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OE-0157

IN THE MATTER OF SHELLEY M. RICHMOND JOSEPH.

Suffolk. May 4, 2026. - September 10, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
& Wolohojian JJ.

Judge. Commission on Judicial Conduct.

Formal charges filed in the Supreme Judicial Court on December 2, 2024.

A hearing was held before a hearing officer appointed by this court, a report was submitted by the hearing officer to the Commission on Judicial Conduct, and a report and recommendation for discipline was submitted by the commission to this court.

Judith Fabricant (Howard V. Neff, III, also present) for Commission on Judicial Conduct.

Elizabeth N. Mulvey (Thomas M. Hoopes & Michael B. Keating also present) for the respondent.

BY THE COURT. The Commission on Judicial Conduct (commission) initiated a complaint against Judge Shelley M. Richmond Joseph (respondent), charging her with misconduct when presiding over an arraignment in the Newton Division of the

District Court Department (Newton District Court). After a six-day evidentiary hearing and receipt of a report from a hearing officer, the commission concluded that the respondent created the appearance of impropriety and failed to comply with the law, in violation of Rules 1.1 and 1.2 of the Code of Judicial Conduct, S.J.C. Rule 3:09, Canon 1, Rules 1.1 (rule 1.1), 1.2 (rule 1.2) (2016), and recommended a sanction of public reprimand. For the reasons discussed below, we adopt the commission's recommendation and impose a public reprimand.

Background. 1. Facts. The commission adopted all of the hearing officer's factual findings. We take the following facts from those findings, as supported and supplemented by evidence apparent from the record. See Matter of Sushchuk, 489 Mass. 330, 331 (2022).

The respondent was sworn in as a District Court judge on November 2, 2017. On April 2, 2018, five months into her tenure as a judge, the respondent presided over the first session court room of the Newton District Court. She was the only judge sitting in the Newton District Court that day, and it was the first time that she sat alone with a full docket of scheduled matters. Jose Medina-Perez was scheduled to be arraigned on two misdemeanor counts of drug possession, in violation of G. L. c. 94C, § 34, and one misdemeanor count of being a fugitive from justice, in violation of G. L. c. 276, § 20A, based on an

outstanding Pennsylvania criminal warrant issued eight years earlier. At the time, Medina-Perez had been identified as the subject of an outstanding detainer and warrant issued by United States Immigration and Customs Enforcement (ICE).

Those present in the court room included the respondent, Medina-Perez, an interpreter, the first assistant clerk-magistrate of the Newton District Court (clerk), Elizabeth Bostwick (a bar advocate assigned to Medina-Perez's case), assistant district attorney Shannon Jurgens, and a plainclothes ICE officer. Having identified himself to a court officer inside the court room, the ICE officer requested that he be allowed to take custody of Medina-Perez in the lockup area after the arraignment and upon Medina-Perez's release from State custody, to which the court officer responded that it would be "no problem."

When Medina-Perez's case was called, Jurgens indicated that she would be recommending Medina-Perez's release without bail on the two drug possession charges but requested that he be held in custody without bail on the fugitive charge. As is standard practice with a fugitive charge, the respondent asked whether there was "an issue of ID" with respect to the Pennsylvania warrant. In response, Bostwick relayed her belief that Medina-Perez was not the person subject to the warrant. Bostwick also requested a further call to resolve the identification issue.

The respondent granted Bostwick's request and recessed for lunch.

During the lunch recess, the clerk informed the respondent that an ICE officer was present in the court room. He also told the respondent that the First Justice of the Newton District Court, Mary Elizabeth Heffernan, had adopted a practice of asking ICE officers to wait outside the court room so as not to interfere with court proceedings. This practice was discretionary, not in writing, and rarely employed, as ICE officers were only present at the Newton District Court approximately one to three times per year. Accordingly, the respondent was unfamiliar with the practice and was concerned about excluding a member of the public from a public hearing. The respondent took a number of steps during the lunch recess to determine whether she should follow First Justice Heffernan's practice.¹ This included speaking with the District Court administrative office's legal counsel, who informed the respondent of the so-called "Lunn policy"² and advised the

¹ The respondent could not ask First Justice Heffernan for advice because she was unavailable that day.

