

Judge Joseph argues for dismissal based on this characterization of the Hearing Officer's recommended factual findings and conclusions:

“[T]he Hearing Officer's report exonerates Judge Joseph from any intentional wrongdoing and leaves no doubt that the events of the past eight years were precipitated by David Jellinek's illegal scheme, and by Jellinek's repeated and evolving false statements under grant of immunity—including testimony under oath—attempting to implicate Judge Joseph.”

The Hearing Officer did find that Judge Joseph's misconduct was inadvertent, but he did not exonerate her from wrongdoing. The Hearing Officer wrote:

“I find that she inadvertently created the appearance of impropriety and bias in two respects: (1) through her communications with the defense counsel and assistant district attorney during the defendant's arraignment, and (2) by unknowingly violating a court rule when she granted the defense counsel's request to go off the record during a discussion regarding the immigration authorities' interest in taking custody of the defendant. I therefore recommend that she receive a reprimand. Moreover, because this proceeding has been public, and to ensure that there is no misunderstanding as to what Judge Joseph is—and is not—being reprimanded for, I recommend that the reprimand be public” (Commission Report, Appendix Q at CJCAPP4358).

The Commission accepted and adopted the Hearing Officer's recommended findings of fact and accepted some but not all of his recommended conclusions.

In particular, the Commission rejected the Hearing Officer's conclusion that Judge Joseph did not violate the Code of Judicial Conduct by conferring with counsel off the record in violation of District Court Special Rule 211 (Commission Report, at CJCAPP0007-0008).

Rather, the Commission concluded that Judge Joseph's unrecorded conference was a violation of Code of Judicial Conduct Rule 1.1. The Commission further concluded that that violation contributed to the appearance of impropriety and bias, and that her failure to familiarize herself with the rules of her court, in violation of her duty of competence under Rule 2.5(A), did not

excuse, but further contributed to the appearance of impropriety and bias.

The Commission concluded that Judge Joseph's suggestions to detain the defendant overnight were not, as the Hearing Officer concluded, mere good faith error of law, not subject to discipline. (Commission Report, at CJCAPP0008). Rather, the Commission concluded that, in making these suggestions in the context of the discussion about ICE and the prospect that ICE would take the defendant into custody, Judge Joseph created the appearance of willingness to use a state criminal charge for an illegitimate purpose: to keep the Defendant in state, rather than federal custody. The Commission concluded that, by proposing to hold Mr. Medina-Perez in state custody despite the absence of any lawful authority to do so, Judge Joseph violated Rules 1.1 and 1.2 of the Code.

B. Judge Joseph's contentions that she had no prior notice that she might be disciplined for creating an appearance of bias, and that the standard for a judge creating the appearance of impropriety and bias is "vague and poorly defined," are not consistent with the Formal Charges or the Code of Judicial Conduct.

The Commission's Formal Charges clearly charged Judge Joseph with creating the appearance of impropriety and bias. Based on facts that included her discussions with Attorney David Jellinek about ICE, and her decision, in the context of that discussion, to turn off the courtroom audio recording system in violation of District Court Special Rule 211, the Commission charged her with "failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and [with] failing to avoid impropriety, in violation of Rule 1.2.; [and with] failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2" (Commission Report, Appendix C at CJCAPP0057-0058, 0062, and 0110-0111).

Judge Joseph argues that disciplining her for creating the appearance of impropriety and bias based on the "tone and substance" of her conversations with counsel would have a "chilling

effect” on the judiciary, in that judges would worry that “inadvertent, good-faith actions” would subject them to discipline “based on a vague and poorly defined standard.”

The standard for creating the appearance of impropriety and bias is neither vague nor poorly defined. Rather, the standard is explicitly set out in the Commentary to Rule 1.2 of the Code. Comment 5 provides as follows:

“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). 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 2 to Rule 1.2 provides the following additional warning for judges:

“A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.”

