

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO.: 2285CV00971

JOAO DEPINA,

Plaintiff,

v.

WORCESTER COUNTY DISTRICT  
ATTORNEY'S OFFICE; JOSEPH D.  
EARLY, JR., in his personal and official  
capacities; ANTHONY MELIA in his  
personal and official capacities; BOSTON  
POLICE DEPARTMENT; DANTE  
WILLIAMS in his personal and official  
capacities; and RACHAEL ROLLINS, in  
her personal capacity,

Defendants.

**NOTICE OF FILING**

NOW COMES Plaintiff, Joao DePina, in the above-captioned matter, and, pursuant to Superior Court Rule 9A(b)(2) hereby makes certificate of notice of filing the Rule 9A package relative to Plaintiff's Motion for Recusal as set forth in the accompanying List of Documents.

Dated: October 21, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza, BBO# 651477

mjr@randazza.com, ecf@randazza.com

Jay M. Wolman, BBO# 666053

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RANDAZZA LEGAL GROUP, PLLC

30 Western Avenue

Gloucester, MA 01930

Tel: (978) 801-1776

Attorneys for Plaintiff,

Joao DePina

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon all parties through the Court’s electronic filing system on this 21<sup>st</sup> day of October, 2022, or otherwise caused for service via U.S. Mail, as follows:

Thomas E. Bocian  
Assistant Attorney General  
Criminal Bureau/Appeals  
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One Ashburton Place  
18<sup>th</sup> Floor  
Boston, MA 02108  
thomas.bocian@mass.gov

Jesse M. Boodoo  
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Hannah C. Vail  
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*Counsel for Defendants Worcester County Prosecutor’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins. Served via the Court’s electronic filing system.*

Additionally, I caused Defendants Dante Williams and Boston Police Department to be served by U.S. Mail as follows:

Dante Williams  
31 Blake Street  
Hyde Park, MA 02136

Boston Police Department  
c/o Boston Law Department  
1 City Hall Square  
Room 615  
Boston, MA 02201

/s/ Marc J. Randazza  
Marc J. Randazza

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her personal capacity,

Defendants.

**LIST OF DOCUMENTS**

NOW COMES Plaintiff, Joao DePina, in the above-captioned matter, and, pursuant to Superior Court Rule 9A(b)(2) hereby lists the titles of each document in the Rule 9A package relative to Plaintiff's Motion for Recusal as follows:

- 1) Plaintiff's Motion for Recusal
- 2) Plaintiff's Memorandum in Support of Motion for Recusal
- 3) Defendants Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins' Response to Motion for Recusal
- 4) Request for Hearing
- 5) Notice of Filing
- 6) List of Documents
- 7) Certification of Conference Pursuant to Rule 9C

8) Affidavit of Compliance

Dated: October 21, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

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WILLIAMS in his personal and official  
capacities; and RACHAEL ROLLINS, in  
her personal capacity,

Defendants.

**REQUEST FOR HEARING**

NOW COMES Plaintiff, Joao DePina, in the above-captioned matter, and, pursuant to Superior Court Rule 9A(c)(2) hereby requests a hearing on Plaintiff's accompanying Motion for Recusal.

Dated: October 21, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

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Defendants.

**AFFIDAVIT OF COMPLIANCE**

I, Jay M. Wolman, counsel for Plaintiff Joao DePina, in the above-captioned matter, pursuant to Superior Court Rule 9A(b)(2) hereby state and depose as follows:

- 1) I am counsel for Plaintiff Joao DePina in the above-captioned matter and I am duly admitted to practice before the bar of this Court;
- 2) On October 6, 2022, Plaintiff served a true and correct copy of Plaintiff's Motion for Recusal and Memorandum in Support of Motion for Recusal upon Defendants Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins;
- 3) On October 6, 2022 Plaintiff caused to be served via the Suffolk County Sheriff's Department a true and correct copy of Plaintiff's Motion for Recusal and Memorandum in Support of Motion for Recusal upon Defendants Boston Police Department and




Dante Williams. Defendant Boston Police Department was delivered the documents on October 14, 2022. Defendant Dante Williams was delivered the documents on October 18, 2022.

- 4) Plaintiff received a response from Defendants Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins on October 8, 2022.
- 5) Plaintiff has not received a response from Defendants Boston Police Department nor Dante Williams. However, as they have not appeared in the action, the particulars of Rule 9A do not appear to properly apply.

~~6)~~

*J. W.* Therefore, Plaintiff hereby recites that he has complied with Superior Court Rule 9A and received no response from Defendants Boston Police Department nor Dante Williams, but the timing requirements as a result of the response of the Commonwealth Defendants necessitates filing this date.

SWORN AND SUBSCRIBED UNDER THE PAINS AND PENALTIES OF PERJURY THIS  
21st DAY OF OCTOBER, 2022.