² The Executive Office of the Trial Court issued the Lunn policy on November 10, 2017, in the wake of Lunn v. Commonwealth, 477 Mass. 517 (2017). In Lunn, this court held that State court officers lack authority to hold an individual based solely on a civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody. Id. at 537. The Lunn policy prohibits

respondent that, in her view, excluding the ICE officer from the court room "was not inconsistent with" the policy. She also explained to the respondent that the Lunn policy permitted ICE officers to enter the lockup area to take custody of individuals pursuant to an immigration detainer or warrant. The respondent ultimately decided to follow First Justice Heffernan's practice, and she instructed the clerk to tell the ICE officer to leave the court room and wait in the court house lobby, which he did without issue.

That afternoon, attorney David Jellinek was hired to serve as Medina-Perez's private counsel. After he was retained, Jellinek noticed what he believed to be discrepancies between Medina-Perez's photograph and personal information, and the

court personnel from holding any individual who would otherwise be entitled to release based solely on an immigration detainer or warrant. Of note, the Lunn policy also provides, in relevant part, that court personnel shall permit an ICE officer to enter the holding cell area in order to take custody of an individual who has been processed for release out of the court house, provided (among other conditions) that the ICE officer seeks custody pursuant to an immigration detainer or warrant. Further, court personnel are restricted under the policy from impeding ICE officers from taking custody in a court house of an individual who is not in custody of the court house security personnel.

Although the respondent received no specific training on how to address ICE officers seeking to take custody of someone in a court house, all judges and magistrates received a transmittal via e-mail in January 2018 that referenced the Lunn policy. Attached to the e-mail message was an updated "Immigration Benchcard" on the Lunn decision. The respondent acknowledged that she would have received this transmittal.

Pennsylvania warrant and ICE detainer. After trying and failing to convince the ICE officer that ICE had misidentified Medina-Perez, Jellinek devised a plan with the court officer to help Medina-Perez evade the ICE officer, whereby Medina-Perez would be brought to the lockup area after the case was adjourned and then the court officer would release him out the sallyport exit in the back of the court house.

After the lunch recess, the final call of Medina-Perez's case began with Jellinek appearing for the first time in the matter. It is undisputed that, at that point, the respondent was unaware that Jellinek had devised a plan to help his client evade the ICE officer. Jellinek immediately requested a sidebar conference once the case was called, which the respondent granted.

During the recorded portion of the sidebar conference, the respondent began by stating, "[Inaudible] is dismissed, so it's my understanding that ICE is here." Jellinek, Jurgens, and the respondent then discussed the Pennsylvania warrant. Jellinek stated that there was insufficient evidence tying Medina-Perez to the warrant, and Jurgens agreed, stating, "I don't think it's him."

Jellinek then addressed the ICE officer's presence in the court house, stating:

"ICE is convinced that this [is the] guy. I went over to ICE, they say they have a biometric match. I went through it and did the research. There's [thirteen] [Federal Bureau of Investigation] numbers connected to this social [security number]. So something's bad with the [inaudible]. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal . . . and hope that we can avoid ICE."

Neither the respondent nor Jurgens understood Jellinek to mean that he hoped Medina-Perez could sneak out of the sallyport exit to avoid the ICE officer. In response, the respondent said, "[T]he other alternative is if you need more time to figure this out -- hold [Medina-Perez] until tomorrow." Jellinek replied, "There is an ICE detainer. So if he's bailed out from Billerica . . . [inaudible] . . . ICE will pick him up." The respondent replied, "ICE is gonna get him?" After an inaudible reply from Jellinek, the respondent asked, "What if we continued it?" In effect, the respondent raised the possibility of keeping Medina-Perez in State custody overnight. The respondent later explained that she did so to try "hit[ting] pause" on the case, which would have afforded Jellinek additional time to continue his investigation into Medina-Perez's identity, and to potentially engage further with the ICE officer about the issue.

