

COMMONWEALTH OF MASSACHUSETTS

COMMISSION ON JUDICIAL CONDUCT

IN RE: JUDGE PAUL M. SUSHCHYK

SJC NO. OE-143

COMMISSION COMPLAINT NUMBER 2019-27

**REPORT AND RECOMMENDATION OF
THE COMMISSION ON JUDICIAL CONDUCT**

INTRODUCTION

Pursuant to G.L. c. 211C, secs. 7(9) and (10), and Rule 11F of the Rules of the Commission on Judicial Conduct, the Commission on Judicial Conduct (“the Commission”) submits to the Supreme Judicial Court (“the Court”) its findings of fact, conclusions as to violations of the Code of Judicial Conduct (SJC Rule 3:09), and its recommendations for discipline in the above-captioned matter.

For the reasons described below, the Commission recommends that Judge Paul M. Sushchik (“Judge Sushchik,” “Respondent”) be publicly censured, that he be ordered to pay the costs of the Commission in connection with this matter, and that he be suspended without pay from his judicial office, until further order of the Court, for a reasonable time to permit the executive and legislative branches to consider, if they wish, the question of whether he should retain his judicial office, on the basis of such factors as they think appropriate, including the record of evidence before the Commission.

The Commission also recommends that, in connection with this disposition, the Court grant the Commission permission to share information and evidence from its investigation of this matter with the legislative and/or executive branches that, in the Commission’s discretion, the Commission feels may assist the legislative and/or executive branches in any consideration of whether Judge Sushchik should retain his judicial office.

I. PROCEDURAL HISTORY

1. On June 4, 2019, the Commission received a complaint (Commission Complaint Number 2019-27) against Judge Sushchik from the late Chief Justice of the Supreme Judicial Court, Chief Justice Ralph D. Gants.¹ That complaint alleged

¹ Commission Complaint Number 2019-27 is enclosed with the Commission’s Report as Appendix A.

that Judge Sushchyk committed misconduct by inappropriately touching a court employee without her consent.

2. On July 16, 2019, the Commission, acting pursuant to M.G.L. c. 211C, sec. 5(5) and Commission Rule 6J, found that there was adequate reason to proceed to a Statement of Allegations in the above complaint and presented those allegations to Judge Sushchyk.²
3. On August 7, 2019, the Commission received Judge Sushchyk's written response to the Statement of Allegations from his counsel, Mr. Michael P. Angelini, Esq. ("Mr. Angelini").³ Mr. Angelini requested an opportunity for Judge Sushchyk to personally appear before the Commission, and Judge Sushchyk appeared before the Commission with Mr. Angelini in response to the Statement of Allegations, at the Commission's September 10, 2019 meeting.
4. On November 12, 2019, the Commission, acting pursuant to M.G.L. c. 211C, sec. 5(12) and Commission Rule 6N, found that there was adequate reason to amend the Statement of Allegations in the above complaint. The Commission then presented that amended Statement of Allegations to Judge Sushchyk.⁴

On December 9, 2019, the Commission received a written acknowledgement of the amended Statement of Allegations from Judge Sushchyk's counsel, Mr. Angelini. Judge Sushchyk did not, pursuant to Commission Rule 6N, file a further response to the amended Statement of Allegations.

5. On February 5, 2020, the Commission, acting pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), found sufficient cause to issue Formal Charges in the above complaint and presented those charges to Judge Sushchyk.⁵
6. In its Formal Charges, the Commission alleged "that Judge Sushchyk has engaged in willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer,⁶ and has violated the Massachusetts Code of Judicial Conduct (Supreme Judicial Court Rule 3:09)."

²The July 16, 2019 Statement of Allegations is enclosed with the Commission's Report as Appendix B.

³Judge Sushchyk's Answer to the July 16, 2019 Statement of Allegations is enclosed with the Commission's Report as Appendix C.

⁴The amended November 12, 2019 Statement of Allegations is enclosed with the Commission's Report as Appendix D.

⁵The Formal Charges are enclosed with the Commission's Report as Appendix E.

⁶M.G.L. c. 211C, secs. 2(5)(b), (d), and (e).

The Commission charged Judge Sushchik with violations of Rules 1.1, 1.2, 2.3(A), 2.3(B), 2.8(B) and 3.1(C) of the Massachusetts Code of Judicial Conduct (“the Code”).

7. On February 11, 2020, in connection with the anticipated filing of the Formal Charges with the Court, the Commission filed a “Motion to Impound the Name of the Complaining Witness” and an accompanying “Motion to Impound” the filing, pursuant to Supreme Judicial Court Rule 1:15 and M.G.L. c. 211C, sec. 6, with the Supreme Judicial Court.⁷
8. On February 24, 2020, Judge Sushchik filed his “Response to Formal Charges” with the Commission.⁸
9. On February 24, 2020, Judge Sushchik also filed a “Response to the Motion to Impound and Cross Motion to Impounded” (sic) with the Supreme Judicial Court.⁹
10. On February 25, 2020, the Commission filed a “Memorandum of Law in Support of Motion to Impound Name of Complaining Witness and Opposition to Judge’s Cross Motion to Impound” with the Supreme Judicial Court.¹⁰
11. On February 25, 2020, the Commission also filed the Formal Charges and Judge Sushchik’s Response to the Formal Charges with the Supreme Judicial Court, and requested the appointment of a Hearing Officer. On February 27, 2020, the Court appointed retired Associate Justice of the Superior Court Bertha D. Josephson (“Judge Josephson,” “Hearing Officer”), as the Hearing Officer for this matter.
12. On February 27, 2020, the Commission received an Order from the Supreme Judicial Court¹¹ in response to its “Motion to Impound Name of Complaining Witness.” The Court denied the motion without prejudice. The Court then added:

“The Commission may submit, for the court’s consideration, an affidavit from the complaining witness identifying with specificity the particularized harm that would be caused by public disclosure of her name

⁷ The Commission’s “Motion to Impound the Name of the Complaining Witness” and the accompanying “Motion to Impound” are both enclosed with the Commission’s Report as Appendix F.

⁸ Judge Sushchik’s “Response to Formal Charges” is enclosed with the Commission’s Report as Appendix G.

⁹ Judge Sushchik’s “Response to the Motion to Impound and Cross Motion to Impounded” (sic) is enclosed with the Commission’s Report as Appendix H.

¹⁰ The Commission’s “Memorandum of Law in Support of Motion to Impound Name of Complaining Witness and Opposition to Judge’s Cross Motion to Impound” is enclosed with the Commission’s Report as Appendix I.

¹¹ The Supreme Judicial Court’s Order on Impoundment, dated February 27, 2020, is enclosed with the Commission’s Report as Appendix J.

prior to the public hearing in this matter.”

The Court indicated that that affidavit had to be submitted to the Court by 4:30 p.m., on March 3, 2020.

In its February 27, 2020 Order, the Supreme Judicial Court also ruled, as follows:

“The Judge’s motion to impound his name is DENIED. The Judge’s motion to impound the Commission’s formal proceedings is DENIED WITHOUT PREJUDICE. The Judge may submit, for the court’s consideration, an affidavit identifying with specificity any information, apart from the Judge’s name, in which the Judge may have a legitimate privacy interest, such as personal medical information and other personal information.” (emphasis supplied)

13. On March 3, 2020, after being notified by the complaining witness’ counsel, Mr. Dan Carey, Esq. (“Mr. Carey”), that the complaining witness, Ms. Emily Deines (“Ms. Deines”), did not wish for her name to be redacted from the Formal Charges in this matter, the Commission filed a letter with the Supreme Judicial Court, notifying the Court that the Commission would not be filing an affidavit in response to the Court’s February 27, 2020 Order. On that same date, Judge Sushchuk filed an affidavit in support of his “Cross Motion to Impound.”¹²
14. On March 5, 2020, the Commission received an Order from the Supreme Judicial Court in response to its “Motion to Impound Name of Complaining Witness.”¹³ The Court denied the motion with prejudice. In its March 5, 2020 Order, the Supreme Judicial Court also denied Judge Sushchuk’s “Cross Motion to Impound” with prejudice.

The Commission did not issue a press release regarding the Formal Charges against Judge Sushchuk at this time.

15. On July 7, 2020, the Supreme Judicial Court issued the “Supplemental Order Regarding Virtual Proceedings and Affirmations” to clarify the scope of the Court’s prior orders concerning virtual operations during the COVID-19 pandemic.¹⁴ In its Order, the Court indicated that the Commission on Judicial Conduct may “elect to conduct any proceeding virtually and may issue protocols to govern such virtual proceedings.”

¹² Judge Sushchuk’s affidavit is enclosed with the Commission’s Report as Appendix K.

¹³ The Supreme Judicial Court’s Order on Impoundment, dated March 5, 2020, is enclosed with the Commission’s Report as Appendix L.