C. Judge Joseph’s contention that she was not charged with “simple failure to be familiar” with the requirement that District Court courtroom proceedings be recorded is not consistent with the Formal Charges.

The factual allegations in the Formal Charges clearly included Judge Joseph’s failure “to be familiar with District Court Special Rule 211.” The Formal Charges provided as follows:

“. . . [D]efense counsel asked, ‘Are we on the record?’ Judge Joseph then said to the session clerk, ‘can we go off the record for a moment?’ After she repeated that request, the session clerk turned off the courtroom recording system. Judge Joseph did not ask defense counsel for any explanation of his request to confer off the record and did not consider any reason or justification for doing so. In violation of District Court Special Rule 211, Judge Joseph conducted an unrecorded conference with counsel regarding the case, lasting approximately 52 seconds. The unrecorded conference occurred at sidebar, with the prosecutor and defense counsel present, outside the hearing of others present in the courtroom.” (Commission Report, Appendix C at CJCAPP0058).

Based on those facts, the Commission charged Judge Joseph with failing to comply with the law, in violation of Rule 1.1; failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2; and failing to perform her judicial

duties competently, in violation of Rule 2.5 (Commission Report, Appendix C at CJCAPP0058 and 0062).

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; rather, it constitutes a violation of her obligation to perform her duties competently, in further violation of the Code, and further contributes to the appearance of impropriety and bias.

Moreover, it was Judge Joseph's violation of Rule 211 that 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, which constituted a violation of Rule 1.1 of the Code, had a substantial and adverse effect on the judicial system, bringing the Massachusetts judiciary into disrepute and undermining public confidence in the judiciary.

D. Judge Joseph's contention that she was not charged with misconduct based on her proposal to detain Mr. Medina-Perez overnight without lawful authority is not consistent with the Formal Charges.

The Formal Charges did not charge a separate violation based on Judge Joseph's proposal to hold Mr. Medina-Perez overnight without lawful authority. Rather, the Formal Charges set forth the facts establishing that Judge Joseph proposed to detain the defendant overnight without lawful authority to do so (Commission Report, Appendix C at 0057-0058, 0062, and 0109-0111). The Commission's Report, consistent with the Formal Charges, does not recommend separate discipline for this conduct. Rather, the Commission concludes that this conduct contributed to the appearance of impropriety and bias and recommends that an order of reprimand specifically reference this conduct.

The Formal Charges allege facts establishing that Judge Joseph made that proposal after

the ADA had told her that she believed that Mr. Medina-Perez was not the person being sought in the warrant underlying the Fugitive from Justice matter, and that the Commonwealth would not be seeking bail on the two nonviolent misdemeanor charges, for which the law provides a statutory presumption of release on personal recognizance.¹

As a matter of law, even if the Fugitive from Justice charge had been valid and were to be prosecuted, pretrial detention without bail for such a charge is required under M.G. L. c. 276, sec. 20D, only when the underlying offense is punishable by death or life imprisonment. For all other offenses, the court is directed to apply the otherwise applicable statutes governing bail and release. The underlying out-of-state warrant in Mr. Medina-Perez's case was for an Operating Under the Influence of Alcohol charge in Pennsylvania.

Thus, Judge Joseph had no lawful authority to detain the defendant overnight on the Fugitive from Justice charge, and no legitimate basis to do so on the Massachusetts misdemeanor charges. Her proposals to do so, under these circumstances, contributed to the appearance of impropriety and bias.

E. Judge Joseph's argument that dismissal of this matter is required to ensure that the public has an accurate understanding of the underlying facts is not supported by any evidence before the Court or by established precedent.

Judge Joseph cites media reports about the Hearing Officer's recommendations that she characterizes as inaccurate or misleading, and argues that dismissal of this complaint would be the only way to avoid "subject[ing] Judge Joseph and the judiciary to additional criticism."

