

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC NO. OE-157

DISSENT TO THE COMMISSION MAJORITY RECOMMENDATION

I respectfully disagree with the majority's finding that Judge Joseph's proposal of detaining the defendant overnight was not "mere good faith error of the law, not subject to discipline," but was done "despite the absence of any lawful authority to do so." The Hearing Officer considered the matter at length (see, for example, Hearing Report, pp. 35-38). Here, I only emphasize the undisputed fact that at the time in question, the ADA had yet to state her intention not to prosecute the most serious state charges against the defendant. Thus, when Judge Joseph suggested holding the defendant—a suggestion she did not repeat—she had legal authority to do so.

I also disagree with the majority's recommendation for a Public Reprimand.

In their recommendation for discipline, the majority cites two cases from five decades and more ago: Matter of DeSaulnier (No. 4), 360 Mass. 1787 (1972), and Matter of Larkin, 368 Mass. 87, 91-92 (1975), both of which, in my view, involved more egregious misconduct than Judge Joseph's.

- Judge DeSaulnier's misconduct included conspiring with a professional bail bondsman to influence the disposition of criminal cases in exchange for payments. The Supreme Judicial Court removed him from the bench and disbarred him, finding him unfit to continue as either judge or lawyer.
- Judge Larkin was publicly censored¹ after he twice attempted to give Governor Francis W. Sargent \$1,000 campaign contributions in what the court found "only could be regarded by many as a reward for past judicial appointments and an expression of hope for a future one."

Nevertheless, I agree with the majority that precedent matters, and in the past 35 years, the following are examples of cases where the sanction was either Public Reprimand or Public Censure:

- In the Matter of a Judge, Supreme Judicial Court, SJC No. OE-150 (December 22, 2022): Judge Joseph Michaud made multiple posts on his Facebook account over a five-week period expressing views on political candidates, political figures, and politicized public events, creating an appearance of bias based on gender, ethnicity, or immigration status.
- In the Matter of Diane E. Moriarty, Supreme Judicial Court (October 6, 2010): Conducted improper ex parte hearings, displayed discourtesy toward parties, created an appearance of bias and lack of impartiality, and failed to be faithful to the law in handling several criminal matters.
- In the Matter of Frederick L. Brown, 427 Mass 1015 (1998): Made intemperate, excessive, and gratuitously insulting comments during oral argument, criticizing the National Association of Government Employees union (NAGE), its president, and his family. Stated NAGE was a "union

¹ The court has written that "The terms 'public reprimand' and 'public censure' have the same meaning when used by this court to express disapproval of judicial conduct." Matter of Scott, 377 Mass. 364 (1979)

gone amok,” that its president “had his whole family on the payroll,” and “they just take the money and keep on stepping and buy more condos.”

- In the Matter of Paul H. King, 409 Mass. 590, 604–608 (1991): Made derogatory and obscene references to members of the bench and bar; regularly and openly drank to excess in public and then urinated in public view of the parking lot of a local restaurant; was not candid or forthright in his testimony before the Commission; imposed unusually high bail on four Black defendants in retaliation of the overwhelming rejection of his brother by Black voters during a gubernatorial primary election; and systematically and without notice confiscated bail money posted by friends and relatives of non-defaulting defendants and applied it to court costs and other obligations of those defendants, sometimes even obligations arising from other cases.

Notably, the previous Public Reprimand or Public Censure cases have all involved misconduct that was, in my view, more serious than Judge Joseph’s. In any event, the misconduct in those cases occurred over more extended periods of time than Judge Joseph’s misconduct in the Medina-Perez case, which lasted seven minutes.²

At times, judges have been sanctioned with Private Reprimands, which were nonetheless publicized because of the notoriety of their misconduct. These have included:

- Matter of Merrick (2012): Repeatedly failed to engage criminal defendants in legally sufficient plea colloquies in connection with minor motor vehicle criminal offenses.
- Matter of McDonough (2005): Repeatedly failed to follow appropriate plea colloquy procedures and then signed an affidavit during the disciplinary process, which inaccurately described his former plea colloquy practice.
- Matter of Mori (1996): During a lobby conference, referring to seven Cambodian defendants, said, “We ought to send them right back to the Killing Fields.” Judge Mori “agreed to a private reprimand to be made public.”

Again, the misconduct in these Private Reprimand cases was either more extended (Merrick, McDonough) or more egregious (Mori)³ than Judge Joseph’s unintentional creation of the appearance of bias.

However, as the majority notes, Judge Joseph also violated Rule 2.5(A) by not familiarizing herself with the rules of the District Court. In my view, that violation, which occurred over the several months leading up to the Medina-Perez case, brings Judge Joseph’s misconduct into the realm of those Private Reprimands which were publicly announced.

In sum, based on the nature of Judge Joseph’s misconduct, precedent, and the mitigating factors (inexperience on the bench and lack of willful intent when she created the appearance of bias), I believe a Private Reprimand is the appropriate sanction. Given the notoriety of these events, even a Private Reprimand should be done publicly. If the Court agrees, I suggest the following language based on that of the Hearing Officer (Hearing Report pp. 113-114), with my amendment in **bold**:

² The final call of the Medina-Perez case began at 2:48 p.m., immediately after which, Attorney Jellinek introduced himself and requested a sidebar with Judge Joseph (HR pp. 32-33). Judge Joseph’s involvement ended at 2:55 p.m. when the Medina-Perez courtroom proceeding concluded (HR p.63).

³ A fourth case in which a Private Reprimand was announced publicly concerned misconduct outside of the judge’s official duties. Matter of Trainor (2004): Operated a motor vehicle while under the influence of alcohol. In addition to agreeing to a public reprimand, Justice Trainor agreed not to sit on any appeal involving a charge of operating under the influence until at least one year following the dismissal of his criminal case.

*Judge Shelley M. Richmond Joseph is hereby reprimanded **for not having familiarized herself with the rules of the District Court**, for having inadvertently created the appearance of impropriety and bias through her communications with the defense counsel and assistant district attorney during a defendant's arraignment, and for unknowingly violating a court rule by granting the defense counsel's request to go off the record during a discussion regarding immigration authorities' interest in taking custody of the defendant.*

For the avoidance of doubt, because the record does not support a finding that Judge Joseph engaged in any intentional misconduct—including (1) authorizing the defense counsel's plan to enable the defendant to evade immigration authorities, or (2) misleading court authorities when discussing her actions on the day of the defendant's arraignment—she is not being reprimanded for any such alleged conduct.

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