  
J. M. Wolman, BBO# 666053  
jw@randazza.com  
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*Counsel for Defendants Worcester County Prosecutor’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins. Served via the Court’s electronic filing system.*

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capacities; and RACHAEL ROLLINS, in  
her personal capacity,

Defendants.

**PLAINTIFF'S MOTION FOR RECUSAL**

Plaintiff Joao DePina respectfully moves for the recusal of Justice Renee P. Dupuis from this pending case pursuant to Code of Judicial Conduct, S.J.C. Rule 3:09, Canon 2, Rule 2.11 (2016). Plaintiff does not seek to impugn Justice Dupuis. However, as a career prosecutor prior to becoming a jurist, Justice Dupuis likely has an unconscious bias and, at a minimum, there will be an appearance of bias in a case challenging long-standing protections of prosecutors, residues of which she enjoys to this day

Pursuant to article 29 of the Massachusetts Constitution Declaration of Rights, "It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit." *King v. Grace*, 293 Mass. 244, 246 (Mass. 1936). Plaintiff believes that recusal is required to "enforce society's legitimate expectation that judges maintain, in fact and appearance, the conviction and discipline to resolve those disputes with detachment and impartiality." *Litecky v. United States*, 510 U.S. 540, 564 (1994) (Kennedy, J., concurring, with Blackmun, Stevens, and Souter, JJ.).

In support hereof, Plaintiff refers to the accompanying memorandum of law, filed herewith and incorporated herein by reference.

Dated: October 6, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza, BBO# 651477

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Attorneys for Plaintiff,

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*Counsel for Defendants Worcester County Prosecutor’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins. Served via the Court’s electronic filing system.*

Additionally, I caused Defendants Dante Williams and Boston Police Department to be served by mailing the foregoing document to the Suffolk County Sheriff’s Department for their service of process, return of which will be separately made.

/s/ Marc J. Randazza \_\_\_\_\_  
Marc J. Randazza

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Defendants.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR RECUSAL**

**1.0 INTRODUCTION**

The facts are not in dispute in this case. During a live televised press conference, Plaintiff Joao DePina questioned Defendant Rachael Rollins' ability to do her job. DePina challenged former Suffolk County District Attorney Rachael Rollins, a government servant, on whether she could competently serve the people in her district. The entire incident was recorded on video.

Because he challenged a state prosecutor, three days after the live televised press conference DePina was charged with attorney intimidation in violation of G.L. c 268 § 13B. *See Commonwealth v. DePina*, No. 2107CR003064 (Boston Municipal Court Dorchester Division). Attorney intimidation is a felony subject to a maximum of 10 years in prison. The criminal complaint and police report are not in dispute.

The criminal charge against DePina was dismissed for lack of probable cause. The order dismissing the criminal charge against DePina and the transcript of the hearing are not in dispute.

What is in dispute is the law. The doctrine of absolute prosecutorial immunity is in dispute. Defendant Worcester County District Attorney's Office should never have prosecuted this egregious violation of DePina's right to speak freely and petition his government. The Commonwealth of Massachusetts is being called upon to abolish the doctrine of absolute prosecutorial immunity in this case. Because Justice Renee P. Dupuis served as a prosecutor for over 20 years in the Commonwealth, Plaintiff respectfully requests Honorable Dupuis recuse herself.

## **2.0 BACKGROUND**

DePina was the victim of malfeasance by Massachusetts prosecutors and Boston police officers. Defendants conspired to prosecute DePina for a felony without any reasonable basis in law or fact to do so. In fact, a year prior, DePina performed an almost identical act where he heckled former Boston Police Chief William Gross during a live televised press conference. There, Defendant Rachael Rollins stepped in to protect DePina and his right to freedom of speech because she feared white police officers were going to attack him—a black man. “Hold my badge and my phone, I trust you with my belongings.” Defendant Rachael Rollins told DePina after he heckled former Boston Police Chief Williams Gross. In a public response after the incident, Defendant Rollins explained why she helped de-escalate that situation, stating in defense of DePina that “As I am sure you are aware, yelling your opinion is free speech.”

But then, a mere year later, Defendant Rachael Rollins found herself on the receiving end of DePina's criticism, and she used the criminal justice system to unjustly silence him. Defendant Rachael Rollins had DePina charged with a felony where he could have received a 10-year jail sentence. Defendant Rachael Rollins farmed out the prosecution. At the time, Defendant Rachael Rollins was the Suffolk County District Attorney. She had Defendant Detective Dante Williams prepare a criminal complaint against DePina and Defendant Worcester District Attorney's Office prosecute the case.

Ultimately, the case against DePina was dismissed for lack of probable cause. Justice Fraser noted in the order dismissing the charge that “[DePina’s] speech is within the First Amendment’s protective reach.”