¹⁴ The Supreme Judicial Court’s “Supplemental Order Regarding Virtual Proceedings and Administration of Oaths and Affirmations” is enclosed with the Commission’s Report as Appendix M.

16. On July 9, 2020, the Commission notified Judge Sushchuk's counsel; the Hearing Officer, Judge Josephson; and other interested parties that the Commission had voted to conduct the Formal Hearing virtually, pursuant to the Supreme Judicial Court's July 7, 2020 order.
17. On July 10, 2020, the Commission issued the "CJC Temporary Emergency Order on Protocols for Remote Formal Hearings."¹⁵
18. On July 10, 2020, counsel for the Commission, Executive Director Howard V. Neff, III, Esq. ("Mr. Neff," "Commission counsel"), filed five motions *in limine* with the Hearing Officer, Judge Josephson, including a "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment Relating to Respondent's Alleged Improper Touching of the Complaining Witness."¹⁶
19. In response, on July 13, 2020, counsel for Judge Sushchuk, Mr. Angelini, filed "Respondent's Omnibus Opposition to Commission's Motions In Limine," which addressed all of Commission counsel's motions *in limine*, including Commission counsel's "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment Relating to Respondent's Alleged Improper Touching of the Complaining Witness."¹⁷

In response to the motions *in limine* filed by counsel for the Commission and the July 13, 2020 Omnibus Opposition filed by Mr. Angelini, the Hearing Officer conducted a brief closed hearing on July 15, 2020. Because of the ongoing COVID-19 pandemic, the hearing was conducted remotely through the "Zoom" videoconference platform.

The Commission was represented by Mr. Neff. Judge Sushchuk was represented by Mr. Angelini. Ms. Audrey Cosgrove ("Ms. Cosgrove"), Staff Attorney for the Commission, was also present.

20. On July 13, 2020, Mr. Angelini filed an "Emergency Petition to Single Justice

¹⁵ The "CJC Temporary Emergency Order on Protocols for Remote Formal Hearings" is enclosed with the Commission's Report as Appendix N.

¹⁶ Commission counsel's "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment Relating to Respondent's Alleged Improper Touching of the Complaining Witness" is enclosed with the Commission's Report as Appendix O.

¹⁷ In his written objections to Judge Josephson's post-Formal Hearing "Report of the Hearing Officer to the Commission on Judicial Conduct," Judge Sushchuk objected to Judge Josephson's ruling on Commission counsel's "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment Relating to Respondent's Alleged Improper Touching of the Complaining Witness" but did not object to her rulings on any of the other motions *in limine* filed by Commission counsel. Accordingly, this procedural history only reviews, and includes the portion of the record relating to, the actions taken with respect to the motion *in limine* Judge Sushchuk objected to the Hearing Officer's ruling on in the written objections he filed with the Commission.

Pursuant to M.G.L. c. 211, sec. 3,” with the Supreme Judicial Court, on behalf of Judge Sushchik.¹⁸

In his petition, Judge Sushchik sought an Order that the Formal Hearing scheduled for July 20, 2020 be “continued until such time that it be conducted in person, rather than virtually.”

21. On July 15, 2020, counsel for the Commission, Mr. Neff, filed the “Commission on Judicial Conduct’s Opposition to Judge Paul M. Sushchik’s Petition, Pursuant to G.L. c. 211 sec. 3, to Delay the Formal Hearing on the Charges of Judicial Misconduct Against Him” with the Single Justice of the Supreme Judicial Court.¹⁹
22. On July 16, 2020, the Commission received an Order from the Supreme Judicial Court. In that Order, the emergency petition was transferred from the Single Justice session for review before the full panel of the Supreme Judicial Court.
23. On July 16, 2020, the Commission also received a “Notice of Docket Entry” from the Supreme Judicial Court in response to Judge Sushchik’s emergency petition. On that date, the Court entered an Order denying Judge Sushchik’s emergency petition. The Court denied the petition without prejudice. The Court then added, “The Commission’s decision is in accord with this Court’s Supplemental Order Regarding Virtual Proceedings and Affirmations, which allows the Commission to conduct proceedings virtually.”
24. On July 17, 2020, the Commission received a “Memorandum of Decision,” dated July 17, 2020, from the Hearing Officer, Judge Josephson, ruling on the motions *in limine* filed on behalf of the Commission, by Mr. Neff. In her “Memorandum of Decision,” Judge Josephson ruled on all of Commission counsel’s motions *in limine*. Regarding Commission counsel’s “Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment Relating to Respondent’s Alleged Improper Touching of the Complaining Witness,” Judge Josephson ruled, as follows:

“The Commission seeks a pretrial ruling prohibiting the respondent from presenting evidence in the form of a demonstration or experiment. The concern appears to be that the respondent will present a barstool

¹⁸ Judge Sushchik’s M.G.L. c. 211, sec. 3 petition is enclosed with the Commission’s Report as Appendix P.

¹⁹ The “Commission on Judicial Conduct’s Opposition to Judge Paul M. Sushchik’s Petition, Pursuant to G.L. c. 211, sec. 3, to Delay the Formal Hearing on the Charges of Judicial Misconduct Against Him” is enclosed with the Commission’s Report as Appendix Q.

purporting to be either precisely the same or substantially similar to the one on which the complaining witness was seated at the time of the alleged touching and further that the respondent will give a demonstration or conduct an experiment utilizing the barstool. Certainly, if the respondent is unable to establish a sufficient basis for such a demonstration or experiment, any such demonstration or experiment would not be permitted. However, with nothing before me by which to determine if the proffered evidence has an adequate foundation for admission, I am not able to rule on its potential admissibility. Accordingly, the Commission's motion is denied."

25. The Formal Hearing in this matter took place on July 20, 2020, July 21, 2020 and July 22, 2020, before the Hearing Officer, Judge Josephson.²⁰ Pursuant to the Supreme Judicial Court's July 7, 2020 Order permitting virtual hearings during the ongoing COVID-19 pandemic, the three-day hearing was conducted remotely through the "Zoom" videoconference platform and was open to the public. Six witnesses testified under oath: Ms. Deines, Chief Justice of the Probate and Family Court John D. Casey ("Chief Justice Casey," "Judge Casey"), Ms. Evelyn Patsos, Esq. ("Ms. Patsos"), Ms. Jocelynn D. Welsh, Esq. ("Ms. Welsh"), Ms. Noel B. Stern ("Ms. Stern"), and Judge Sushchyk.

All three days of the hearing were transcribed. The Commission was represented by Mr. Neff, and Ms. Cosgrove. Judge Sushchyk was represented by Mr. Angelini. Twelve exhibits were introduced into evidence.²¹

26. On July 22, 2020, on the third day of the Formal Hearing, Mr. Angelini filed "Respondent's Motion to Dismiss" with the Hearing Officer.²² After hearing oral arguments from Mr. Angelini and Mr. Neff, the Hearing Officer denied the motion.²³
27. On July 22, 2020, on the third day of the Formal Hearing, Judge Josephson conducted a hearing in connection with Commission's counsel's July 10, 2020 "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment to Respondent's Alleged Improper Touching of the Complaining Witness."²⁴ After a hearing, Judge Josephson

²⁰ The transcripts for all three days of the Formal Hearing in this matter are enclosed with the Commission's Report as Appendix R.

²¹ The exhibits introduced during the Formal Hearing are enclosed with the Commission's Report as Appendix S.

²² The "Respondent's Motion to Dismiss," filed by Mr. Angelini on behalf of Judge Sushchyk, is enclosed with the Commission's Report as Appendix T.

²³ (Tr. Day 3, p. 10-18)

²⁴ Commission counsel's "Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment to Respondent's Alleged Improper Touching of the Complaining Witness," dated July 10, 2020, is enclosed with the Commission's Report as Appendix O.

sustained Commission counsel's objection to Mr. Angelini's proposed in-court demonstration, allowing the motion *in limine*.²⁵

28. On July 29, 2020, Mr. Angelini filed "Respondent's Proposed Findings of Fact" with the Hearing Officer.²⁶
29. On July 30, 2020, Mr. Angelini filed a "Post-Hearing Memorandum of Law," on behalf of Judge Sushchyk, with the Hearing Officer.²⁷
30. On August 3, 2020, Mr. Neff filed a "Post-Hearing Memorandum of Law," on behalf of the Commission, with the Hearing Officer.²⁸
31. On August 17, 2020, the Hearing Officer submitted a "Ruling on Respondent's Request for Findings of Fact" to the Commission and to counsel for Judge Sushchyk.²⁹
32. On August 17, 2020, the Hearing Officer also submitted a "Report of the Hearing Officer to the Commission on Judicial Conduct" ("Hearing Officer's Report") to the Commission and to counsel for Judge Sushchyk.³⁰

In the Hearing Officer's Report, Judge Josephson made findings of fact that "the allegation that Judge Sushchyk engaged in an intentional, nonconsensual touching of Ms. Deines as detailed in the complaint against him has been proved by clear and convincing evidence."³¹

Judge Josephson also made findings of fact that Judge Sushchyk had violated Rules 1.2; 2.3(A); 2.3(B); 2.8(B); and 3.1(C) of the Massachusetts Code of Judicial Conduct and had engaged in "willful judicial misconduct, conduct prejudicial to the administration of justice and unbecoming a judicial officer, and br[ought] the judicial office into disrepute, in violation of G.L. c. 211C,"³² as charged in the Formal Charges issued by the Commission in this matter.

