

Suspended Newton judge declined plea deal that would have meant no criminal charges

By [Andrea Estes](#), [Shelley Murphy](#) and [Maria Cramer](#) Globe Staff, May 23, 2019, 12:36 p.m.



Newton District Court Judge Shelley Richmond Joseph faces the possibility of up to 20 years in prison if convicted of obstruction of justice. (JESSICA RINALDI/GLOBE STAFF)

Suspended Newton [Judge Shelley Richmond Joseph](#) turned down a deal that would have allowed her to avoid prosecution — and possibly preserve her career — if she admitted that she [illegally helped](#) an undocumented immigrant [elude arrest by an Immigration and Customs Enforcement agent](#), according to several people briefed on the federal prosecutor's offer.

US Attorney Andrew Lelling had offered Joseph a “deferred prosecution agreement” under which she would not have been indicted and, in a year, as long as she didn’t repeat the conduct, prosecutors would abandon the obstruction of justice charges, according to the people familiar with the deal.

But Joseph refused to admit she violated federal law and now faces the possibility of up to 20 years in prison if convicted of obstruction of justice.

“Our client has pleaded not guilty because she is not guilty,” said Joseph’s lawyer, Thomas Hoopes.

The US attorney’s office declined to comment on the plea offer, which legal experts say is extremely rare.

Opinions on whether Joseph should have accepted the deal varied depending on a person’s view of the original indictment.

Just a few months after Governor Charlie Baker appointed her as a district court judge in the fall of 2017, Joseph was thrust into a national debate over illegal immigration when she allegedly helped an undocumented immigrant duck out a back door of the courthouse to elude an ICE agent who was

waiting for him.

Joseph, 51, who has been on unpaid suspension since [her indictment in April](#), has been defended by retired judges and Attorney General Maura Healey, who accused Lelling of prosecutorial overreach, while others criticized Joseph, saying her job is to enforce the law, not help others violate it.

If Joseph had accepted the deal, it is unclear whether she could have kept her job as a judge or her license to practice law, according to state law.

The Massachusetts Commission on Judicial Conduct could recommend the Supreme Judicial Court impose sanctions including suspension or private or public reprimand. However, even the SJC cannot force a judge to step down. Only the Legislature and governor can force a judge off the bench, either through a bill calling for the judge's removal that must be signed by the governor and the Governor's Council or through an impeachment trial before the Senate.

Martin W. Healy, chief legal counsel and chief operating officer for the Massachusetts Bar Association, a lawyers lobbying group, said he believes Joseph would have put her legal career in jeopardy had she accepted the plea deal.

“Though at first it might appear to be an attractive offer, upon reflection it could present some very serious and harsh consequences down the line,” said Healy, whose group has expressed concern about the indictment.

The Commission on Judicial Conduct could recommend removing her from the bench, he said, an action that would likely trigger a review of her alleged conduct by the state Board of Bar Overseers. “There is a great likelihood that she could lose her ability to practice law” had she accepted the deal, Healy said.

But former Massachusetts US attorney Michael J. Sullivan, who has said Lelling made the right call in charging Joseph, said the judge should have agreed to the offer.

“Based on the facts, that was an extremely generous offer on the part of the government,” he said. “I’m shocked she didn’t take it. She would have avoided an indictment. She would have avoided a trial. She would have avoided the potential of being found guilty.”

The offer also undercuts the notion that Lelling was determined to incarcerate a sitting judge for political reasons, Sullivan said.

“Anybody who knows Andrew Lelling or has had the opportunity to work with Andrew Lelling knows he’s not a zealot,” Sullivan said. “He’s always approached matters in a fair and balanced way.”

Criminal defense lawyer Martin Weinberg added that Lelling’s offer to Joseph is both rare and “rarely refused. About the only justification for turning down such an offer is that it often comes with the requirement of factual admissions of guilt.”

Retired Supreme Judicial Court Justice Geraldine Hines, who has been critical of the indictment, said she understood why Joseph would turn down such a deal.

“The fact that she denied it makes sense to me if her position is that the indictment is not true,” Hines said. “Just like any other defendant who would say, ‘Well yeah, that’s nice of you to want to offer me a plea but I’m not guilty.’”

The near-unprecedented nature of the case — a sitting judge indicted for criminal behavior — makes it unclear whether Joseph would lose her job as a judge or even her law license, Hines said. The last time a Massachusetts judge was criminally sentenced was in 1787, when Judge William Whiting was

found guilty of seditious libel for defending the farmers who led Shays’ Rebellion. He was sentenced to seven months in jail and lost his judgeship.

“If [Joseph] admitted that she committed acts which would be criminal, I think that would open her up to impeachment or the [Commission on Judicial Conduct] could take action against her,” Hines said. “This is extraordinary so I don’t know that anybody has a script that they can follow on this.”

Short of impeachment, court officials can also put pressure on judges to step down. Last year, Pittsfield Judge Thomas H. Estes resigned after the state's highest court assigned him to paid administrative duties following his admission that he had sex with a clinician who worked in his court.

Last month, a federal grand jury in Boston indicted Joseph on obstruction of justice charges for allegedly helping Jose Medina-Perez, a Dominican national who had entered the country illegally three times, flee from the courthouse last year. Wesley MacGregor, a retired court officer who allegedly helped the defendant sneak out, was also indicted — charged with lying to the grand jury investigating the incident.

The unusual charge against a sitting judge infuriated immigration advocates and attorneys, who called it “politically motivated,” but it was praised by supporters of tougher immigration laws.

“This case is not about immigration,” Lelling said at a news conference. “It is about the rule of law. . . . This case is not intended as a policy statement, at least not beyond making the point that the laws have to apply equally even if you're a state court judge.”

Andrea Estes can be reached at andrea.estes@globe.com. Maria Cramer can be reached at maria.cramer@globe.com. Shelley Murphy can be reached at shelley.murphy@globe.com.

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