While still at sidebar, in reply to the respondent's question about possibly continuing the proceeding, Jellinek asked, "Are we on the record?" The respondent then asked the

clerk, "[C]an we go off the record for a moment?" After the clerk sought clarification, Jellinek likewise asked, "Can we go off the record for a minute?" The clerk proceeded to turn off the court room recording system. Jellinek never provided a reason for his request to go off the record, and the respondent did not know or ask why he made the request. The respondent later testified that "everything [was] moving very quickly" and she "didn't give [the request] much thought."

The off-the-record portion of the sidebar lasted approximately fifty-two seconds. The witness accounts of what was said during this time varied significantly. Nonetheless, based on the testimony he credited, the hearing officer found that, during this time, the respondent and the parties continued discussion about Medina-Perez's identity, the Pennsylvania warrant, the ICE officer's presence, and whether the ICE officer might take custody of Medina-Perez following the arraignment. At some point, the respondent asked something to the effect of, "What could we do?" In discussing courses of action, the possibility of continuing the case until the next morning and keeping Medina-Perez in custody overnight was again presented. However, Jellinek rejected this idea, stating, in substance, that he had "a plan," was "all set," or had it "under control."

After rejecting the proposal to continue the case, Jellinek requested that he be allowed to go down to the lockup area with

Medina-Perez and the interpreter after the proceeding was adjourned so that he could speak further with his client. The respondent granted Jellinek's request, which she believed was appropriate because she "was under the impression that [Medina-Perez] was going to go back downstairs . . . and go right into ICE custody through the sallyport," and she was not confident that the ICE officer would delay seizure of Medina-Perez to permit him time to speak with his attorney.

Notwithstanding the reference to a "plan," the hearing officer found that, during the off-the-record portion of the sidebar, Jellinek did not explicitly state or implicitly suggest that Medina-Perez would be let out the sallyport exit in order to evade the ICE officer, and the respondent did not, either explicitly or implicitly, approve of such a plan.³

Jurgens, who the hearing officer determined was credible, testified that she had no reason to believe the respondent was aware of any escape plan involving Medina-Perez. Despite this, she expressed discomfort with the sidebar discussion, describing it as "weird or sketchy," and she characterized the respondent's

³ Jellinek testified that he had told the respondent about his plan for Medina-Perez to evade the ICE officer and that she had provided her "blessing" to proceed with this plan. However, the hearing officer did not credit Jellinek's account, as Jellinek's testimony was "repeatedly at odds with both the factual record and common sense."

behavior during the proceeding as a "misguided attempt[] to do what she thought was right."

The respondent, for her part, averred that Jellinek never told her that he planned to have Medina-Perez escape through the back door of the court house if she granted his request to speak with Medina-Perez in the lockup area.

The entire sidebar, both on and off the record, lasted approximately two minutes. Once the sidebar concluded and the proceeding went back on the record, Jurgens moved to dismiss the fugitive charge, conceding that there was "[not] enough [information] tying [Medina-Perez] to the Pennsylvania warrant." After the respondent granted Jurgens's request, Jurgens reiterated that she would not seek bail on Medina-Perez's drug possession charges. Jellinek then mentioned that Medina-Perez had "some property downstairs" and asked to speak with him in the lockup area with the interpreter. The respondent replied, "That's fine. Of course." Although the general practice in the Newton District Court was for defendants to be released from custody in the court room, it was not unusual for defendants to first go downstairs to the lockup area before leaving through the front door of the court room.

After the respondent agreed to release Medina-Perez on personal recognizance, Medina-Perez was arraigned on the remaining charges, and a pretrial conference date was set.

Before concluding the proceeding, the respondent told the clerk that, although the ICE officer could not enter the court room, he was permitted to enter the lockup area in accordance with the Lunn policy. Notwithstanding this instruction, the clerk informed the ICE officer that he could not enter the lockup area⁴ and, instead, should remain in the lobby to await Medina-Perez, who would be released through the front door of the court house. The ICE officer remained in the lobby while the court officer escorted Medina-Perez, Jellinek, and the interpreter into the lockup area. Approximately six minutes after the proceeding concluded, the court officer opened the sallyport door and unshackled Medina-Perez, who left the court house through the sallyport exit.

