

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Nos. 2000-110, et seq.

FORMAL CHARGES

The Commission on Judicial Conduct ("the Commission"), acting pursuant to Mass. Gen. L. ch. 211C, §5(14) and Commission Rule 7B(4), hereby notifies the Honorable Judge Maria I. Lopez ("Judge Lopez"), Associate Justice of the Superior Court Department, that it has found sufficient cause to issue formal charges in the above-numbered matter.

These charges grew out of the investigation of Complaints Nos. 2000-110, 2000-111, 2000-113 through 2000-122, 2000-124 through 2000-141, 2000-143 through 2000-148, 2000-150 through 2000-159, 2000-164 through 2000-171, 2000-177, 2000-179, 2000-180, 2000-183, 2000-184, 2000-193, 2000-196, 2000-338, and 2001-5. As a result of that investigation, a Statement of Allegations was issued on January 16, 2001, and Judge Lopez, through her attorney, filed a response on February 7, 2001. Following the appointment of Special Counsel and further investigation, on January 10, 2002, the Commission issued an Amended Statement of Allegations pursuant to Mass. Gen. L. ch. 211C, §5(5), which incorporated allegations from the above-listed complaints, as well as other allegations.

Judge Lopez was granted an extension of the statutory period of response until April 11, 2002. However, Judge Lopez has submitted no written response. Judge Lopez made a personal appearance before the Commission, pursuant to Mass. Gen. L. ch. 211C, §5(9), on April 18, 2002.

The Commission also hereby notifies Judge Lopez that, pursuant to Mass. Gen. L. ch. 211C, §5(14) and Commission Rule 7B(4), she has ten (10) days after service of these formal charges in which to file a written response with the Commission. The response should set forth in concise language all denials, affirmative defenses, and any other matters upon which Judge Lopez intends to rely at the hearing on these charges. Immediately after the filing of Judge Lopez's response, a copy of the formal charges and of her response, if any, shall be filed with the Supreme Judicial Court. Upon this filing, the confidentiality of the formal charges and the response thereto shall cease.

Pursuant to Mass. Gen. L. ch. 211C, § 5(5), the Commission on Judicial Conduct ("the Commission") makes these Formal Charges against Judge Lopez.

The Commission charges that, in matters relating to her consideration and disposition of *Commonwealth v. Charles Horton* (Suffolk Superior Court Criminal Indictment Nos. 2000-10029-001 through 2000-10029-005), Judge Lopez engaged in a pattern of conduct prejudicial to the administration of justice and unbecoming a judicial officer that brings the judicial office into disrepute under Mass. Gen. L. ch. 211C, § 2(5)(d). This conduct constitutes violations of the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) under ch. 211C, § 2(5)(e). Specifically, the Commission charges that Judge Lopez's conduct included at least the following

violations:

- I. Judge Lopez engaged in improper *ex parte* contacts;
- II. Judge Lopez exhibited bias in the discharge of her duties;
- III. Judge Lopez used the court system in disregard of her duty to uphold the impartiality and integrity of the judiciary;
- IV. Judge Lopez, directly and indirectly, made and encouraged misleading public comment on a pending matter;
- V. Judge Lopez failed to be patient, courteous and dignified, and failed to accord every person or litigant a full right to be heard according to law; and
- VI. Judge Lopez exhibited a pattern of abuse of her office, bias and indiscretion.

CASE HISTORY

Commonwealth v. Horton originated in November 1999, when Charles Horton was arrested and subsequently indicted on charges of kidnapping; assault with intent to rape a child under 16; indecent assault and battery on a child under 14; assault and battery; and assault and battery by means of a dangerous weapon. The victim of these crimes was an 11-year-old child whom Horton enticed to enter his car on a pretext. Horton was dressed as a woman and claimed to need assistance in finding “her” son.

The case first came before Judge Lopez on August 1, 2000, when the Court held a plea conference with the Assistant District Attorney and defense counsel. A plea hearing was scheduled for August 4, 2000. On that date, Judge Lopez continued the change of plea and sentencing to September 6, 2000, and issued written findings in the case.

On September 6, 2000, Judge Lopez found that Mr. Horton had pled guilty knowingly and voluntarily, and found that there was a sufficient factual basis for his guilty plea. Mr. Horton, stating that he agreed with all of the material facts as presented by the prosecution, was sentenced to five years probation, subject to certain specified conditions.

Following the sentencing, the Commission received complaints relating to Judge Lopez and her handling of the *Horton* case. Pursuant to its mandate under Mass. Gen. L. ch. 211C, the Commission initiated an investigation.

