

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN THE MATTER OF
JUDGE SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS.

SJC NO. OE-157

**OPPOSITION OF JUDGE SHELLEY M. RICHMOND JOSEPH
TO THE REPORT AND RECOMMENDATIONS
OF THE COMMISSION ON JUDICIAL CONDUCT
AND REQUEST FOR DISMISSAL OF CHARGES**

I. Introduction and Request for Dismissal

This complaint against District Court Judge Shelley M. Richmond Joseph¹ arises from an extraordinary situation in which a sitting judge faced first a federal criminal indictment and later a charge of willful misconduct by the Commission on Judicial Conduct (“Commission”), both based on the uncorroborated testimony of the admitted mastermind of an illegal scheme who had received complete immunity for his conduct. In June 2025, after more than seven years of unrelenting public criticism, Judge Joseph finally had the opportunity to challenge

¹ Judge Joseph took the oath of office as a District Court judge on November 2, 2017, and held that position at the time of the events that form the basis of the Commission’s charges. After the federal indictment was dismissed, she was assigned to the Boston Municipal Court, where she sat for two years before being assigned to administrative duties because of the Commission’s filing.

her accuser in a public hearing. As a result of the evidence presented, the Hearing Officer, Denis J. McInerney, Esq., found:

➤ That Judge Joseph “did not know about—much less authorize—the escape plan” engineered by Attorney David Jellinek (Appendix Q, Hearing Officer Report at CJCAPP4358); and

➤ That Judge Joseph was “fully candid in her discussions with the supervisory judges” (Appendix Q at CJCAPP4466).

The only violation found by the Hearing Officer was that Judge Joseph “inadvertently expressed herself in ways that created the appearance of bias against ICE” (Appendix Q at CJCAPP4459), while specifically finding that she harbored no actual bias (Appendix Q at CJCAPP4456). Central to the Hearing Officer’s findings was Judge Joseph’s “tone and substance, “including her use of the word “we” while speaking to the attorneys at sidebar (Appendix Q at CJCAPP4458-4459). The Hearing Officer recommended the imposition of a public reprimand for this conduct—which he noted would ordinarily warrant a private reprimand—to “ensure that there is no misunderstanding as to what Judge Joseph is—and is not—being reprimanded for” (Appendix Q at CJCAPP4358).

As described below, the Hearing Officer’s recommendation has had precisely the opposite effect from that intended by Attorney McInerney, subjecting

both Judge Joseph and the Massachusetts judiciary to further criticism that largely fails to acknowledge that she was cleared of the charges of deliberate wrongdoing that attracted so much public scrutiny. Further, the imposition of discipline based on “tone and substance” would have a chilling effect on other trial court judges, creating a subjective and amorphous standard that raises the specter of ethics charges for a wide variety of everyday colloquies.

The Commission’s recommendation arrives in this Court in an unprecedented posture² where the Commission, having failed to prove the grave charges that brought this matter to public attention, now seeks to heap further criticisms on Judge Joseph, concluding that she committed violations that were specifically rejected by the Hearing Officer. One proposed violation seeks to punish Judge Joseph for her unfamiliarity with a court rule requiring substantive proceedings to be recorded (Commission Report and Recommendation at 8).³ The

² As far as Judge Joseph’s counsel are aware, this is the first case where the Commission has alleged, but failed to prove, intentional misconduct by a judge. It is regrettable that the Commission filed these charges without interrogating David Jellinek, whose prior statements and testimony—as the Hearing Officer noted—demonstrated numerous inconsistencies and implausibilities, or interviewing Shannon Jurgens McDermott, the assistant district attorney who was the third person present at the critical sidebar and whose testimony all parties agreed was credible.

³ This Court has already recognized the significant distinction between intentional and unintentional conduct, noting that “if the Judge intentionally conspired with the defense and lied about her actions, public censure may be an insufficient

second rejects the Hearing Officer’s conclusion that Judge Joseph’s proposal to hold the defendant overnight, essentially continuing the proceedings to the following day, was at most a “good faith error of law,” and perhaps not even that given that the Pennsylvania charges had not yet been dismissed (Appendix Q at CJCAPP4457). Instead, the Commission proposes to substitute its conclusion that Judge Joseph’s suggestion, which she did not pursue when Jellinek indicated that he did not want his client held, violated Rules 1.1 and 1.2 of the Code of Judicial Conduct. (Report and Recommendation at 8).