After Jurgens learned that Medina-Perez was no longer in the lockup area and came to realize what had likely transpired, she told Jellinek that she knew what he had done and that she thought it was wrong. In response, Jellinek smiled and walked away without saying anything. Jellinek then encountered Bostwick in the parking lot of the court house and told her that

⁴ As for why the clerk indicated that the ICE officer could not enter the lockup area despite the fact that the respondent said it was "fine" for the ICE officer to do so, the clerk testified that he had understood the respondent to mean that the ICE officer could not enter the court room in order to subsequently access the lockup area. However, the court house has several means, other than the court room itself, by which the lockup area may be accessed.

he was pleased that he was able to help Medina-Perez avoid the ICE officer by having him leave through the back of the court house. Bostwick responded that she thought his actions amounted to an obstruction of justice.

Following the events of April 2, the respondent met with a number of individuals to discuss what transpired that day. On April 4, the respondent had a conversation with First Justice Heffernan, who informed the respondent that Medina-Perez had evaded the ICE officer by leaving through the sallyport exit. This was the first time the respondent learned that Medina-Perez had escaped ICE custody. While the respondent noted that she had permitted Jellinek and the interpreter to accompany Medina-Perez to the lockup area, the respondent did not discuss her decision to go off the record during her brief conversation with First Justice Heffernan.

The respondent also met informally with Regional Administrative Justice (RAJ) Stacey Fortes. The two discussed the topic of going off the record, and RAJ Fortes showed the respondent a copy of Rule 211 of the Special Rules of the District Court (1988) (rule 211). Rule 211(A)(1) requires, in relevant part, that "all courtroom proceedings, including arraignments in criminal . . . cases, shall be recorded electronically," with limited exceptions that do not apply here.

This was the first time the respondent learned that going off the record was prohibited by a court rule.

On May 8, 2018, the respondent met with RAJ Fortes and Chief Justice of the District Court Paul Dawley. During their conversation, the respondent confirmed that she had directed the clerk to go off the record but strongly denied any responsibility for, or awareness of, the plan for Medina-Perez to escape through the sallyport exit.

The respondent was indicted in April 2019 by a Federal grand jury on charges of conspiracy to obstruct justice, aiding and abetting the obstruction of justice, and aiding and abetting obstruction of a Federal proceeding. The Federal charges were dismissed in September 2022, on the condition that the respondent formally refer herself to the commission and cooperate with any investigation or proceeding initiated by the commission.

2. Procedural background. On May 16, 2019, the commission initiated a complaint against the respondent, which was subsequently stayed in light of the pending Federal criminal case. Following the dismissal of the Federal charges, on November 19, 2024, the commission issued formal charges against the respondent, pursuant to G. L. c. 211C, § 5 (14), and Rule 7(B)(4) of the Rules of the Commission on Judicial Conduct (2023). On December 2, 2024, the commission filed the formal

charges and the respondent's response with this court. We appointed a hearing officer, who conducted a public hearing over six days in June 2025, at which seventeen witnesses testified.

The hearing officer submitted his report to the commission on October 31, 2025, recommending that the respondent be publicly reprimanded because of the notoriety of the case. The commission then submitted its own report and recommendation to this court on January 13, 2026. In its report, the commission concluded that the respondent's suggestions to detain Medina-Perez overnight, having been made during a discussion about Medina-Perez being taken into ICE custody, were not "mere good faith error[s] of law" that did not warrant discipline, but rather "created the appearance of willingness to use a [S]tate criminal charge for an illegitimate purpose" in violation of rule 1.2. The commission also concluded that, in going off the record during a discussion related to the ICE officer's interest in taking custody of Medina-Perez, the respondent violated rules 1.1 and 1.2.⁵ For the respondent's rule violations, the

⁵ The commission also found that the respondent's statements during the sidebar violated rule 1.1, and that her ignorance of rule 211 was a violation of S.J.C. Rule 3:09, Canon 2, Rule 2.5(A) (2016), which requires a judge to "perform judicial and administrative duties competently, diligently, and in a timely manner." Because it does not change the result, we do not reach these two issues.

commission recommends that she be publicly reprimanded.⁶

Discussion. "The commission has the burden in these proceedings to prove the charges against the respondent by clear and convincing evidence." Matter of Sushchuk, 489 Mass. at 334, citing G. L. c. 211C, § 7 (4). Rule 1.1 provides that "[a] judge shall comply with the law, including the Code of Judicial Conduct." S.J.C. Rule 3:09, Canon 1, Rule 1.1. Rule 1.2 states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." S.J.C. Rule 3:09, Canon 1, Rule 1.2. We first address the respondent's statements and conduct that created the appearance of impropriety in violation of rule 1.2, before turning to her noncompliance with the Special Rules of the District Courts, in violation of rule 1.1.