Erroneous media reports are not the standard by which either the Commission or this Court addresses disciplinary matters. Rather, as this Court has said, requiring "strict adherence" to the Code and imposing appropriate "disciplinary measures" is necessary to "give assurance to

¹ M.G.L. c. 276, sec. 58.

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.” Matter of Killam, 388 Mass. 619, 622 (1983) and Matter of Morrissey, 366 Mass. 11, 16-17 (1974).

Here, Judge Joseph created the appearance of impropriety and bias by her discussion with counsel regarding ICE: by the topic itself, by her manner in speaking, and particularly by going off the record in this context. She further contributed to the appearance of impropriety and bias by proposing to detain the defendant overnight without lawful authority to do so.

The Commission recognizes that not every violation of the Code requires discipline. Here, Judge Joseph’s conduct in creating an appearance of impropriety and bias has brought the judiciary into disrepute. Dismissal, as Judge Joseph urges, would not remedy that effect, but would exacerbate it.

F. This Court should issue an order that will send a clear message to all present and future judges and to the public.

The Commission agrees with Judge Joseph in one respect: The Order this Court will issue in this case will send a message to all present and future judges and to the public. Dismissal, as Judge Joseph requests, would send a message that a judge is free to disregard rules of court, or to rely on ignorance of them; to conduct criminal proceedings off the record, despite a rule to the contrary; and to interact with counsel in a manner that creates the appearance of impropriety and bias. Such a message would undermine the rule of law, as well as public respect for the judiciary.

The Commission urges the Court to issue an order that will send a message including these three components:

First, it is a judge’s obligation to be familiar with the rules of the court on which the judge sits. A judge must read the rules, learn the rules, and comply with them.

Second, a judge must conduct all proceedings in criminal cases on the record. This Court has been sending that message in cases since 1992.² In 2015, three years before the event at issue here, the Court 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 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 Court’s revision to Rule 12(b) expressed its determination that if any such exception had ever existed, it exists no longer. It is time for that message to be announced clearly, unequivocally, comprehensively, and without exceptions.³

Third, a judge must confine herself to her role: she must hear and decide the matters properly before her, without attempting to involve herself in matters outside her authority. That does not mean a judge cannot participate in lawfully authorized efforts to assist parties with the many human problems that arise in the District Court and other departments of the Trial Court. To the contrary, statutes and court policies authorize and encourage judges to do so, within the confines of the law. But it is not the role of a Massachusetts judge to address matters regarding immigration enforcement, or to attempt to address a defendant’s concerns about ICE by proposing to use a criminal charge for an unauthorized purpose.

² See Commonwealth v. Fanelli, 412 Mass. 497, 501 (1992); Commonwealth v. Serino, 436 Mass. 408, 412 n.2 (2002); and Ernest B. Murphy v. Boston Herald, 449 Mass. 42, 57, n. 15 (2007).

³ On the rare occasion when legitimate privacy interests outweigh the public’s right of access, impoundment provides the solution. See Trial Court Rule VIII: Uniform Rules on Impoundment Procedure.

CONCLUSION

For all the above reasons, the Commission respectfully requests that the Supreme Judicial Court adopt its recommendation for discipline against Judge Joseph.⁴

Respectfully submitted,
For the Commission on Judicial Conduct,



Judith Fabricant, Special Counsel
Commission on Judicial Conduct
111 Beacon Street, Suite 525
Boston, MA 02108
BBO# 157180

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⁴ Judge Joseph urges that the Court not order monitoring. The Commission has not recommended an order of monitoring. Rather, the Commission's report suggests that the Chief Justice of the court department to which Judge Joseph is assigned appoint a mentor under the Trial Court Judge-to-Judge Mentor program, to assist Judge Joseph. Trial Court department Chief Justices have discretion to appoint mentors as they deem appropriate. Judges who seek to learn and grow in the judicial role welcome such appointments as among the many resources available to assist them in performing their role as well as they possibly can.