CHARGES

I. Judge Lopez Engaged In Improper *Ex Parte* Contacts

Following her having retained jurisdiction in the *Horton* case, and during the period of appeal and/or for motions under Rule 30 of the Massachusetts Rules of Criminal Procedure, Judge Lopez engaged in at least the following *ex parte* contacts:

1. Judge Lopez initiated a telephone conversation with defense counsel Anne Goldbach of the Committee for Public Counsel Services ("CPCS") shortly following the September 6, 2000 sentencing, during which Judge Lopez discussed Horton and the publicity which followed his sentencing.
2. On or about September 7, 2000, Judge Lopez placed a telephone call to William Leahy, Chief Counsel at CPCS and expressed her anger at the press coverage of the *Horton* sentencing. The Judge encouraged Leahy and CPCS to come to her defense publicly.
3. Following her first telephone call to Ms. Goldbach, Judge Lopez placed one or more additional telephone calls to her, again discussing the *Horton* sentencing and the press coverage.
4. During one of the calls to Ms. Goldbach, the Judge obtained information regarding Boston Police detective Jay Greene, whom the Judge believed to be a material witness in the *Horton* case. The Judge contacted the detective and elicited information from Greene which she later characterized as supporting her sentencing decision.
5. Following September 6, 2000, Judge Lopez had one or more conversations with Greene, whom the Judge believed to be a material witness in the *Horton* case. Judge Lopez subsequently caused the Supreme Judicial Court's Office of Public Information to contact the detective for information to justify her sentencing decision.

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 3 (failure to perform judicial duties impartially); 3(A)(4) (failure to avoid *ex parte* contacts).

II. Judge Lopez Exhibited Bias In The Discharge Of Her Duties

1. Throughout the proceedings, Judge Lopez exhibited a bias against counsel for the Commonwealth based at least in part on her prior experiences with Assistant District Attorney Leora Joseph in the *Calixte* and *Estrada* cases.
2. On August 4, 2000, during a lobby conference in *Horton*, Judge Lopez reprimanded Assistant District Attorney Leora Joseph by stating in substance, "You're very mean. . . . You're very young. . . . This is all your fault. . . . You belong in the suburbs."
3. Judge Lopez intended her comments to ADA Joseph on August 4 as a personal insult and as a characterization of "the woman who, you know, stays home, goes to the beauty parlor and does her nails."
4. During the August 4, 2000 hearing on continuance of the plea hearing, Judge Lopez falsely stated that she would not hear the *Horton* case because of her crowded calendar that day, when in truth the Court continued the hearing specifically to avoid media coverage.

5. On August 4, 2000, Assistant District Attorney David Deakin objected to the continuance on behalf of the Commonwealth and noted to Judge Lopez her statutory obligation to enter written findings. Judge Lopez responded in what the Assistant District Attorney perceived to be a hostile tone: "You will get written findings."
6. On August 4, 2000, Judge Lopez issued findings to support the continuance in which the Court falsely stated that:
 - (a) the Assistant District Attorney had a habit of calling in the press;
 - (b) the Assistant District Attorney attempted to embarrass and ridicule a defendant "suffering from a psychological disorder," and
 - (c) the Commonwealth caused the continuance by seeking to turn the court proceedings into a "circus."
7. On or before September 6, 2000 and in anticipation of what she viewed as unwelcome press interest in the *Horton* case, Judge Lopez made special arrangements for the defendant (but not for the victim's family) to enter the courthouse and utilize a back elevator and a room, neither of which was available to the public or defense counsel in the ordinary course of business. The Judge made these arrangements to defeat what she viewed as inappropriate press attention. At no time was counsel for the Commonwealth advised of these arrangements.
8. On September 6, 2000 and for the purpose of insulating Horton from exposure to cameras the Court permitted in the courtroom, Judge Lopez ordered court personnel to shield the defendant from cameras and placed Horton in a designated location with his back to the press.
9. On September 6, 2000, Judge Lopez conducted the change of plea and sentencing hearing in *Horton*. On separate occasions during that hearing, Judge Lopez failed to accord the Assistant District Attorneys a full right to be heard on behalf of the Commonwealth:
 - (a) During ADA Deakin's recitation of the facts, Judge Lopez interrupted and suggested that his description was sufficient. The Assistant District Attorney had to request permission to complete the Commonwealth's statement of the facts in support of the plea.
 - (b) Judge Lopez asked ADA Deakin to rate the case on a scale of one to ten relative to other cases. The Assistant District Attorney responded, explaining that he rated the case a "ten" in terms of absence of any pre-existing relationship between Horton and the victim; he considered it "in the quite serious range" given the age of the child; and as "moderately serious" in terms of the completed assault, though he noted that it could have been more serious had the police not intervened. The following exchange then took place:

THE COURT: Well, let me just say that I've been a Judge now since 1988, and I have seen many of these cases. And

in the scale of cases that charge sexual assault of children, this is on a very low level. Okay? And, so, I really think it's disingenuous for you to tell me that this is a ten. I'll hear from the defense attorney.