The Commission’s Report and Recommendation places three separate but interrelated questions before this Court:

- 1) What is fair to Judge Joseph, both to address her response to defense counsel’s request to go off the record, a violation of a court rule she has always acknowledged and has never repeated, and to address the subjective impression of “her tone and substance” at sidebar in a situation where she was acting in good faith and without actual bias?

sanction. On the other hand, if any misconduct was purely unintentional, including the unintentional violation of a District Court rule, a public censure may not be ordered.” Order OE-513, October 23, 2024.

- 2) What message will the remainder of the judiciary take from this Court's treatment of Judge Joseph, and how will that treatment affect the conduct of business in trial courts across the Commonwealth?
- 3) What is the best way to effectuate the Hearing Officer's goal of "ensur[ing] that there is no misunderstanding as to what Judge Joseph is—and is not—being reprimanded for"?

Judge Joseph submits that in the unique and compelling circumstances of this case, the appropriate result is dismissal of the charges. While this outcome is certainly important to Judge Joseph, she has already traveled to hell and back over the years. Whether this proceeding ends with a public censure, a private reprimand, or a dismissal will have little practical consequence to Judge Joseph compared to the already incurred personal, professional, financial, and emotional impact of past events. However, the level of discipline—*vel non*—imposed on Judge Joseph by this Court will send an unequivocal message to the public and the judiciary about who was responsible for this unfortunate chapter in the long and storied history of the Commonwealth's courts and will influence the conduct of trial judges for years to come.

II. The Hearing Officer's Report Exonerates Judge Joseph of Intentional Wrongdoing and Finds that Her Actions Were Inadvertent and Taken in Good Faith

The Commission's Formal Charges made two allegations of willful misconduct against Judge Joseph. First, the Commission charged that Judge Joseph "consciously participated in a plan proposed by Attorney David Jellinek" to assist Jellinek's client to avoid ICE custody. The Commission further charged that Judge Joseph "was not candid or honest" with the Special Counsel or the three supervising judges with whom she spoke at various times following the defendant's escape. Report and Recommendation, ¶7. These allegations both charged Judge Joseph with serious and intentional wrongdoing, and the Hearing Officer found that Special Counsel had proved neither one.

However, the Hearing Officer's report reflects more than merely a finding that the Commission had not proved the charges. It would have been a simple matter (and have consumed far less ink) for the Hearing Officer to state that the Commission had not met its burden of proof. The Hearing Officer could also have disposed of the charges based solely on the credible testimony of former Assistant District Attorney Shannon Jurgens McDermott, who was unequivocal in her recollection that David Jellinek had not revealed a plan to have his client released from the downstairs lockup, and whose contemporaneous actions evidenced her

belief that the defendant would be released through the courtroom into the public lobby where ICE was waiting. See Appendix Q at CJCAPP4403-4405. But instead, the Hearing Officer went much further, making a concerted and detailed effort to explain, in no uncertain terms, that he found David Jellinek's version of events to be completely unworthy of belief. See Appendix Q at CJCAPP4401-4402 and CJCAPP4442-4447.

In sum, the 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. In essence, David Jellinek sacrificed Judge Joseph's career and reputation, and by extension the reputation of the Massachusetts judiciary, to save himself from personal and professional disaster. The Hearing Officer acknowledged the indisputable truth: that for the past eight years, the public has fed upon a narrative fueled by Jellinek's misconduct and false testimony.

If David Jellinek had not executed his secret scheme to engineer his client's escape, April 2, 2018 would have gone into the record as an unremarkable day in the Newton District Court. When the hearing concluded, Jellinek would have

conferred with this client, ICE would have entered the lockup, as expressly authorized by Judge Joseph in accordance with the *Lunn* policy,⁴ and taken Medina-Perez into custody. No publicity would have ensued, and all the participants would have gone about their business. It is true, as the Commission charged, that the judicial office was brought into disrepute, but that disrepute arose not from the actions of Judge Joseph or any other member of the court staff, but because of David Jellinek.