Defendants knew that DePina was lawfully exercising his right to freedom of speech . Defendants maliciously abused the criminal justice system to silence DePina. Defendant Worcester District Attorney Joseph D. Early, Jr. willingly served as Defendant Rollins’s henchman and sent his foot soldier Defendant Assistant District Attorney Anthony Melia to maliciously prosecute DePina without any factual or legal basis to support the charges.

When pressed by Justice Fraser for evidence at the hearing on the motion to dismiss the charges for lack of probable cause, Defendant Assistant District Attorney Melia stated, “My only argument would be that with DePina questioning [Rollins] ability to be the district attorney, he’s indirectly referencing her ability to fairly prosecute him as a defendant.” Justice Fraser followed up asking, “So does that mean that when anybody who has a case appears at a press conference questions the ability of the prosecutor to do their job, that is witness intimidation?” Defendant Melia responded, “If they’re under prosecution by that district attorney, yes.”

Defendant Assistant District Attorney Melia, and every government official involved in this conspiracy, was aware that DePina was merely questioning Defendant Rachael Rollins – a government servant – on her ability to do her job. The entire incident was on video, and the prosecutor defendants had access to the video throughout the pendency of the criminal case. In no way, shape or form did DePina threaten Defendant Rollins. Defendant Assistant District Attorney Melia prosecuted DePina for questioning a government official’s ability to do her job. This malicious conduct from government officials can not stand in a free society. DePina was abused.

Defendants flipped the criminal justice system into a criminal injustice system. Defendants will necessarily put forth the doctrine of absolute prosecutorial immunity and other immunity doctrines as a defense to protect their conduct. Because Justice Renee P. Dupuis honorably served as a prosecutor for over 20 years in Massachusetts, DePina respectfully requests Honorable Dupuis



recuse herself from this case. Unfortunately, Justice Dupuis's interests in this case are inherently adverse to DePina obtaining justice. For the doctrine of absolute prosecutorial immunity to be overturned, by implication, it opens Honorable Dupuis's career as a prosecutor to scrutiny and exposure to potential lawsuits. A reasonable person on the street would look at this inherent conflict as raising serious questions.

### 3.0 ARGUMENT

The principle of impartial justice is expressly enshrined in article 29 of the Massachusetts Constitution Declaration of Rights:

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

“A rigid adherence to that principle is essential to the maintenance of free institutions. It has been strictly upheld by decisions of this court.” *Commonwealth v. Leventhal*, 364 Mass. 718, 721 (1974) (quoting *Thomajanian v. Odabshian*, 272 Mass. 19, 23 (Mass. 1930)). The requirement of an unbiased tribunal is fundamental to due process. *See Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972). “A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955).

“The administration of justice by the courts ought not only to be, but it ought to appear to be, impartial and efficient. The principles of natural justice as well as the mandates of the Constitution establish a strict and lofty standard.” *King v. Grace*, 293 Mass. 244, 247 (Mass. 1936). Article 29 is “at least as rigorous in exacting high standards of judicial propriety as are those of the Fourteenth Amendment of the Constitution of the United States.” *Id.*

When a question of recusal is raised, a “judge must ‘consult first his own emotions and conscience’ to determine whether he possesses the capacity to rule fairly at trial.” *Commonwealth v. Daye*, 435 Mass. 463, 469 (2001) (quoting *Lena v. Commonwealth*, 369 Mass. 571, 575 (1976)).

Plaintiff asks this Honorable Court to make that assessment in light of her background serving as a prosecutor for over 20 years in the Commonwealth, and whether overturning the doctrine of absolute prosecutorial immunity would open her up to exposure to potential lawsuits. “A judge shall disqualify herself in any proceeding in which the judge cannot be impartial.” Massachusetts Code of Judicial Conduct, S.J.C. Rule 3:09, Canon 2, Rule 2.11 (2016). There is potential legal and economic exposure to Justice Dupuis as a former prosecutor in Massachusetts if the absolute prosecutorial immunity doctrine were overturned. And, these are doctrines she, herself, enjoyed for decades, even if she never invoked them nor had cause to.

If this Court determines that it does possess the capacity to rule fairly, this Court must nonetheless “disqualify himself or herself in any proceeding in which . . . the judge’s impartiality might reasonably be questioned.” Code of Judicial Conduct, S.J.C. Rule 3:09, Canon 2, Rule 2.1. This requires an “objective appraisal” rather than a subjective one. *Daye*, 435 Mass. at 469 (*quoting Haddad v. Gonzalez*, 410 Mass. 855, 862 (1991)). The Appeals Court has stated that this requirement tracks 28 U.S.C. § 455(a), under which the standard is “whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge’s impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion . . . but rather in the mind of the reasonable man.” *Commonwealth v. Zine*, 52 Mass. App. Ct. 130, 131 n.1 (2001) (*quoting United States v. Cowden*, 545 F.2d 257, 265 (1st Cir. 1976), *cert. denied*, 430 U.S. 909 (1977)). The question is “how his participation looks to the average person on the street.” *Zine*, 52 Mass. App. Ct. at 131 n.1. Recusal should be allowed where there is an appearance of bias or prejudice, there is no requirement that an actual subjective bias be present.