ASSISTANT DISTRICT ATTORNEY DEAKIN: Your Honor, if I may –

THE COURT: No, you may not. You may sit down now.

ASSISTANT DISTRICT ATTORNEY DEAKIN: I –

THE COURT: You may sit down now or I'll get a Court Officer to make you sit down. And I'll hear from the defense attorney.

ASSISTANT DISTRICT ATTORNEY DEAKIN: I object to being charged with being disingenuous.

THE COURT: I find it was disingenuous, and I know better than that.

During the course of this exchange, Judge Lopez raised her voice and shook her finger at Assistant District Attorney Deakin, who remained calm and professional in his manner.

- (c) When ADA Joseph (at the request of the victim's mother and grandmother) attempted to read the relevant victim impact statements into the record, Judge Lopez refused to allow her to participate in the hearing and directed ADA Deakin to read the impact statements. At all relevant times, Ms. Joseph was the Assistant District Attorney in charge of the *Horton* case.
 - (d) When ADA Deakin sought to be heard for the purpose of properly reminding Judge Lopez to specify the conditions of probation, Judge Lopez interrupted the Assistant District Attorney and stated in a hostile manner, "I don't want to hear from you anymore. Do you understand?" and "No. You will not be heard. I said, I've heard enough."
 - (e) While ADA Deakin was stating the Commonwealth's recommendations for sentence, Judge Lopez asked sarcastically: "And would the Commonwealth request that this defendant be sent to a male prison or female prison?"
- 10. After the sentencing on September 6, 2000, while the matter was pending before her, Judge Lopez placed *ex parte* telephone calls to defense counsel Anne Goldbach to express her concern for counsel's and the defendant's well-being. She encouraged defense counsel to defend her sentence of Horton publicly.
 - 11. In a further effort to defend her sentence to Mr. Horton, Judge Lopez contacted Boston Police detective Jay Greene, whom the Judge understood to have been "first on scene," and therefore, a material witness. She also encouraged the Public

Information Officer of the Supreme Judicial Court to contact the detective to obtain information which would justify her sentence in *Horton*.

12. During the August 1, 2000 conference, in *Commonwealth v. Horton*, Judge Lopez categorized transgendered persons, like the defendant, stating that she knows “these people,” and justified a sentence of probation by stating: “They are not violent.”

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 2(B) (failure to prevent social or other relationships from influencing her conduct or judgment); 3 (failure to perform judicial duties impartially); 3(A)(1) (failure to be faithful to the law and failure to be unswayed by partisan interests, public clamor, or fear of criticism); and 3(B)(5) (failure to perform judicial duties, by words and conduct, without exhibiting bias or the perception of bias, and failure to supervise court personnel in a manner to avoid the perception of bias).

III. Judge Lopez Used The Court System In Disregard Of Her Obligation To Uphold The Impartiality And Integrity Of The Judiciary

1. On August 4, 2000, having continued the *Horton* case for change of plea and sentencing to avoid press attention, Judge Lopez asserted falsely that the continuance was a result of her crowded calendar. At the insistence of the Commonwealth, Judge Lopez entered “findings,” which findings were false and constituted a pretext to conceal the Court’s actions. These “findings” were entered as part of the official court record.
2. In her “findings” in support of the continuance, Judge Lopez stated: (a) that ADA Joseph had a “habit” of calling in the press; (b) that she attempted to embarrass and ridicule a defendant; and (c) that the Commonwealth had caused the continuance by turning the proceeding into a “circus.” There was no basis in fact for these pretextual findings, concerning which the Court took no evidence.
3. Following the September 6, 2000 court proceedings, and in response to unfavorable reactions to her decision in the press, Judge Lopez contacted the Office of Public Information of the Supreme Judicial Court. Judge Lopez made material misrepresentations to the Public Information Officer, knowing that she would rely on such false information in communicating with the press and the public. Specifically, Judge Lopez falsely communicated to the Public Information Officer that: (a) the 11-year-old victim was not kidnapped; (b) the defendant did not use a screwdriver as a weapon in the commission of the offense; and (c) that her reference to the offense as “low level” was a reference to sentencing guidelines.
4. Judge Lopez caused the Public Information Office of the Supreme Judicial Court to issue a press statement on her behalf titled “In the Matter of Charles Horton in Response to Media Reports by Judge Maria Lopez” knowing that this release contained materially false statements including: (a) that Judge Lopez’s sentencing reference to “low level” referred to proposed sentencing guidelines;

and (b) that there were “certain facts” known to the Judge which, if known by the public, would support her sentencing decision.