The Commission's theory of the case was always that Judge Joseph committed willful misconduct, and the case was tried and defended on that basis. The claim of intentional misconduct was the centerpiece of Special Counsel's presentation at the public hearing. In her opening statement, Special Counsel stated that there was, "one central issue in dispute" – what happened in those 52 seconds" (Appendix I at CJCAPP0873; see also closing argument at CJCAPP2079, CJCAPP2115, CJCAPP2120; Appendix L, Commission's Request for Findings of Fact, paragraphs 97-100, 109, 111, 169-170, at CJCAPP2215-2216, 2218, 2228).

⁴ Indeed, as the Hearing Officer acknowledged, "it appears that Judge Joseph's work over the lunch recess resulted in her being the only court official in the NDC who was familiar with [the *Lunn* policy]. None of the other court personnel, including the court clerk, the NDC chief court officer, ADA Jurgens, or First Justice Heffernan (who was not in the courthouse that day) were aware of it. Appendix Q at CJCAPP4360.

However, rather than expressing relief that a member of the Massachusetts judiciary did not conspire with David Jellinek and turning its attention to the mitigating the damage wrought by the true culprit, the Commission has chosen to shift its focus to the inadvertent and good faith conduct of Judge Joseph. Nowhere did the CJC charge that Judge Joseph's simple failure to be familiar with District Court Special Rule 211 was judicial misconduct.⁵ Similarly, the Formal Charges do not allege that Judge Joseph had no authority to hold the defendant overnight; rather it cited that fact as evidence that she "sought to assist defense counsel in identifying a means for the defendant to avoid ICE" (Formal Charges, paragraph 23 at CJCAPP0058). Nevertheless, it is those two propositions that now form the

⁵ As the Hearing Officer found, a lack of familiarity with Special Rule 211 was not unique to Judge Joseph (Appendix Q at CJCAPP4461). In citing this finding, Judge Joseph does not seek to blame or implicate others, but rather to point out that it is a difficult task for court personnel to be familiar with every rule, statute, policy or law, and that an inadvertent lapse in this area should not be grounds for discipline. The Commission's recommendation that Judge Joseph's failure to familiarize herself with the rules of the district court rises to the level of a disciplinary violation ignores the breadth and volume of material piled upon a new judge (Appendix I at CJCAPP1538-1539). Special Rule 211 was not a part of the 90-day guide or the training that Judge Joseph received—although Chief Justice Dawley added the Rule to training for new judges after this incident (Appendix C, ¶15 at CJCAPP0054, Appendix Q at CJCAPP4461 fn. 624). Further, Judge Joseph's call to the Administrative Office for guidance when she was confronted with a local practice that seemed questionable demonstrate that she took seriously the need to identify rules or policies applicable to the situation in front of her. In so doing, she learned of a policy that was apparently unknown to the other courthouse staff, including the First Justice (Appendix Q at CJCAPP4384-4386.)

basis for the Commission's recommendation that Judge Joseph be found to have committed violations not found by the Hearing Officer.

The Hearing Officer accepted the evidence that Judge Joseph's past experience as a lawyer included off-the-record discussions, a practice confirmed by the testimony of multiple Superior and District Court judges, and unusual and changing circumstances,⁶ as well as the ready acquiescence of long-time Clerk Lawrence Okstein in the request to go off the record (Appendix Q at CJCAPP4462). When informed by Regional Administrative Justice Stacey Fortes of Special Rule 211, Judge Joseph readily acknowledged her error, apologized, and promised to comply in the future, a promise that she has scrupulously honored (Appendix Q at CJCAPP4438-4439 and CJCAPP4461 fn. 620). The evidence strongly supports the Hearing Officer's conclusion that an isolated and

⁶ At the time Jellinek had made his request, Judge Joseph had just learned that he had been retained as private counsel to replace the assigned public defender, Elizabeth Bostwick, who had departed at lunchtime with the stated intention of returning after a medical appointment, and that the assistant district attorney had reversed her position on the defendant's identity. The transcript of the hearing also reflects that when Jellinek asked to approach side bar, the clerk asked him if he wanted to wait for the defendant, who had not yet been brought upstairs. Defense counsel's willingness to proceed in the absence of his client would have added to Judge Joseph's impression that the sidebar would not address substantive matters (Appendix G, Stipulation of the Parties dated 3/25/2025 at CJCAPP0261).

unintentional violation of Special Rule 211 did not reflect a lack of diligence or competence.