²⁵ (Tr. Day 3, p. 89-96)

²⁶ The "Respondent's Proposed Findings of Fact" is enclosed with the Commission's Report as Appendix U.

²⁷ The Respondent's "Post-Hearing Memorandum of Law" is enclosed with the Commission's Report as Appendix V.

²⁸ The Commission's "Post-Hearing Memorandum of Law" is enclosed with the Commission's Report as Appendix W.

²⁹ The Hearing Officer's "Ruling on Respondent's Request for Findings of Fact" is enclosed with the Commission's Report as Appendix X.

³⁰ The "Report of Hearing Officer to the Commission on Judicial Conduct" is enclosed with the Commission's Report as Appendix Y.

³¹ Hearing Officer's Report, at p. 16.

³² Hearing Officer's Report, at p. 16-17.

Finally, in her Hearing Officer’s Report, Judge Josephson recommended Judge Sushchyk’s “retirement from office pursuant to G.L. c. 211C, section 8(4)(b) or removal from office pursuant to G.L. c. 211C, section 8(4)(a).³³

33. On September 3, 2020, pursuant to Commission Rule 11D, counsel for Judge Sushchyk, Mr. Angelini, filed a written request for Judge Sushchyk to be heard before the Commission regarding its recommendation for discipline.
34. On September 8, 2020, counsel for Judge Sushchyk, Mr. Angelini, filed “Hon. Paul M. Sushchyk’s Objections to Hearing Officer’s Findings and Recommendations” (“Sushchyk Objections”) with the Commission, pursuant to Commission Rule 11C.³⁴
35. On September 8, 2020, pursuant to Commission Rule 11D, Ms. Deines’ counsel, Mr. Carey, filed a written request for Ms. Deines to be heard before the Commission regarding its recommendation for discipline.
36. On October 5, 2020, the Commission held a public hearing, pursuant to Commission Rule 11E, regarding its recommendation for discipline in this matter.³⁵ Pursuant to the Supreme Judicial Court’s July 7, 2020 Order permitting virtual hearings during the ongoing COVID-19 pandemic, the hearing was conducted remotely through the “Zoom” videoconference platform. At this hearing, Ms. Deines made a statement, as a complainant in this matter. Mr. Angelini made a statement on behalf of Judge Sushchyk.

II. OBJECTIONS TO THE HEARING OFFICER’S REPORT

As described above, pursuant to Commission Rule 11C, on September 8, 2020, Mr. Angelini filed written objections, on behalf of Judge Sushchyk, to the findings and recommendations made by the Hearing Officer, Judge Josephson, in her Hearing Officer’s Report. Counsel for the Commission did not file any objections to the Hearing Officer’s Report. The Respondent’s objections and the Commission’s responses to those objections are, as follows:

1. **Judge Sushchyk objected to the Hearing Officer’s findings that “[a]s Judge Sushchyk passed behind her stool, Ms. Deines felt the distinct sensation of a hand grabbing the left side of her buttocks and applying a full-handed**

³³ Hearing Officer’s Report, at p. 22.

³⁴ The “Hon. Paul M. Sushchyk’s Objections to Hearing Officer’s Findings and Recommendations” is enclosed with the Commission’s Report as Appendix Z.

³⁵ The transcript and the sole exhibit from this Rule 11E Hearing are enclosed with the Commission’s Report as Appendix AA.

squeeze to it...She was aware at that moment that Judge Sushchuk was the only one passing behind her.”³⁶

- a. In his objections, Judge Sushchuk wrote, “*While it is certainly the case that at some point that evening Judge Sushchuk walked behind where Ms. Deines was seated, there is absolutely no support in the record for the fact that Ms. Deines felt this distinct sensation as Judge Sushchuk passed behind her or that at the time of this incident Judge Sushchuk was ‘the only one passing behind her.’*”³⁷

The Commission concludes that the weight of the credible evidence supports the Hearing Officer’s findings that Ms. Deines felt the intentional, nonconsensual touching as Judge Sushchuk passed behind her, and that Ms. Deines was aware that Judge Sushchuk was the only one passing behind her at that moment.

As admitted by Judge Sushchuk, and corroborated by multiple witnesses, Judge Sushchuk did indeed walk toward Ms. Deines from her right, and passed behind where she was seated before he stopped to her left, next to Ms. Patsos.³⁸ Contrary to Judge Sushchuk’s objection, there is ample support in the record that Ms. Deines felt the intentional, nonconsensual touching while Judge Sushchuk was the only person directly behind her.

At the hearing, Ms. Deines testified directly to that fact: “As [Judge Sushchuk] passed behind me, I felt him grab, slide his hand under my left buttock and grab me.”³⁹ In describing the grab, Ms. Deines testified: “It felt like someone was -- was sliding their hand under me and using their full hand to grab upwards.”⁴⁰ Regarding how she knew it was Judge Sushchuk who grabbed her, Ms. Deines testified, “He was walking behind me at that time.”⁴¹ Ms. Deines also testified that, after the grab, Judge Sushchuk was “behind me over my left shoulder, and I saw Evelyn [Patsos] standing next to him.”⁴²

There is also ample support in the record that Ms. Deines was aware that Judge Sushchuk was the only one passing behind her at that moment. In

³⁶ Sushchuk Objections, at p. 1-2; and see Hearing Officer’s Report, at p. 7.

³⁷ Sushchuk Objections, at p. 1-2.

³⁸ (Tr. Day 3, p. 55:9-11; 14-18; 56:14-18; 81:9-13); (Tr. Day 2, p. 58:14-24; 59:1-24; 60:1-6; 64:3-12; 172:5-8; 180:1-24; 181:1-3; 200:10-14; 227:8-18; 231:5-7; 233:1-10); (Tr. Day 1, p. 74:16-21; 77:11-12); Formal Hearing Exhibit 4.

³⁹ (Tr. Day 1, p. 74:20-21)

⁴⁰ (Tr. Day 1, p. 76:17-19)

⁴¹ (Tr. Day 1, p. 75:4)

⁴² (Tr. Day 1, p. 77:11-12)

addition to the hearing testimony described above, Ms. Deines testified that, at the time of the touching, she “[did] not believe anyone else was standing behind [her]”⁴³ and that “[t]here was no one else directly behind me at that time that I know of, no.”⁴⁴ Ms. Deines further testified that the bar area to her left was crowded, but the restaurant area to her right from where Judge Sushchuk approached from was not, and that the area behind her was not filled with people when Judge Sushchuk passed behind her.⁴⁵ Ms. Welsh and Chief Justice Casey each witnessed Judge Sushchuk approach the bar area from the restaurant side and pass behind Ms. Deines, and neither recalled any evasive navigation by Judge Sushchuk as he passed behind.⁴⁶

At the hearing, there was also additional testimony and evidence presented that corroborated and supported the reliability of Ms. Deines’ testimony. In the minutes following the incident, Ms. Deines attempted a nonverbal communication with Ms. Patsos “that something had happened.”⁴⁷ After leaving the bar and getting into her car, Ms. Deines texted her sister and complained of the nonconsensual touching by Judge Sushchuk.⁴⁸ On Monday, April 29, 2019, four days later, Ms. Deines created a written account of the incident.⁴⁹ On or around that date, Ms. Deines also spoke with her husband, family, friends, and an attorney, before she ultimately reported the incident to Chief Justice Casey by telephone on Wednesday, May 1, 2019.⁵⁰ Ms. Deines also provided Chief Justice Casey with her April 29, 2019 written statement,⁵¹ and discussed the incident with Judge Linda Fidnick and Judge Richard Simons.⁵²

On May 10, 2019, Chief Justice Casey informed Judge Sushchuk of Ms. Deines’ complaint, and Judge Sushchuk created a written statement in response, dated May 20, 2019.⁵³ In that statement, Judge Sushchuk admitted that his hand came into unintentional “momentary contact with a portion of [Ms. Deines’] lower body” as he passed behind her.⁵⁴ Although Judge Sushchuk partially recanted this admission during his testimony at

⁴³ (Tr. Day 1, p. 205:22-23)

⁴⁴ (Tr. Day 1, p. 75:10)

⁴⁵ (Tr. Day 1, p. 143:6-16; Tr. Day 1, p. 77:20-22)

⁴⁶ (Judge Casey: Tr. Day 2, p. 64:7-15; Welsh: Tr. Day 2, p. 230:21-24; 231:1)

⁴⁷ (Tr. Day 1, p. 86:5-9); (Tr. Day 2, p. 200:10-18)

⁴⁸ (Tr. Day 1, p. 90:2-24; 91:1-15); Formal Hearing Exhibit 5.