With respect to a judge's obligation to avoid the appearance of impropriety, we have commented:

"That the standards imposed on judges are high goes without saying. Because of the great power and responsibility judges have in passing judgment on their fellow citizens, such standards are desirable and necessary and there should be strict adherence to them. Failure on the part of even a few judges to comply with these standards serves to degrade and demean the entire judiciary and to erode public confidence in the judicial process."

⁶ One commission member dissented to the majority recommendation and proposed a private reprimand made public to account for the notoriety of the case.

Matter of Morrissey, 366 Mass. 11, 16-17 (1974). "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge . . . engaged in . . . conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." S.J.C. Rule 3:09, Canon 1, Rule 1.2 comment 5. See Matter of Brown, 427 Mass. 146, 149-150, S.C., 427 Mass. 1015 (1998) (judge violated public confidence in integrity and impartiality of judiciary by expressing "strong animus" against union and its leadership during oral argument in labor relations matter).

We agree with the commission that the respondent, by "making . . . suggestions in the context of the discussion about ICE and the prospect that ICE would take [Medina-Perez] into custody, . . . created the appearance of willingness to use a [S]tate criminal charge for an illegitimate purpose," in violation of rule 1.2, and that her instruction to stop the recording violated rules 1.1 and 1.2. These violations are supported by the record.

First, in the context of a conversation regarding the ICE officer's intent to detain Medina-Perez, seconds after Jellinek mentioned that "ICE [was] going to pick [Medina-Perez] up if he walk[ed] out the front door" and stated his hope that Medina-Perez could "avoid ICE," the respondent offered to "hold [Medina-Perez] until tomorrow" -- a proposal that would have

resulted in Medina-Perez being held in State custody overnight without a legal basis. When Jellinek noted that the ICE detainer would allow an ICE officer to arrest Medina-Perez after release from overnight detention, the respondent asked, "ICE is gonna get him?" Then, after an inaudible statement from Jellinek, the respondent asked, "What if we continued it?"

During the off-the-record portion of the sidebar, the respondent, Jellinek, and Jurgens continued to discuss the ICE officer's presence and whether ICE would take custody of Medina-Perez. In the course of that conversation, the respondent asked something to the effect of "What could we do?" and again raised the possibility of continuing the case until the next day.

The respondent's comments create in reasonable minds a perception that she was willing to detain Medina-Perez overnight without a legal basis to do so to help him avoid Federal custody -- a purpose not authorized by the bail statute. See Commonwealth v. Vieira, 483 Mass. 417, 419-421 (2019) (describing pretrial release under G. L. c. 276, §§ 58 and 58A). See also S.W. v. Commonwealth, 497 Mass. 597, 603 (2026) ("circumstances in which a judge may order pretrial detention are limited" [quotation and citation omitted]). When the respondent suggested holding Medina-Perez until the next day, there was no legitimate purpose to detain him. Jurgens had indicated that she would recommend that Medina-Perez be released

without bail on the two misdemeanor drug possession charges. And while Jurgens had not formally moved to dismiss the fugitive charge at that time, she had already conceded that there was insufficient evidence tying Medina-Perez to the fugitive warrant. Nevertheless, the respondent suggested holding Medina-Perez in State custody.

The respondent compounded this appearance of impropriety by instructing the clerk to turn off the court room recording system in the midst of a conversation regarding Medina-Perez's outstanding ICE detainer and warrant. By stopping the recording, the respondent created an impression that she intended to conceal the conversation. Taken together, the respondent's actions violated rule 1.2 by potentially undermining the public confidence in the independence, integrity, and impartiality of the judiciary.