The Hearing Officer further rejected Special Counsel’s claim, first raised during the hearing, that Judge Joseph had no “lawful authority” to detain the defendant. He correctly noted that, because the fugitive charge was still pending, notwithstanding the prosecutor’s stated intention to move to dismiss that charge, Judge Joseph may well have had the authority to detain him. He further credited Judge Joseph’s testimony that she wanted “to hit pause” to allow Jellinek sufficient time to complete his investigation of the defendant’s identity⁷ (Appendix Q at CJCAPP at 4453, 4456). Even if the defendant had in fact been held overnight—a circumstance that did not occur—the Hearing Officer found that this would constitute merely a “good faith error” not punishable under Rule 2.2 (Appendix Q at CHCAPP4457). Again, the evidence plainly supports the Hearing Officer’s view.

The sole violation found by the Hearing Officer was that Judge Joseph, although she “attempted to resolve [the] issues neutrally and fairly,” nevertheless

⁷ Given that Jellinek had successfully convinced the prosecutor that the defendant was not the subject of the Pennsylvania warrant, the possibility that he might not be the subject of the ICE detainer was real, and Judge Joseph did not want to deprive the defendant of the opportunity to demonstrate a second case of mistaken identity.

“inadvertently expressed herself in ways that created the appearance of bias against ICE and in favor of the defendant” (Appendix Q at CJCAPP4459). Judge Joseph had no notice, either from the Formal Charges, or from any prior disciplinary decisions, that she might be subject to discipline for inadvertently expressing herself in ways that created an appearance of bias or what words or actions might have created such an appearance. Further, as argued in Section III, *infra*, that formulation is so vague as to leave other judges completely at sea as to when and under what circumstances they might be deemed inadvertently to have created an appearance of bias.

The Hearing Officer’s conclusion that the “inadvertent” creation of the appearance of bias violated Rule 1.2 is in tension with his findings that Judge Joseph began the sidebar discussion with a reference to ICE because she had spent her entire lunch hour researching ICE issues and that her intent was not to have the defendant escape ICE, but to give his counsel time to investigate, and if he was able, to convince ICE as he had convinced the assistant district attorney that the defendant was not the subject of the detainer. See Appendix Q at CJCAPP4453, CJCAPP4457. Judge Joseph never proposed to put the defendant in a position to escape; at most, her suggestion, if adopted, would have deferred ICE action until the following day. It is hard to conceive of a one-day postponement as “hindering”

ICE. Viewed as a whole, it was not Judge Joseph’s words or actions, which the Hearing Officer characterized as made “innocently and in good faith” (Appendix Q at CJCAPP4406) that created a problem; such exchanges are commonplace in district courts. Rather, it was the completely unforeseeable criminal act⁸ of David Jellinek that cast an otherwise ordinary and unremarkable exchange in a sinister light.

The appropriate vantage point from which to view Judge Joseph’s tone and words was that of the supervising judges, RAJ Fortes and District Court Chief Justice Paul Dawley, both of whom had listened to the recording at the time they spoke with Judge Joseph in the spring of 2018. Unlike later impressions, unavoidably formed with knowledge of Jellinek’s intentions and role and the concomitant danger of hindsight bias,⁹ the two judges’ interpretation most closely approaches what a listener at the time would have thought. Without the knowledge

⁸ Although not essential to his findings, the Hearing Officer, a former member of the Department of Justice, expressed the view that Jellinek’s actions were “over the edge, both legally and ethically” (Appendix Q at CHCAPP4414).