⁴⁹ Formal Hearing Exhibit 6.

⁵⁰ (Tr. Day 1, p. 102:21-24; 103:1-24; 104:1-20)

⁵¹ (Tr. Day 1, p. 105:4-19)

⁵² (Tr. Day 1, p. 107:18-24)

⁵³ (Tr. Day 2, p. 104:4-10; 110:24; 111:1-3); (Tr. Day 3, 129:20-24; 130:1-2; 132:15-19); Formal Hearing Exhibit 10.

⁵⁴ Formal Hearing Exhibit 10.

the Formal Hearing, and testified that he did not recall any physical contact, he left open the possibility “that there may have been” some accidental physical contact with Ms. Deines that he did not recall.⁵⁵

After considering the evidence presented during the Formal Hearing, the Commission concludes that the weight of the credible evidence supports the Hearing Officer’s findings that Ms. Deines felt the intentional, nonconsensual touching of the left side of her buttocks as Judge Sushchuk passed behind her, and that Ms. Deines was aware that Judge Sushchuk was the only one passing behind her at that moment.

2. Judge Sushchuk objected to the Hearing Officer’s finding that Ms. Deines was “a percipient witness with direct knowledge of the facts she related.”⁵⁶

- a. In his objections, Judge Sushchuk wrote: “*While the Hearing Officer characterized Ms. Deines as a ‘percipient’ witness it could only be in the sense that she claimed to perceive, without knowledge, that something was true. In the absence of observing what happened, as Ms. Deines did not, what one may have perceived is not probative of what actually occurred. Describing her as a ‘percipient witness with direct knowledge of the facts she related’ is plainly wrong, and we object to it.*”⁵⁷

The Commission concludes that the weight of the credible evidence supports the Hearing Officer’s finding that Ms. Deines was a percipient witness with direct knowledge of the facts she related.

At the time of the grab of her left buttock, Ms. Deines testified that she was aware of her surroundings, of those in close proximity to her, and that she was not aware of anyone else directly behind her at that moment; other than Judge Sushchuk.⁵⁸

Although Ms. Deines acknowledged during her testimony that she was not looking behind her at the time of the touching, she testified credibly to facts that she had direct knowledge of, and could draw reasonable inferences from, including Judge Sushchuk’s approach to her table, his passage behind her, her sensation of the unwanted touching as he was the only one passing behind her, and that the first person she observed after

⁵⁵ (Tr. Day 3, p. 80:20-24; 81:1; 82:1-14)

⁵⁶ Sushchuk Objections, at p. 4; see Hearing Officer’s Report, at p. 14.

⁵⁷ Sushchuk Objections, at p. 3-4

⁵⁸ (Tr. Day 1, p. 75:2-11; 205:3-23)

being touched was Judge Sushchuk behind her and over her left shoulder, next to Ms. Patsos.⁵⁹

The testimony of Judge Sushchuk, Ms. Welsh, Ms. Patsos, and Chief Justice Casey all corroborate wholly and/or substantially the testimony of Ms. Deines regarding the pub's layout, the seating of the parties at the table, the timeframe, Judge Sushchuk's course of travel through the pub, his passage behind Ms. Deines, and his conduct at that table.⁶⁰

After considering the evidence presented during the Formal Hearing, the Commission concludes that the weight of the credible evidence supports the Hearing Officer's finding that "...Ms. Deines is a percipient witness with direct knowledge of the facts she related."⁶¹

3. Judge Sushchuk objected to the Hearing Officer's finding that Ms. Deines' text message(s) to her sister corroborated her testimony, and to the finding that Ms. Deines' complaint against Judge Sushchuk "has remained essentially unchanged."⁶²

- a. In his objections, Judge Sushchuk wrote: *"The Hearing Officer's finding that Ms. Deines' perception of Judge Sushchuk [sic] culpability was corroborated by her text message to her sister later that evening is also baseless. That text message is, at the very best, simply another version of her speculation that the person who grabbed her was Judge Sushchuk."*

In his objections, Judge Sushchuk also wrote: *"...The Hearing Officer's conclusion that Ms. Deines' version of the incident 'has remained essentially unchanged' is also inaccurate."*⁶³

The Commission concludes that weight of the credible evidence supports the Hearing Officer's findings that Ms. Deines' text messages to her sister corroborated her testimony, and that "Ms. Deines gave a cogent, credible, consistent account of what occurred" that "has essentially remained unchanged."⁶⁴

At the table, within minutes of the intentional, nonconsensual touching of her buttock, Ms. Deines attempted a nonverbal communication with Ms.

⁵⁹ (Tr. Day 1, p. 158:15-17; 74:13-21; 75:2-11; 76:17-19; 77:5-12)

⁶⁰ (Judge Sushchuk: Tr. Day 3, p. 47, 52, 55, 63-64, 71, 73-74) (Welsh: Tr. Day 2, p. 218-233, 237) (Patsos: Tr. Day 2, p. 159-60, 162-172, 179-83; Chief Justice Casey: Tr. Day 2, p. 56-61, 65-66)

⁶¹ Hearing Officer's Report, at p. 14.

⁶² Sushchuk Objections, at p. 4; and see Hearing Officer's Report, at p. 14.

⁶³ Sushchuk Objections, at p. 4.

⁶⁴ Hearing Officer's Report, at p. 14.

Patsos in response to the incident.⁶⁵ Ms. Deines remained at the table with her colleagues and Judge Sushchuk for approximately 10 to 15 minutes after the unwanted touching.⁶⁶ Ms. Deines then left the table and said goodbye to several judges before she left the establishment and went to her car.⁶⁷

At 9:24 p.m., once back to her car, Ms. Deines immediately sent a text message to her sister, which read, as follows: “OMG. I think one of the judges grabbed my butt on purpose”; her sister responded by sending a text message reading: “What? Slap him”; Ms. Deines then responded by texting again to her sister: “He’s carrying a hip flask, so maybe just fell? Except it was a distinct pinch.”⁶⁸

On the second day of the conference, Ms. Deines informed Ms. Patsos that there was something that she wanted to talk to her about.⁶⁹ Ms. Patsos and Ms. Deines spoke on Monday, April 29, 2019.⁷⁰ On that date, Ms. Deines also prepared a written statement that described both the intentional, nonconsensual touching by Judge Sushchuk, and Ms. Deines’ nonverbal communication to Ms. Patsos.⁷¹ On or around that same date, Ms. Deines told Ms. Welsh that Judge Sushchuk “grabbed her ass.”⁷² At the hearing, Ms. Deines’ testimony about Judge Sushchuk’s grab of her buttock as he passed behind her was consistent with her prior reporting of the incident.⁷³

After considering the evidence presented during the Formal Hearing, the Commission concludes that the weight of the credible evidence supports the Hearing Officer’s findings that Ms. Deines’ text messages to her sister corroborate her testimony, and that “Ms. Deines gave a cogent, credible, consistent account of what occurred” that “has essentially remained unchanged.”⁷⁴

4. Judge Sushchuk objected to the Hearing Officer’s finding that Ms. Deines’ nonverbal communication to Ms. Patsos corroborated her testimony that Judge Sushchuk committed the intentional, nonconsensual touching.⁷⁵

⁶⁵ (Deines: Tr. Day 1, p. 86:7-16) (Patsos, Tr. Day 2, p. 183:23-24; 184:1-18; 200:10-18)

⁶⁶ (Tr. Day 1, p. 84:23-24; 85:1-2)

⁶⁷ (Tr. Day 1, p. 85:15-17; 87:3-14; 88:10-15)

⁶⁸ (Tr. Day 1, p. 88:16-18; 89:22-24; 90:1-24; 91:1-15); Formal Hearing Exhibit 5.

⁶⁹ (Tr. Day 2, p. 187:12-23)

⁷⁰ (Tr. Day 2, p. 188:4-14)

⁷¹ (Tr. Day 1, p. 106:5-24; 107:1-4); Formal Hearing Exhibit 6.

⁷² (Tr. Day 3, p. 27:7-10)

⁷³ (Tr. Day 1, p. 74:20-21); see Formal Hearing Exhibits 5 and 6, and see (Tr. Day 3, p. 27:7-10)

⁷⁴ Hearing Officer’s Report, at p. 14.

⁷⁵ Sushchuk Objections, at p. 5-6; see Hearing Officer’s Report, at p. 14.