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 3(A)(1) (failure to be faithful to the law and failure to be unswayed by partisan interests, public clamor, or fear of criticism); and 3(A)(6) (failure to abstain from public comment about a pending proceeding).

IV. Judge Lopez Made And Encouraged Misleading Public Comment On A Pending Matter

1. Following the September 6 sentencing, Judge Lopez engaged in *ex parte* contacts with defense counsel Anne Goldbach and the Chief Counsel William Leahy at CPCS and encouraged them to defend the *Horton* sentence in the press. Both defense counsel and Chief Counsel for CPCS spoke with the press after their *ex parte* conversations with the Judge.
2. Following the September 6 hearing, Judge Lopez talked with Boston Police detective Jay Greene about the *Horton* sentencing. Judge Lopez also provided the Public Information Office of the Supreme Judicial Court with the detective’s phone number and encouraged that office to contact the detective and use his information to defend the Judge’s sentencing decision.
3. On or about September 7, Judge Lopez made material misrepresentations to the Public Information Officer of the Supreme Judicial Court, knowing that she would issue a release containing false information to the press. Specifically, Judge Lopez falsely told the Public Information Officer that: (a) the 11-year-old victim was not kidnapped; (b) the defendant did not use a screwdriver as a weapon in the commission of the offense; and (c) that her reference to the offense as “low level” was a reference to sentencing guidelines. Judge Lopez approved the Public Information Office’s issuance of the statement which she knew to be false in order to facilitate a defense of her sentencing decision and without regard for the integrity of the Court’s communications to the public.
4. In response to a telephone call from a *Boston Herald* reporter, Judge Lopez stated that she was prohibited from discussing the case, and that “[T]here is more to the case than meets the eye.” She then stated, “Call around and you’ll get the real story. I’m sorry but I can’t give it to you, though.” This again implied the existence of “facts” which, if known publicly, purported to justify the *Horton* sentence. José Martínez, *Grandma Denies Kid Knew Molester*, BOSTON HERALD, September 10, 2000.
5. Following September 6, 2000, Judge Lopez discussed the *Horton* case with numerous individuals in order to defend her public image and her sentencing decision.

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 3 (failure to perform judicial duties impartially and diligently); and 3(A)(6) (failure to abstain from public comment about a pending case).

V. Judge Lopez Failed To Be Patient, Courteous And Dignified, And Failed To Accord Every Person Or Litigant A Full Right To Be Heard According to Law

1. On August 4, 2000, during a lobby conference prior to the scheduled change of plea, Judge Lopez stated to Assistant District Attorney Leora Joseph, in substance: "You're very mean. . . . You're very young. . . . This is all your fault. . . . You belong in the suburbs."
2. At the hearing on August 4, 2000, Assistant District Attorney David Deakin objected to the continuance of the *Horton* plea and sentencing on behalf of the Commonwealth. The Assistant District Attorney reminded Judge Lopez of her statutory obligation to issue written findings regarding the continuance. Judge Lopez responded to the Assistant District Attorney in a condescending and hostile tone, "You will get written findings."
3. In her findings in support of the continuance, Judge Lopez stated: (a) that the Assistant District Attorney had a "habit" of calling in the press; (b) that she attempted to embarrass and ridicule a defendant; and (c) that the Commonwealth had caused the continuance by turning the proceeding into a "circus." There was no basis in fact for these findings.
4. On September 6, 2000, Judge Lopez conducted the change of plea and sentencing in *Horton*. On separate occasions during that hearing, Judge Lopez failed to accord the Assistant District Attorneys a full right to be heard and was abusive in her manner toward them:
 - (a) During ADA Deakin's recitation of the facts, Judge Lopez interrupted and suggested that his description was sufficient. The Assistant District Attorney had to request permission to complete the Commonwealth's statement of the facts in support of the plea.
 - (b) Judge Lopez asked ADA Deakin to rate the case on a scale of one to ten relative to other cases. The Assistant District Attorney responded, explaining that he rated the case a "ten" in terms of absence of any pre-existing relationship between Horton and the victim; he considered it "in the quite serious range" given the age of the child; and as "moderately serious" in terms of the completed assault, though he noted that it could have been more serious had the police not intervened. The following exchange then took place:

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it's disingenuous for you to tell me that this is a ten. I'll hear from the defense attorney.