⁹ Judge Joseph has the utmost respect for the Hearing Officer, whose diligence and attention to detail were exceptional. Nevertheless, he, like everyone else since Jellinek began to develop his story, assessed Judge Joseph’s words with knowledge of Jellinek’s intentions and role. Similarly, the assistant district attorney’s description that she felt the sidebar was “weird or sketchy”—on which the Hearing Officer principally relied (Appendix Q at CJC4455)—was not articulated contemporaneously, but rather when she was being interrogated under pressure by the United States Attorney’s Office.

that Jellinek had orchestrated the defendant's escape or that he would later implicate Judge Joseph, neither of the supervising judges found cause to criticize Judge Joseph for creating an appearance of bias. Rather, their concern was to educate a new judge about the existence and importance of Special Rule 211; in Judge Dawley's words, to have her understand that "the record is your friend" (Appendix Q at CJCAPP4437-4442, CJCAPP4452 fn. 578.) While Judge Dawley counseled Judge Joseph about her "lack of formality" (Appendix Q at CJCAPP4456 fn. 595), he did not suggest that he had any concern about an appearance of bias or impropriety.¹⁰ The two judges' handling of the situation, which stands in stark contrast to the view many years later, underscores the inevitable effect that subsequent events have had on the interpretation of Judge Joseph's words and actions.

In fairly assessing the effect of Judge Joseph's words and actions, it is also crucial to remember that when she said, "what should we do?"¹¹ the court system

¹⁰ The context of Judge Joseph's words is important. The words that are posited to have created an appearance of bias were spoken on the record, but during a sidebar discussion among Judge Joseph and counsel, a situation where there is often less formality than in open court.

¹¹ Presumably it was Judge Joseph's use of the editorial "we," fully consistent with the practical and problem-solving approach that prevails in district courts, that has prompted the Commission's recommendation. Had she said, "What do you want me to do?" she might not be here.

was just beginning to grapple with the issues related to ICE, and the *Lunn* policy implementation was still a work in progress. This incident occurred one year into President Trump’s first term. ICE presence in the courthouses was starting to grow but was far from current levels.¹² The federal lawsuit by the District Attorneys of Suffolk and Middlesex counties challenging the practice of courthouse arrests—filed on April 29, 2019—was more than a year away. No graduate student had been snatched off the streets of Somerville by armed masked men in black and whisked a thousand miles away to a federal detention center. No lawyer had been accosted upon a return from a weekend pleasure trip and had his phone seized and searched by Border Patrol agents. And not a single citizen had been gunned down in the streets of Minneapolis. As with the subsequent knowledge of Jellinek’s actions, Judge Joseph’s actions and statements must be judged by the immigration climate in April 2018 and not in light of later events—a difficult but necessary task.

¹² Compare “Blocking the Courthouse Doors,” a report prepared by Northeastern University School of Law’s Immigrant Justice Clinic in March 2018, anecdotally reporting eight courthouse arrests, see [ijc-courthouse-report.pdf](#), last accessed 2/12/2026, with a WBUR data analysis that identified 386 arrests in Massachusetts state and federal courts in the first nine months of 2025, see [ICE agents are staking out local courthouses. As they've roamed the halls, Mass. court arrests tripled | WBUR News](#), last accessed 2/12/2026.

Discipline should not be imposed on a judge based on a subjective interpretation of her words made many years after the fact, particularly when that interpretation is at odds with the impression of two experienced district court judges at the time. The “inadvertent” conduct that forms the basis for the Hearing Officer’s recommendation of a public reprimand is far less serious than anything for which a Massachusetts judge has ever been disciplined, either publicly or privately.¹³ Indeed, it is unclear that any Massachusetts judge has ever been disciplined for an “inadvertent” statement. This case, with its nuances and complexities, would be a poor place to establish such a precedent.

III. Discipline of Judge Joseph Would Have a Chilling Effect on the Massachusetts Judiciary

The imposition of the discipline recommended by the Commission would send two chilling messages to the Massachusetts judiciary. First, “we will not

¹³ Indeed, the Hearing Officer acknowledged that previous public reprimands have sanctioned conduct far more serious, either in intent, duration, or both, than that of Judge Joseph (Appendix Q at CHCAPP4470 fn. 673). Nevertheless, he found that because of the publicity surrounding this case, it was in Judge Joseph’s interest for the public to understand what she did and did not do—specifically, that she had no awareness or complicity in David Jellinek’s scheme. Judge Joseph suggests that the same result could be accomplished with either a private reprimand or a statement of concern, expressed publicly for the reasons stated by the Hearing Officer.

protect you from false attacks by a lawyer and may in fact hold you responsible for the consequences of that lawyer's unethical or illegal actions." Second, "you may be subject to discipline based on a subjective and retrospective interpretation of your inadvertent, good-faith actions, based on a vague and poorly defined standard." These two messages would leave judges suspicious and wary of lawyers, and with little guidance about how to conduct the daily business of the courts.