- a. In his objections, Judge Sushchuk wrote, “*To buttress conclusions based on speculation and disproven evidence, the Hearing Officer reported that Ms. Deines’ assertions of Judge Sushchuk’s culpability was ‘corroborated’ by ‘Ms. Patsos’ confirmation of Ms. Deines’ attempt to signal her’ at the bar table by ‘opening her eyes wide and indicating toward Judge Sushchuk,’ claiming ‘that Ms. Patsos noticed and remembered her doing that exactly.’ ...Attorney Patsos did not testify that Ms. Deines did anything, by facial expression or otherwise, ‘indicating toward Judge Sushchuk.’*”⁷⁶

In his objections, Judge Sushchuk also wrote, “*....the Hearing Officer had no basis on which to conclude that this five second facial gesture had any relationship to someone having grabbed Ms. Deines’ buttocks, much less anything to do with Judge Sushchuk.*”⁷⁷

The Commission concludes that the weight of the credible evidence supports the Hearing Officer’s finding that Ms. Deines’ nonverbal communication to Ms. Patsos corroborated her testimony that Judge Sushchuk committed the intentional, nonconsensual touching.⁷⁸

Within minutes of the intentional, nonconsensual touching, Ms. Deines targeted Ms. Patsos with some “raised eyebrows” and “pointed looks,” in an attempt to communicate to her “that something had happened.”⁷⁹ Ms. Patsos observed that Ms. Deines did indeed give her “a particular look with her eyes...very wide-eyed” while she was conversing with Judge Sushchuk.⁸⁰ Ms. Patsos testified that this behavior took place five minutes after Judge Sushchuk passed behind Ms. Deines.⁸¹ Ms. Patsos interpreted this wide-eyed look from Ms. Deines as an attempt to get her attention, but she did not understand at that time why Ms. Deines was attempting to get her attention.⁸²

On the following day, Friday, April 26, 2019, the second and final day of the conference, Ms. Deines told Ms. Patsos that there was something she

⁷⁶ Sushchuk Objections, at p. 5.

⁷⁷ Sushchuk Objections, at p. 6.

⁷⁸ To the extent Judge Sushchuk’s objection challenged any finding by the Hearing Officer that Ms. Patsos had testified that Ms. Deines’ nonverbal communication “indicat[ed] toward Judge Sushchuk,” the Commission acknowledges and agrees that Ms. Patsos never testified during the Formal Hearing to that specific fact. As indicated below, the Commission did not adopt this specific factual finding as part of its own findings of fact. The Commission also did not consider this particular factual finding in connection with its findings as to Judge Sushchuk’s violations of the Code or its recommendation for discipline in this matter.

⁷⁹ (Tr. Day 1, p. 86:5-16) (Tr. Day 2, p. 200:10-18)

⁸⁰ (Tr. Day 2, p. 183:23-24; 184:1-8)

⁸¹ (Tr. Day 2, p. 200:10-18)

⁸² (Tr. Day 2, p. 184:6-24)

wanted to talk to her about.⁸³ Ms. Patsos and Ms. Deines discussed that subject on Monday, April 29, 2019.⁸⁴ On April 29, 2019, Ms. Deines also prepared a written statement that alleged that Judge Sushchik had grabbed her left buttock and described her subsequent nonverbal attempt to get Ms. Patsos' attention with her eyes.⁸⁵

After considering the evidence presented during the Formal Hearing, the Commission concludes that the weight of the credible evidence supports the Hearing Officer's finding that Ms. Deines' nonverbal communication to Ms. Patsos corroborated her testimony that Judge Sushchik committed the intentional, nonconsensual touching.

5. **Judge Sushchik objected to the Hearing Officer's finding that he "displayed the flask he was carrying in his inner lapel pocket," because the Commission's Formal Charges used the language "removed."**⁸⁶
 - a. In his objections, Judge Sushchik wrote, "*The Formal Charge alleges that 'while in the area of the table, Judge Sushchik removed a silver flask from his coat pocket'. There is no such evidence. The Hearing Officer simply found that Judge Sushchik 'displayed' the flask to the employees at the table, not that he removed it. The only evidence was that he lifted it an inch or so in his vest pocket, showing only the top of it.*"⁸⁷

The Commission concludes that the weight of the credible evidence supports the Hearing Officer's finding that Judge Sushchik displayed the flask he was carrying in his inner lapel pocket, by partially removing it from his coat pocket, as alleged in the Formal Charges.

Ms. Deines and Ms. Welsh both testified that Judge Sushchik partially removed a flask from his inner lapel coat pocket.⁸⁸ Judge Sushchik admitted that he possessed a flask that contained Glendalough whiskey in his inner lapel coat pocket, and that he partially removed it from concealment at Bayzo's Pub so that it was visible to the parties at the table.⁸⁹

After considering the evidence presented during the hearing, the Commission concludes that the weight of the credible evidence

⁸³ (Tr. Day 2, p. 187:12-23)

⁸⁴ (Tr. Day 2, p. 188:4-14)

⁸⁵ (Tr. Day 1, p. 106:5-24; 107:1-4); Formal Hearing Exhibit 6.

⁸⁶ Sushchik Objections, at p. 6-7.

⁸⁷ Sushchik Objections, at p. 6-7.

⁸⁸ (Tr. Day 1, p. 82:2; 83:1-16; 179:22-24); (Tr. Day 2, p. 237:5-16)

⁸⁹ (Tr. Day 3, p. 71:6-15; 72:6-10; 73:15-24; 74:1-5; -75)

supports the Hearing Officer’s finding that Judge Sushchyk displayed the flask from his inner lapel pocket, by partially removing it from his coat pocket, as alleged in the Formal Charges.

6. Judge Sushchyk objected to the Hearing Officer’s finding “that Judge Sushchyk deliberately lied during the investigation in submitting a version of events he knew to be untrue.”⁹⁰

- a. In his objections, Judge Sushchyk wrote, *“The Formal Charges issued by the Commission were issued after an extensive investigation.... They did not accuse Judge Sushchyk of providing a false statement to Judge Casey or to anyone else. If that charge is made, it will be vigorously defended and will be proven to be false, but in the meantime any findings that Judge Sushchyk provided a false statement during the course of the investigation are misplaced as well as mistaken and we object to them.”⁹¹*

The Commission concludes that the weight of the credible evidence supports the Hearing Officer’s finding that “Judge Sushchyk deliberately lied during the investigation in submitting a version of events that he knew to be untrue.”⁹²

On May 17, 2019, Judge Sushchyk was informed of Ms. Deines’ allegation against him during a private meeting with Chief Justice Casey in Judge Sushchyk’s lobby.⁹³ At Chief Justice Casey’s request, Judge Sushchyk completed a written statement responding to Ms. Deines’ allegations against him, dated May 20, 2019, and submitted it to Chief Justice Casey, aware that it would also be forwarded to Chief Justice Ralph Gants.⁹⁴ In that written statement, Judge Sushchyk admitted that he had physical contact with Ms. Deines in Bayzo’s Pub on April 25, 2019, writing, in part: “I recall that as I began to pass by Ms. Deines, to steady myself, I placed my hand in the direction of her chair and came into momentary contact with a portion of her lower body.”⁹⁵ Judge Sushchyk further admitted in that statement that he was “somewhat unsteady on his feet” owing, in part, to “the alcohol consumed.”⁹⁶

⁹⁰ Sushchyk Objections, at p. 7; Hearing Officer’s Report, at p. 16.

⁹¹ Sushchyk Objections, at p. 7.

⁹² Hearing Officer’s Report, at p. 16.

⁹³ (Tr. Day 3, p. 76:21-24; 77:1-11)

⁹⁴ (Tr. Day 3, p. 81:2-5; 132:15-19); Formal Hearing Exhibit 10.

⁹⁵ Formal Hearing Exhibit 10.

⁹⁶ Formal Hearing Exhibit 10.

On August 7, 2019, Judge Sushchuk responded to the Statement of Allegations,⁹⁷ dated July 16, 2019, that had been served on him by the Commission,⁹⁸ wherein he confirmed the accuracy of his May 20, 2019 written statement, and again admitted to unintentional but “inappropriate” physical contact with Ms. Deines.⁹⁹ Judge Sushchuk also offered an apology to Ms. Deines, and requested that an attached letter of apology be forwarded to her.¹⁰⁰

On February 25, 2020, the Commission received Judge Sushchuk’s response to the Formal Charges¹⁰¹ issued by the Commission on February 5, 2020,¹⁰² wherein he denied “any physical contact whatsoever with any part of Ms. Deines’ body that evening.”¹⁰³

At the Formal Hearing, Judge Sushchuk did not testify in a manner consistent with his response to the Formal Charges (that there was not “any physical contact whatsoever”), but instead testified that he “had no intentional contact with Emily Deines” and left open the possibility that “there may have been” some accidental contact that he did not recall.¹⁰⁴

Regarding his prior admission that he did recall unintentional physical contact with Ms. Deines’ “lower body,” Judge Sushchuk acknowledged that this was not true.¹⁰⁵ Judge Sushchuk explained that the discrepancy in his written statement was an “attempt[] to rationalize” what Ms. Deines alleged because he “did not think [she] would lie” and that he “could only then conclude that there was a possibility that [he] may have had some

⁹⁷ Judge Sushchuk’s response to the July 16, 2019 Statement of Allegations, dated August 7, 2019, was not entered into evidence during the Formal Hearing, but it is enclosed with the Commission’s Report as Appendix C.