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- (c) When ADA Joseph (at the request of the victim's mother and grandmother) attempted to read the relevant victim impact statements into the record, Judge Lopez refused to allow her to participate in the hearing and directed ADA Deakin to read the impact statements. At all relevant times, Ms. Joseph was the Assistant District Attorney in charge of the *Horton* case.
- (d) When ADA Deakin sought to be heard for the purpose of properly reminding Judge Lopez to specify the conditions of probation, Judge Lopez interrupted the Assistant District Attorney and stated in a hostile manner, "I don't want to hear from you anymore. Do you understand?" and "No. You will not be heard. I said, I've heard enough."
- (e) While ADA Deakin was stating the Commonwealth's recommendations for sentence, Judge Lopez asked sarcastically: "And would the Commonwealth request that this defendant be sent to a male prison or female prison?"

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 3 (failure to perform judicial duties impartially and diligently); 3(A)(3) (failure to be patient, dignified, and courteous to litigants and others); 3(A)(4) (failure to accord every person or litigant interested in a proceeding a full right to be heard); and 3(B)(5) (failure to avoid the appearance of bias through her words and conduct).

VI. In Light Of The Foregoing Allegations, And In Light Of Conduct Herein Specified, Judge Lopez Has Exhibited A Pattern Of Abuse Of Her Office, Bias, And Indiscretion

1. While the investigation of Judge Lopez undertaken by the Commission on Judicial Conduct was still pending, Judge Lopez received a copy of a complaint to the Commission on Judicial Conduct (as to which the Judge had a right of notice) and placed an anonymous telephone call to the complainant on November 1, 2000, just after 11:00 pm. The complainant, an elderly woman, viewed the call as an attempted threat and act of intimidation by the Judge.
2. Notwithstanding advice to the contrary from the Chief Justice of the Superior Court, and her having retained jurisdiction in the *Horton* case, Judge Lopez has had numerous conversations with third parties concerning the *Horton* case from September 6, 2000 to the present.

All in violation of Canons 1 (failure to uphold the integrity of the judiciary); 2 (failure to avoid impropriety and the appearance of impropriety); 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary); and 3 (failure to perform judicial duties impartially).

SUMMARY OF VIOLATIONS

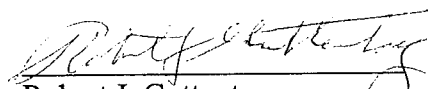
The conduct charged above, if true, constitutes conduct that is unbecoming a judicial officer and violates Mass. Gen. L. ch. 211C, § 2(5)(d) and (e), and the following Canons of the Code of Judicial Conduct:

- (a) Canon 1 (failure to uphold the integrity of the judiciary);
- (b) Canon 2 (failure to avoid impropriety and the appearance of impropriety);
- (c) Canon 2(A) (failure to respect and comply with the law);
- (d) Canon 2(A) (failure to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary);
- (e) Canon 2(B) (failure to prevent social or other relationships from influencing her conduct or judgment);
- (f) Canon 3 (failure to perform judicial duties impartially);
- (g) Canon 3(A)(1) (failure to be faithful to the law and maintain professional competence in it, and failure to be unswayed by partisan interests, public clamor, or fear of criticism);
- (h) Canon 3(A)(3) (failure to be patient, dignified, and courteous to litigants and others);
- (i) Canon 3(A)(4) (failure to accord every person or litigant interested in a proceeding a full right to be heard);
- (j) Canon 3(A)(4) (failure to avoid ex parte contacts);

- (k) Canon 3(A)(6) (failure to abstain from public comment and/or failure to require court personnel subject to judge's direction to abstain from public comment as to a pending proceeding); and
- (l) Canon 3(B)(5) (failure to perform judicial duties, by words and conduct, without exhibiting bias or the perception of bias).

For the Commission,

Date: 4/22/02


Robert J. Guttentag
Acting Chairman

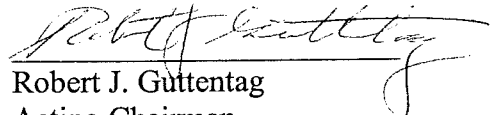
NOTICE OF DISCOVERY RIGHTS

Pursuant to Commission Rule 9A, the Commission hereby notifies Judge Lopez that the Commission shall, within a reasonable time, make available for inspection upon the written request of the Judge all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding, and any written or electronically recorded statements within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding.

As specified in Commission Rule 9C, nothing in the Commission Rules and nothing in this Notice of Discovery Rights shall be construed to require the discovery of any report made to the Commission by its staff or Special Counsel. Furthermore, in granting discovery the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of its staff, Special Counsel, or other representative.

For the Commission,

Date: 4/22/02


Robert J. Guttentag
Acting Chairman

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