As the Hearing Officer's report explains in detail, Judge Joseph was not a participant, but an unwitting tool in David Jellinek's scheme. While it is a facile response to say that Judge Joseph could have avoided this situation by refusing Jellinek's request to go off the record, in the law of torts, the consequences of her acquiescence were far outside any reasonable zone of foreseeability. While judges must expect the unexpected, it is not reasonable to charge a judge with anticipating that an ordinary court proceeding—even one off the record—might result in a lawyer's aberrant criminal act. As retired Superior Court Judge Carol S. Ball testified, "I really like lawyers. And I trusted lawyers. I really felt that—I always trusted that lawyers were doing the right job, were helping counsel and doing the right job for their clients" (Appendix I at CJCAPP1936). It would be tragic for the

system if the actions of a single unscrupulous lawyer were permitted to destroy that trust and admiration.

Perhaps more concerning than the erosion of trust that will likely ensue if Judge Joseph is forced to share (or perhaps entirely shoulder) the blame for Jellinek's actions is the prospect that a judge may be disciplined for a momentary poor word choice or inartful phrase, or for making a practical suggestion to resolve a problem—and be essentially powerless to recognize when such a situation is occurring. Every district court daily list represents a broad spectrum of people and challenges that must be resolved in real time. District court judges are not merely judges, but social workers and problem solvers, case managers and for many ordinary citizens, the face of the judiciary. They are confronted with an ever-changing panoply of situations to which there is no textbook response. Yet they are continuously called upon to manage those various scenarios, with fairness and wisdom, but also with dispatch. And they deal constantly with lawyers who are facing their own challenges—clients with difficult family or social situations, substance disorders, and limited resources. There is little time for thoughtful study or reflection, or for careful wordsmithing or polished speeches.

District court judge is a difficult but rewarding job that is already fraught with stress. Every dangerousness hearing and each bail decision is a risk to land

the judge on the front page of the Boston Herald if something goes awry. A judge imposing a sentence of confinement recognizes that the action may permanently destabilize a family already on the edge. And yet across the Commonwealth, district court judges, like Judge Joseph, arrive at the courthouses every day with the intention to do justice.

It is a daunting prospect to any judge, but particularly to those judges on the front lines, to be told by this Court that they are subject to discipline, even when trying to do justice, if the Commission later decides that a suggested course of action was unlawful, or a tone or phrase was imprecise or misleading.¹⁴ These are not standards that can be readily discerned—much less applied in an instant. Nor are they objective; the Commission sees an appearance of bias where RAJ Fortes and Chief Justice Dawley saw a new judge in a difficult situation. And neither the Commission nor the Hearing Officer has articulated a general rule that would

¹⁴ The example of Judge Joseph’s use of the first-person plural “we” is illustrative. See Appendix Q at CJCAPP4459. A judge under the gun to make a decision might see that usage as an indication of collaborative problem solving, and should not have to agonize that someone will later view it as inappropriately biased. Similarly, a judge reading that Judge Joseph was disciplined for proposing an action that might “delay” ICE from taking custody of a defendant shouldn’t have to choose between giving the defendant due process and “delaying” ICE for one day. Id.

provide judges with sufficient clarity to enable them to avoid “inadvertently” creating an appearance of bias.

It is of no assistance to suggest that merely avoiding off-the-record discussion would avoid any appearance of impropriety. The Hearing Officer’s finding was largely based on Judge Joseph’s tone and choice of language on the record, as well as the general perception of the assistant district attorney. It is a dangerous precedent to discipline a judge for speech that made a single attorney, in the midst of a federal investigation, “uncomfortable”—a subjective and potentially limitless “standard.” If this Court chooses to provide an explanation of where the boundary of impropriety lies, so be it, but Judge Joseph should not retroactively be disciplined for failing to adhere to that standard. And any standard must be clear enough that other judges have fair and adequate notice of how they can avoid sharing Judge Joseph’s fate.