⁹⁸ The Commission’s July 16, 2019 Statement of Allegations is enclosed with the Commission’s Report as Appendix B.

⁹⁹ In his response to the July 16, 2019 Statement of Allegations, Judge Sushchuk responded, in part, as follows:

“I stand by and reiterate the Statement which I provided to Judge Casey on May 20, 2019. That was then and is now my best recollection of what occurred. It would be tempting to acknowledge that I purposely grabbed Ms. Deines’ buttocks and to offer my apology for having done so, but I have no such recollection and therefore cannot do so. However, I do not dispute that I had physical contact with M[s.] Deines and I acknowledge that it was inappropriate. I regret what occurred and I apologize to Ms. Deines for it. I enclose a personal letter of apology which I respectfully request be transmitted to Ms. Deines.”

¹⁰⁰ Appendix C: Judge Sushchuk’s response to Statement of Allegations, dated August 7, 2019.

¹⁰¹ Judge Sushchuk’s response to the Formal Charges was not entered into evidence during the Formal Hearing, but it is enclosed with the Commission’s Report as Appendix G.

¹⁰² The Formal Charges are enclosed with the Commission’s Report as Appendix E.

¹⁰³ Appendix G: Judge Sushchuk’s response to Formal Charges, dated February 25, 2020.

¹⁰⁴ (Tr. Day 3, p. 79:1-2; 80:20-24; 81:2; 82:13-14)

¹⁰⁵ (Tr. Day 3, p. 81:24; 82:1-24; 83:15-24; 84:1; 131:15-24; 132:1)

fleeting contact with her.”¹⁰⁶ Contrary to Judge Sushchyk’s testimonial explanation, his written statement stated his recollection of physical contact as a fact, not a mere possibility.¹⁰⁷ Judge Sushchyk’s answer to the Formal Charges wherein he denied “any physical contact whatsoever,” was also presented as an absolute fact that did not leave open the possibility of some unrecalled physical contact that he subsequently testified to.¹⁰⁸

At the Formal Hearing, Judge Sushchyk also denied that he was affected by alcohol on April 25, 2019, despite also testifying to the accuracy of the section of his written statement to Chief Justice Casey that admitted to unsteadiness from a combination of factors, including the alcohol Judge Sushchyk had consumed.¹⁰⁹ From Judge Sushchyk’s written statement to Chief Justice Casey, the now recanted recollection of physical contact with Ms. Deines’ “lower body” also allegedly had occurred after Judge Sushchyk had already arrived at her table, purchased a drink for himself and for two others, consumed part of his drink, walked behind Ms. Deines to use the restroom, and then had contact with her when he walked behind her again upon his return the table.¹¹⁰ The testimony offered by witnesses during the hearing, including Judge Sushchyk, only described Judge Sushchyk passing behind Ms. Deines once, when he first arrived at the table. There was no testimony offered to support Judge Sushchyk’s alleged trip the restroom, or regarding any second or even third passage behind Ms. Deines, as would have been the circumstance if Judge Sushchyk’s initial May 20, 2019 written statement were truthful.¹¹¹

After considering the evidence presented during the hearing,¹¹² the Commission concludes that the weight of the credible evidence supports the Hearing Officer’s finding that “Judge Sushchyk deliberately lied during the investigation in submitting a version of events that he knew to be untrue.”¹¹³

¹⁰⁶ (Tr. Day 3, p. 82:15-24; 83:15-21)

¹⁰⁷ Formal Hearing Exhibit 10.

¹⁰⁸ (Tr. Day 3, p. 80:20-24; 81:1); Appendix G: Judge Sushchyk’s response to Formal Charges, dated February 25, 2020.

¹⁰⁹ (Tr. Day 3, p. 54:22-24; 81:14-23); Formal Hearing Exhibit 10.

¹¹⁰ (Tr. Day 3, p. 81:24; 82:1-14); Formal Hearing Exhibit 10.

¹¹¹ See Formal Hearing Transcripts, generally.

¹¹² The Commission reached this conclusion based solely upon the full record of evidence presented during the Formal Hearing. Any references to documents that are part of the full record of this matter, but which are not part of the full record of evidence presented at the Formal Hearing, are made to provide the full record of this matter to the Court, for the Court’s consideration when making its’ final determination in this matter.

¹¹³ Hearing Officer’s Report, at p. 16.

7. Judge Sushchik also preserved his objections to the Formal Hearing being conducted virtually, and to the Hearing Officer’s ruling that denied Judge Sushchik’s requests to present demonstrative evidence during the hearing.¹¹⁴

- a. In his objections, Judge Sushchik wrote: “*Judge Sushchik preserves his objection to the Commission’s requirement that the hearing be conducted virtually and the Hearing Officer’s refusal to allow demonstrative evidence as was identified in his Offer of Proof.*”¹¹⁵

The Commission maintains that the Supreme Judicial Court’s July 7, 2020 “Supplemental Order Regarding Virtual Proceedings and Affirmations” granted the Commission authority to issue the “[Commission on Judicial Conduct’s] Emergency Order on Protocols for Remote Formal Hearings”¹¹⁶ and to require that the Formal Hearing in this matter be conducted virtually pursuant to that emergency order.

Indeed, as described above, on July 16, 2020, this Court issued an Order in response to an emergency petition filed by Mr. Angelini, challenging the Commission’s decision to hold the Formal Hearing in this matter by videoconference. On that date, the Court entered an Order denying Judge Sushchik’s emergency petition. The Court denied the petition without prejudice. The Court then added, “The Commission’s decision is in accord with this Court’s Supplemental Order Regarding Virtual Proceedings and Affirmations, which allows the Commission to conduct proceedings virtually.”

The Commission also agrees with and supports the Hearing Officer’s ruling on Commission’s counsel’s July 10, 2020 “Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment to Respondent’s Alleged Improper Touching of the Complaining Witness,”¹¹⁷ which Judge Josephson granted after a hearing on the third day of the Formal Hearing, July 22, 2020.¹¹⁸

¹¹⁴ Sushchik Objections, at p. 8.

¹¹⁵ Sushchik Objections, at p. 8.

¹¹⁶ The “[Commission on Judicial Conduct’s] Emergency Order on Protocols for Remote Formal Hearings” is enclosed with the Commission’s Report as Appendix N.

¹¹⁷ Commission counsel’s “Motion In Limine to Preclude the Respondent from Presenting Any In-Court or Out-of-Court Demonstration or Experiment to Respondent’s Alleged Improper Touching of the Complaining Witness,” dated July 10, 2020, is enclosed with the Commission’s Report as Appendix O.

¹¹⁸ (Tr. Day 3, p. 89-96)

III. FINDINGS OF FACT

As described above, on August 17, 2020, pursuant to Commission Rule 11A, the Hearing Officer, Judge Josephson, submitted her “Report of the Hearing Officer to the Commission on Judicial Conduct,” in connection with the Formal Hearing in this matter, which took place from July 20 to 22, 2020.

After review and consideration of the full record of the Formal Hearing and Judge Sushchuk’s objections to the findings and recommendations of the Hearing Officer, by the standard of proof of clear and convincing evidence, the Commission agrees with and adopts all of the Findings of Fact of the Hearing Officer, except for the Hearing Officer’s finding that Ms. Deines was “indicating toward Judge Sushchuk,”¹¹⁹ as she tried to get Ms. Patsos’ attention in Bayzo’s Pub on April 25, 2019.

The Commission’s findings include agreement with, and adoption of, the Hearing Officer’s explicit finding that, during her sworn testimony at the Formal Hearing, “Ms. Deines gave a cogent, credible, consistent account of what occurred.”¹²⁰ The Commission agrees with and defers to the following finding made by the Hearing Officer with respect to the credibility and honesty of Ms. Deines’ sworn testimony at the Formal Hearing: “Based on [Ms. Deines’] testimony and my observations of her over the hours she testified, including during rigorous cross-examination, I believe her.”¹²¹

The Commission’s findings include agreement with, and adoption of, the following explicit findings made by the Hearing Officer, regarding Judge Sushchuk’s credibility and truthfulness during Chief Justice Casey’s investigation of Ms. Deines’ complaint against Judge Sushchuk:

“In contrast [to Ms. Deines], Judge Sushchuk has not been honest in his accounts. He was not forthright in his written statement. He generated a statement he knew to be false in which he invented out of whole cloth a version of events in which Ms. Deines’ very clear perception of what happened to her person was to be dismissed as misimpression or an exaggeration. He admitted under oath that, in truth, what he wrote had happened simply had not. He falsely claimed to the Court administration investigating the matter that he had a recollection of incidental contact, a falsehood he knowingly provided in an attempt to exculpate himself. Such misdirection during the investigation not only evinces a consciousness of guilt, but is wholly inconsistent with the oath of office and ethical conduct required of a judge.”¹²²

¹¹⁹ Hearing Officer’s Report, at p. 8.