Additionally, apart from creating the appearance of impropriety, the respondent's instruction to stop the recording violated rule 211. By instructing the clerk to turn off the court room recording system, the respondent failed to comply with the law, which "includes court rules and standing orders issued by . . . a Chief Justice of a Trial Court Department." S.J.C. Rule 3:09, Terminology (2016).⁷

⁷ The Special Rules are issued by the Chief Justice of the District Court Department. See G. L. c. 218, § 19C.

This court has long emphasized the importance of conducting proceedings in criminal cases on the record. See, e.g., Commonwealth v. Wilkerson, 486 Mass. 159, 173 n.11 (2020) ("We emphasize that, particularly in cases of serious crimes, a contemporaneous record of the proceedings must be made"); Murphy v. Boston Herald, Inc., 449 Mass. 42, 57 n.15 (2007) ("We trust that the lesson learned here will be applied by trial judges to prevent unnecessary problems that often arise from unrecorded lobby conferences"). While the respondent was unaware of rule 211 as of April 2, 2018, her lack of knowledge cannot excuse a violation of that rule, especially where the violation contributed to the appearance of impropriety.

We turn now to the proper sanction. The respondent argues that she should not be subject to any disciplinary action for her statements and conduct during the sidebar because she "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." But the commission charged her with violating rule 1.2, which clearly provides that judges must avoid not only impropriety, but also "the appearance of impropriety." S.J.C. Rule 3:09, Canon 1, Rule 1.2. This is a rule all judges should know and understand. And, as explained above, the respondent's statements during the sidebar, and her

instruction to turn off the recording, created the appearance of impropriety. See *Matter of a Judge*, Supreme Judicial Ct., No. OE-150 (Dec. 22, 2022) (imposing public reprimand on judge whose social media posts on personal account regarding political candidates, figures, and events created appearance of bias); *Matter of Brown*, 427 Mass. at 153-154 (imposing public reprimand on judge for making anti-union comments during oral argument that created appearance of partiality).

We have previously noted that the appropriate disposition for judicial misconduct "depends on the particular circumstances" (citation omitted). *Matter of Sushchik*, 489 Mass. at 337. Here, in determining that a public reprimand was appropriate, the commission considered mitigating factors, including that (1) the respondent "was a relatively new judge at the time of the April 2, 2018, incident, but she already had a great deal of experience as a criminal defense lawyer, including experience in the Newton District Court," and (2) the respondent "has already experienced hardship due to the heightened public scrutiny and lengthy pendency of this matter, the [F]ederal indictment, and her suspension from the bench pending resolution of the [F]ederal indictment." The commission did not note any aggravating factors. We similarly consider these factors in determining the appropriate disposition. See *Matter of King*,

409 Mass. 590, 609 (1991); Matter of Ford, 404 Mass. 347, 356-357 (1989).

We also acknowledge that the respondent's conduct here was less severe than other judicial conduct for which we have issued a public reprimand or censure. See, e.g., Matter of Murphy, 452 Mass. 796, 797, 803 (2008) (public reprimand with assessed costs where judge wrote inappropriate letters to newspaper, on judicial letterhead, concerning libel suit in which he was personally involved); Matter of Markey, 427 Mass. 797, 801-803, 808 (1998) (public reprimand with three-month suspension where judge made improper ex parte communication to another judge to intercede on behalf of party and routinely failed to properly advise defendants in plea colloquies). However, given the public nature of the proceedings against the respondent, and to ensure that there is no misunderstanding as to what she is -- and is not -- being reprimanded for, we conclude that the respondent should be publicly reprimanded.

Conclusion. For the foregoing reasons, the respondent is hereby publicly reprimanded as follows.

The respondent is publicly reprimanded for her statements and conduct during a sidebar discussion on April 2, 2018, regarding the presence of an ICE officer and counsel's concern that the officer would take Medina-Perez into custody. The respondent's statements during that conversation, including her

proposal to detain Medina-Perez overnight in State custody, and her conduct in instructing the clerk to turn off the court room audio recording system, created an appearance of impropriety in violation of her duties under rule 1.2. The respondent is also publicly reprimanded for failing to abide by rule 211 when she instructed the clerk to turn off the court room audio recording system during Medina-Perez's arraignment, in violation of her duty under rule 1.1 to comply with the law.

So ordered.