Similarly, the Commission’s proposal to create a disciplinary violation from a judge’s “proposal” of a course of action that the Commission believes (perhaps incorrectly given the pendency of the Pennsylvania charges) that she was “without lawful authority to make” would expose trial judges to virtually limitless jeopardy. Carrying the Commission’s proposal to its logical conclusion, any judge who, even in good faith, suggests a course of conduct that is legally incorrect, even if not

pursued for whatever reason, commits a disciplinary violation by failing to comply with the law.¹⁵ The Commission has not articulated any formulation of Rule 1.1 or 1.2 that would convey to judges what conduct is prohibited; the difficulty in doing so is obvious.

The Code of Judicial Conduct has never been interpreted to require perfection of trial court judges, and this case should not establish such a standard. There is no authority for the proposition that a good-faith error of law equates to a failure to comply with the law—a proposition that would likely thin the judicial ranks and put the appellate courts out of business. As with the recommendation that Judge Joseph be disciplined for her words and tone, neither Judge Joseph nor any other trial court judge would have fair notice of what words or actions might subject them to discipline.

IV. The Publicity Attendant to the Hearing Officer’s Report Demonstrates that His Goal of Ensuring that the Public Have an Accurate Understanding of the Facts Has Not Been Realized

The Hearing Officer concluded his report with the observation that:

[s]ince the events of her less than seven minute conference in the Medina-Perez proceeding on the afternoon of April 2, 2018, Judge

¹⁵ While the Commission is likely to argue that this statement is extreme or untrue, the plain language of its recommendation suggests otherwise. It is difficult to conceive of a less blameworthy situation than a good-faith suggestion that was not implemented.

Joseph has repeatedly demonstrated through her conduct, including her candor during the investigation and hearing in this matter and her engagement in public service while suspended from her judicial duties, that she is a thoughtful, diligent, and conscientious judge undeserving of the harsh public criticism she has received in connection with this matter, and entirely worth of the opportunity to finally move on from it.

Appendix Q at CJCAPP4471. In an attempt to mitigate the harm done to Judge Joseph by David Jellinek's false accusations, the Hearing Officer recommended a public reprimand explicitly acknowledging that Judge Joseph had not engaged in any intentional misconduct, either by approving Jellinek's plan or by misleading the supervising judges (Appendix Q at CJCAPP4470).

Unfortunately, the media reports of the Hearing Officer's decision "buried the lede," leaving the public with the completely erroneous assumption that the Commission and the Hearing Officer had colluded to issue Judge Joseph a "slap on the wrist" for conspiring with defense counsel. Anything less than an exoneration will perpetuate the impression that Judge Joseph did what the public believes she did, and only an unequivocal statement to the contrary can even attempt to reverse this impression. As demonstrated by the continuing public attention, see examples attached,¹⁶ the Hearing Officer's efforts to set the record straight have thus far not

¹⁶ The attached articles can be found at <https://www.bostonherald.com/2025/11/08/howie-carr-if-i-get-jammed-up-treat-me-like-a-democrat-state-committee-member/> and

succeeded. Any additional language such as that proposed by the Commission would only subject Judge Joseph and the judiciary to additional criticism, and would defeat the Hearing Officer's attempt to make his conclusions known and permit Judge Joseph and the entire system to move forward.

While the eight-year maelstrom that has resulted from Jellinek's actions certainly justifies a public statement about the final outcome of this matter, that unrelenting publicity is not a ground to punish Judge Joseph. Had Jellinek conformed his representation of his client to accepted legal and ethical norms, the brief unrecorded sidebar would have been lost in the annals of history—among many similar encounters that occur throughout the Commonwealth. It is far better for the judicial system if the public understands that the judiciary, as well as Judge Joseph, has been unfairly castigated on account of the actions of a rogue lawyer. Discipline of Judge Joseph under these circumstances will simply perpetuate the prevailing narrative that a Massachusetts judge was complicit in the escape of an illegal immigrant, and that the judiciary has covered up her wrongdoing.

V. Conclusion

<https://www.bostonherald.com/2025/11/15/lucas-a-tale-of-two-ice-avoiding-judges/> (last accessed 11/15//2025).