¹²⁰ Hearing Officer’s Report, at p. 14.

¹²¹ Hearing Officer’s Report, at p. 14.

¹²² Hearing Officer’s Report, at p. 15.

The Commission’s findings include agreement with, and adoption of, the following additional explicit findings made by the Hearing Officer regarding the credibility of Judge Sushchik’s testimony at the Formal Hearing and whether the credible evidence presented at the Formal Hearing supports the Formal Charges:

“Judge Sushchik’s lack of candor at the inception of this matter undermines his credibility at hearing. His initial response suggests that he did what he was accused of doing and sought to minimize his culpability for it. I do not find Judge Sushchik’s testimonial denials of intentional contact with Ms. Deines reliable or believable. Ms. Deines’ immediate, consistent and credible complaint that she was grabbed by Judge Sushchik is not only more believable than his reworked denials, it is bolstered by them. I find Judge Sushchik’s testimony at hearing is a further instance of his failure to be truthful in this matter.”¹²³

Based upon a review of the full record of the Formal Hearing, including a review of the substance of the testimony presented and the exhibits introduced as evidence, by the standard of proof of clear and convincing evidence, the Commission finds that the credible evidence supports the Hearing Officer’s factual findings. The Commission also agrees with and adopts the Findings of Fact of the Hearing Officer, except for the sole factual finding described above, because nearly all of the factual findings relevant to whether Judge Sushchik violated the Code, as charged, largely depend on a determination of the credibility of the witnesses who testified, and the Hearing Officer was in the unique position to personally observe the testimony of those witnesses, to ask those witnesses questions directly, and to otherwise assess the content, substance, and credibility of the evidence presented.

In the Hearing Officer’s Report to the Commission, the Hearing Officer made the following Findings of Fact, which, except for the sole factual finding described above, the Commission adopts as its own Findings of Fact, for the above-stated reasons:

“The Conference

“On February 28, 2018, Judge Sushchik was appointed by Massachusetts Governor Charles Baker to the Massachusetts judiciary as an Associate Justice of the Probate and Family Court (“the Court”). Less than fourteen months later, he attended his second annual Spring Conference for the judges of the Court. Typically, the Court holds a judicial education conference every spring and fall. The spring conferences are two day events generally held at a conference center with dining and overnight accommodations provided. Judges of the Court are expected to attend the conferences. The Court’s 2019 Spring Conference was held on April 25th and April 26th, 2019, at Ocean’s Edge Resort in Brewster, MA. It

¹²³ Hearing Officer’s Report, at p. 15.

was attended by forty-eight or forty-nine of the Court's fifty-one sitting judges. Judge Sushchik was one of the attendees. On April 25, 2019, at approximately 6:00 AM, he left his home in Sterling, MA and drove to Brewster for the conference which was scheduled to begin at 9:00AM. He brought with him a pocket flask containing his favorite whiskey.

“Also in attendance at that spring conference was Emily Deines. Ms. Deines has been an employee of the Administrative Office of the Family and Probate Court since 2004. She is a Field Coordinator for the Court and is assigned to the western region. Her main office is in the Hampden County Hall of Justice in Springfield and she is also assigned space to work out of in the Court's Hampshire County facility in Northampton.

“Ms. Deines' job responsibilities center largely on handling the Court's IT and technology initiatives, as well as providing trainings and on-site support to court staff and judges. Ms. Deines also serves as staff liaison to the Court's Judicial Education Committee (“the Committee”) which is responsible for the Court's annual conferences. The Committee meets monthly throughout the course of the year to plan the conferences. Ms. Deines coordinates presenters, oversees technical aspects of materials and presentations, and provides overall support to the judges at the conferences. Since joining the Committee approximately six years ago, Ms. Deines has participated in approximately twelve of the Court's Judicial Conferences. Ms. Deines was required to attend the conference as part of her job responsibilities.

“The only other Trial Court attendees at the 2019 Spring Conference who were not judges were Michelle Hynes [sic] from the Trial Court's Judicial institution [sic] and four Court attorneys who work in the Administrative Office of the Court.

“Ms. Deines and Judge Sushchik knew one another solely from a few interactions they had after he joined the Court. They had met once in person for Ms. Deines to assist Judge Sushchik in becoming acquainted with the Court's technology. Aside from emails back and forth to set up that training, the only other contact they had had was twice by text or telephone on professional matters.

“Ms. Deines left for the spring conference from her home in Northampton MA, the night before the conference and stayed overnight with her parents at their summer home in Eastham, MA. She brought her toddler son with her for her parents to care for while she worked at the conference. The following morning, April 25, 2019, Ms. Deines left her parents' home for Ocean's Edge, twenty minutes away, arriving shortly after 7:45AM. Upon arrival, she and Ms. Haynes began setting up for the conference. As the judges arrived, Ms. Deines and Ms. Haynes greeted them, registered them and provided them with their

conference materials. In addition, the two women made sure that the breakfast was set out and that the presenters were prepared for the day's programs.

"The conference began with opening remarks from the Chief Justice of the Trial Court and from the Chief Justice of the Supreme Judicial Court. Educational programs ran in the morning and afternoon with an on-site luncheon served in between. Throughout the day, Ms. Deines attended to her responsibilities, including working through the lunch hour, to ensure that the conference was running as smoothly as possible,. [sic] The programmatic aspect of the first day ended shortly before 4:00PM.

"At the conclusion of the day's programs, Ms. Deines helped clean up the main conference room, and then went back to her family's home in Eastham. Ms. Deines got her son ready for dinner and for bed and then returned to Ocean's Edge to attend the Court's scheduled dinner.

"As part of the conference, a Court-sponsored dinner was to begin at 7:00PM in the ballroom of the facility. Before the dinner, all judges were invited by a pair of colleagues to attend an informal social hour in one of the judge's suites. Judge Sushchyk went to that event and brought his flask of whiskey with him.

"The Court dinner began at 7:00PM in the resort's ballroom. A cash bar was available for the attendees. Ms. Deines attended the dinner, arriving at approximately 7:15PM. On arrival, she got herself and one of her dinner companions each a glass of wine from the cash bar. Judge Sushchyk also attended the dinner, going directly to the ballroom from the social hour. At the social hour, Judge Sushchyk had at least one drink, using the whiskey from his flask. Ms. Deines sat at a table with Ms. Hynes and the four staff attorneys whom she knew from the Court's Administrative Office. Judge Sushchyk sat with other judges of the Court. The dinner lasted until approximately 8:30PM.

"After dinner, Ms. Deines and her companions decided to go to the on-site bar, Beyzos Pub ("the Pub"), located a short distance from the ballroom. In addition to Ms. Deines, the group was comprised of Attorneys Evelyn Patsos, Jocelyne Welsh, Denise Fitzgerald and Christine Yurgelun, all of whom worked for the Court and all of whom had been invited by Chief Justice Casey for the stated purpose of promoting good relations between the judges and the Court's administrative staff. The group was among the first to leave the ballroom after the dinner ended.

"On entering the Pub, Ms. Fitzgerald stopped to speak to some judges who were seated at the bar, Ms. Deines and Ms. Patsos stopped at the bar to order drinks and Ms. Welsh and Ms. Yurgelun found a spot for the women to sit. Ms.

Deines ordered a beer and brought it to the table where Ms. Welsh and Ms. Yurgelun were already seated. The table was a round bar-height hightop table in the bar section of the Pub. It was next to a brick pillar that formed part of an archway connecting the bar section to a dining area of the Pub where tables and chairs were located. The high-top had four round, cushioned, backless barstools around it. Ms. Deines sat at the stool nearest the brick pillar and closest to the archway. Ms. Yurgelun sat on a stool to Ms. Deines' left and used a second stool to elevate her foot which at that time was in an air boot. Ms. Welsh sat on the stool directly across from Ms. Deines and Ms. Patsos stood next to Ms. Deines' left at the table.