Justice Dupuis served as a prosecutor in Massachusetts for over 20 years. DePina is making a good faith challenge to the immunity doctrines, including absolute prosecutorial immunity. *See* Notice of Rule 11(a)(1) certification. Plaintiff’s success in defeating the doctrine of absolute prosecutorial immunity conflicts with the interests of Justice Dupuis. Her entire 20 year

prosecutorial career is currently shielded by absolute immunity. This case attacks that immunity and seeks to end it. If it is ended, then she will be subject to at least potential lawsuits over her conduct. This is not to suggest that DePina or his counsel have any present reason to believe that she was one of the bad-apple-prosecutors. But, how can she rule impartially if this case transforms her from 100% bulletproof into a mere mortal like the rest of us?

It is also likely that any career prosecutor would have close friends in that profession. This adverse interest is tangible and creates doubt in the mind of the reasonable man on the street as to the outcome of this case. The reasonable man on the street will be forced to believe that any unfavorable outcome or ruling against DePina is the direct result of this Honorable Court inserting her own bias and protecting her own economic and legal interests.

#### **4.0 CONCLUSION**

Based on the foregoing, DePina believes that recusal is required, as Justice Dupuis personal interests are materially adverse to his in this case. At a minimum, Justice Dupuis would not appear to be fair and impartial to the “average person on the street.” For the foregoing reasons, DePina respectfully moves that this Court, Dupuis, J., recuse itself from presiding over any proceedings in connection with the instant matter.

Dated: October 6, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

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Defendants.

**CERTIFICATION OF CONFERENCE**

**PURSUANT TO RULE 9C**

Pursuant to Superior Court Rule 9C, Movant, Plaintiff Joao DePina, hereby certifies that a conference relative to the accompanying Motion for Recusal was held on Thursday, October 6, 2022, at 1:30 p.m. by telephone. Participating in the conference were Attorney Jay M. Wolman for the Plaintiff, and Attorney Jesse M. Boodoo for Defendants Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins.<sup>1</sup>

The parties made a good faith effort to narrow the issue set forth in the Motion to the fullest extent, but they did not reach agreement.

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<sup>1</sup> As Defendants Dante Williams and Boston Police Department are in the process of being served, they have not yet appeared, making conference with them on this matter impossible.

Dated: October 6, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

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Attorneys for Plaintiff,

Joao DePina

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon all parties through the Court’s electronic filing system on this 6th day of October, 2022, or otherwise caused for service via The Suffolk County Sheriff’s Department, as follows:

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*Counsel for Defendants Worcester County Prosecutor’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins. Served via the Court’s electronic filing system.*

Additionally, I caused Defendants Dante Williams and Boston Police Department to be served by mailing the foregoing document to the Suffolk County Sheriff’s Department for their service of process, return of which will be separately made.

/s/ Marc J. Randazza

Marc J. Randazza

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
C.A. NO. 2285CV00971-A

JOAO DEPINA,

Plaintiff,

v.

WORCESTER COUNTY DISTRICT  
ATTORNEY'S OFFICE, JOSEPH D. EARLY,  
JR., ANTHONY MELIA, BOSTON POLICE  
DEPARTMENT, DANTE WILLIAMS, and  
RACHAEL ROLLINS,

Defendants.

**DEFENDANTS WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE, JOSEPH D.  
EARLY, JR., ANTHONY MELIA, AND RACHAEL ROLLINS'  
RESPONSE TO MOTION FOR RECUSAL**

Defendants the Worcester County District Attorney's Office, Joseph D. Early, Anthony Melia, and Rachael Rollins (collectively, the "Commonwealth Defendants") do not agree with Plaintiff Joao DePina's contention that Judge Dupuis' service as a prosecutor renders her an interested party or otherwise creates reasonable doubt as to her impartiality. Nevertheless, because the question of recusal is one for Judge Dupuis to decide alone, the Commonwealth Defendants take no position on the relief sought by the motion.



Defendants,

WORCESTER COUNTY DISTRICT ATTORNEY'S  
OFFICE, JOSEPH D. EARLY, JR., ANTHONY  
MELIA, and RACHAEL ROLLINS

By their Attorneys

MAURA HEALEY  
ATTORNEY GENERAL

/s/ Jesse M. Boodoo  
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Date: October 8, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 8, 2022, I served a copy of the foregoing on counsel for the plaintiff by email to:

Marc J. Randazza, Esq.  
Jay Wolman, Esq.  
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/s/ Jesse M. Boodoo  
Jesse M. Boodoo