No judge in Judge Joseph's position could ever have anticipated that Jellinek would concoct the plan that he did, much less that he would have the temerity to blame it on the judge. Yet Jellinek's conduct and his wrongful accusation of Judge Joseph, particularly in the politically charged climate surrounding immigration, transformed what should have been a one-day story about an errant lawyer into a years-long saga that many seized upon for political purposes. Overlooked in the rush to judgment were the completely uncorroborated nature of Jellinek's claims, and the unimpeachable contrary testimony from the assistant district attorney who was present at sidebar.

The sidebar at the heart of this case occurred in a state district court, where the hearings are often less formal and more personalized (and fast-paced) than comparable proceedings in the superior or federal district courts, and certainly than in appellate courts. Justice in the district courts often means understanding human situations and showing compassion or empathy for the people who find themselves in bad situations. A public reprimand for Judge Joseph's inadvertent language under these circumstances would establish a dangerous precedent that would have a chilling effect on the daily conduct of district court proceedings. A district court judge reading the recitation of Judge Joseph's conduct would naturally worry that countless statements, past and future, might one day be viewed as violations of the

Code of Judicial Conduct. A public reprimand under these unique circumstances would provide no guidance to other judges on when humanity becomes impropriety.

Judge Joseph requests that this matter be resolved with a public statement in the following form:

After a full hearing before an independent and impartial Hearing Officer appointed by the Supreme Judicial Court, the facts show that Judge Shelley Richmond Joseph “did not know about—much less authorize—the escape plan” engineered by Attorney David Jellinek and that Judge Joseph was “fully candid in her discussions with the supervisory judges.” The Hearing Officer found that, although not harboring actual bias, and with the intention of respecting the rights of all parties, Judge Joseph inadvertently created a potential appearance of bias during the discussion on and off the record. While those inadvertent actions do not rise to the level of a violation of the Code of Judicial Conduct, judges are cautioned that their words, even if uttered with the best of intentions, may be subject to misinterpretation, and for that reason, should be chosen with care. Interested persons are encouraged to read the Hearing Officer’s detailed report, which explains the complicated situation presented by the confluence of circumstances in this case.

As clearly stated by the Hearing Officer, Judge Joseph—and the entire Massachusetts court system—have been subjected to many years of public criticism because of the actions of a lawyer who continues to practice without consequence and whose uncorroborated word was taken as Gospel by the public and the prosecuting authorities. Since this incident, Judge Joseph has conducted

herself with dignity both on and off the bench.¹⁷ She has clearly taken to heart former District Court Chief Paul Dawley’s teaching that “the record is your friend.” Judge Joseph and the Massachusetts judiciary deserve, as the Hearing Officer suggested, finally to put this long journey behind them.

¹⁷ The Hearing Officer opined that a period of monitoring was unnecessary. The Commission has suggested that monitoring would be appropriate. Judge Joseph served in Regions 3 and 4 of the District Court from the time she was sworn in as a judge on November 2, 2017 until she was suspended after the federal indictment in April 2019. When her suspension was lifted in November 2022, she then was assigned to the Boston Municipal Court, where she served for more than two years until she was placed on administrative duties upon the Commission’s filing of charges, including several months presiding over the Dorchester and South Boston recovery court. In light of Judge Joseph’s unblemished record of service Judge Joseph agrees with the Hearing Officer. Indeed, her actions on April 2, 2018, spending the lunch recess researching a policy that was unknown to anyone else in the courthouse, demonstrates her willingness to seek answers where necessary.

The Respondent
SHELLEY M. RICHMOND JOSEPH
By her Attorneys,

/s/ Michael B. Keating

MICHAEL B. KEATING
Meehan Boyle Black & Bogdanow, P.C.
100 Cambridge Street, Suite 2101
Boston, Massachusetts 02114
617 523-8300
mkeating@meehanboyle.com

/s/ Thomas M. Hoopes
/s/ Elizabeth N. Mulvey

THOMAS M. HOOPEES
ELIZABETH N. MULVEY
Libby Hoopes Brooks & Mulvey, P.C.
260 Franklin Street, Suite 1920
Boston, Massachusetts 02110
617 338-9300
thoopes@lhbmlegal.com
emulvey@lhbmlegal.com

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