“Judge Sushchyk made his way to the Pub after the dinner, walking with other judges and arriving at approximately 8:45PM. Being relatively new to the Court and having been assigned predominately to the Worcester Court, Judge Sushchyk did not know many of the other judges at the conference. As the judges who walked with him slowly began to join others in the Pub, Judge Sushchyk stood in the entrance to the Pub, surveying the room. After about ten to fifteen minutes, he noticed Ms. Patsos at the high-top at the far end of the room and he began to make his way to her table. Ms. Patsos was one of few people at the event Judge Sushchyk had known prior to his appointment to the bench. Judge Sushchyk knew her through her work in Worcester as an Assistant Register for the Court six to seven years before. They were not personal friends, but were cordial professional acquaintances who had run into one another prior to the event.

“Ms. Deines was seated facing the end of the Pub where Judge Sushchyk stood. As she spoke to Ms. Welch, she was able to see him in the distance over Ms. Welch's left shoulder as he began to make his way through the adjacent dining area toward the table where she and her companions were seated. Ms. Deines saw Judge Sushchyk as he came around the brick pillar to her right. He approached the table from behind Ms. Deines' seat through the archway on her right. Ms. Deines was leaning slightly forward and was engaged in conversation with Ms. Welsh across from her.

“As Judge Sushchyk passed behind her stool, Ms. Deines felt the distinct sensation of a hand grabbing the left side of her buttocks and applying a full-handed squeeze to it. The contact lasted several seconds. Stunned, Ms. Deines froze in place, making no move to acknowledge the affront or the culprit. She was aware at that moment that Judge Sushchyk was the only one passing behind her. Judge Sushchyk was then immediately standing next to her on her left and slightly behind her as he greeted Ms. Paskos [sic] who was standing to his left. Despite her shock, and as much because of it, Ms. Deines acted as though nothing had happened. She said nothing to Judge Sushchyk and said nothing to her companions at that time.

“As Judge Sushchyk stood at the table next to Ms. Patsos, the two discussed what each was drinking. In response, Judge Sushchyk opened his jacket and displayed the flask he was carrying in his inner lapel pocket. As Ms. Deines saw it she asked somewhat cryptically, ‘Whiskey or bourbon?’ He said it was whiskey. He offered to buy a round for the table. Two or three of the women accepted the offer. Ms. Deines did not and, feeling uncomfortable, she left no more than fifteen minutes after Judge Sushchyk arrived at the table. However, before she left, Ms. Deines tried to gain Ms. Patsos’ attention through using facial gestures to subtly signal that something had happened, opening her eyes wide and indicating toward Judge Sushchyk. Ms. Patsos noticed and remembers Ms. Deines doing exactly that, but Ms. Patsos did not understand the meaning at the time.

“Ms. Deines left the table and said good-bye to Chief Justice Casey and his wife who were seated at the bar. They had arrived at approximately 8:50PM and were seated at the bar for a short time when Ms. Deines said good-bye. As Ms. Deines was leaving, she also had a short conversation with two judges about an earlier presentation and said good-bye to another judge she passed on the stairs on her way out. It took her no more than fifteen minutes to say her goodbyes and leave the facility. Once in her car, the first thing she did was text her sister about what had just happened to her at the judicial conference, resulting in the following text exchange at 9:24PM:

‘OMG. i think one of the judges grabbed my butt on purpose!!!’
‘What???? Slap him.’
‘He is also carrying a hip flask, so maybe just fell?? Except it was a distinct pinch!!’

Ms. Deines then returned to her family in Eastham where she spent the night.

“Judge Sushchyk remained at the table with the group of women until closing at approximately 11:00PM. He offered the women a ride to each of their rooms all of which were about a half mile away. The roadway was dark and walking would have been dangerous. The four women accepted and piled into his truck. Judge Sushchyk drove each to her room and then returned to his room at the conference.

“The next day, April 26, 2019, Ms. Deines returned to to [sic] Ocean’s Edge to fulfill her responsibilities at the conference. She worked the remainder of the day until the conference ended. At one point during the day when attendees needed to move their chairs for a presentation, Ms. Deines felt that Judge Sushchyk positioned himself uncomfortably close to her. The conference ended that afternoon and Ms. Deines returned to her parents’ home for the evening. The next day she went back to her marital home in Northampton. That afternoon she

also texted a friend about the incident.

“The Court Action

“Over the next few days, Ms. Deines grappled with what to do about the incident. After speaking to a number of people, including two judges on the Committee, she decided to report it. On May 1, 2019, the Wednesday following the conference, she called Chief Justice Casey on the telephone and told him what had happened. Judge Casey had Ms. Deines prepare a written account of the incident.

“After receiving the call from Ms. Deines, Judge Casey spoke to the Deputy Court Administrator for the Probate and Family Court Department and called Judge Paula Carey, the Chief Justice of the Trial Court. He also conferred with the sexual harassment policy compliance officer for the Court. He later had his assistant call to arrange for him to see Judge Sushchuk in Judge Sushchuk’s Worcester lobby the morning of May 10, 2019.

“On May 10, 2019, Judge Sushchuk was in his lobby preparing for the morning session when Judge Casey arrived and came into the lobby. Judge Casey began the meeting by handing Judge Sushchuk Ms. Deines’ written statement summarizing the incident. Upon reading Ms. Deines’ statement, Judge Sushchuk became visibly upset. He stood up from his desk, took off his glasses and began to rub his eyes. He said, ‘I couldn’t have’ – ‘I couldn’t have done something like that. I’ – ‘I wouldn’t do something like that. I would never hurt anyone, especially a woman.’ In support of his position that he could not and would not do something like that, he told Judge Casey of a medical condition he had that negatively impacted his sex drive. They discussed the issue of how much alcohol he had consumed that night. Judge Sushchuk said he had had one drink at the judges’ social hour and one drink at the Pub. He did not mention that he had a flask of whiskey on his person that evening. Judge Casey had seen Judge Sushchuk briefly at the conference on the first day. Judge Casey had noticed at the time, that Judge Sushchuk’s eyes were red and he seemed tired, but he said nothing about his observations at the time or during the lobby meeting.

“The conversation that morning lasted about a half an hour. Judge Casey told Judge Sushchuk to write a statement regarding the allegations for submission to Chief Justice of Supreme Judicial Court, Justice Ralph Gants. Ten days later on May 20, 2019, Judge Sushchuk submitted his statement to Judge Casey, understanding that it would be provided to the Chief Justice as part of the investigation into the allegations against him. In that statement, Judge Sushchuk agreed that he had been at Ms. Deines’ table in the Pub and confirmed most of the details concerning who was present, where each was located and other descriptive details. He accounted for his time at the table, saying after offering to buy a

round, he had purchased a Jameson's whiskey for himself and drinks for two of the women at the table and then stayed at the table until he finished his drink. He denied ever having intentionally touched Ms. Deines, but described in detail leaving the table to use the men's room after he finished his drink, recounting the route he had taken to and from it to return to the table. He wrote in his statement that on his return trip to the table, he 'was somewhat unsteady on [his] feet, feeling the effects of past hip replacement surgery, the long day, [] the evening meal and the alcohol consumed.' He 'recall[ed] that as [he] began to pass by Ms. Deines, to steady [himself], [he] placed [his] hand in the direction of her chair and came into momentary contact with a portion of her lower body" and then "returned to [his] seat at the table, rejoining Ms. Patsos, Ms. Yurgelun, Ms. Welsh and Ms. Deines." As discussed below, that statement was not true.

"After further investigation, the matter was reported by the Chief Justice to the Commission for action.

"Judge Sushchik's Statement

"Judge Sushchik testified under oath at hearing that he had not come into any physical contact with Ms. Deines that evening and that his written account saying that he had accidentally touched her was untrue. In his testimony before me, he both stood by his written statement that he was unsteady on his feet owing, in part, to alcohol consumption among other factors, and also denied that he was affected by his consumption of alcohol. He gave no account of leaving for the men's room, making his way back or steadying himself on Ms. Deines' stool, ignoring that part of his written statement.

"In contrast to his written statement, he testified that he had no intentional or unintentional physical contact with Ms. Deines' body on April 25, 2019, and that despite his written account to Judge Casey and Chief Justice Gants in which he claimed a very specific memory of contact with Ms. Deines' person, in actuality, he had had no such memory when he wrote his account and that the touching described never occurred. He testified that because he did not think that Ms. Deines would lie, he created a scenario in an attempt to "rationalize what she said and recalling the events of the evening," he could only conclude that there was a possibility that he may have had some fleeting contact with her.

"However, that is not what his statement said. It did not say there was a possibility of fleeting contact. It very clearly detailed his account of an inadvertent touching that he said he remembered occurring and the precise circumstances surrounding it. In Judge Sushchik's written account, he has Ms. Deines misperceiving an innocent fleeting touch to a portion of her lower body and confusing it with full-on handgrab of her buttocks. At hearing, Judge Sushchik admitted that he invented the fleeting touch he described. In his

testimony, he abandoned that version of events and maintained that there had been no touching at all. His testimony is an admission that during the course of the investigation into Ms. Deines' complaint, he knowingly and intentionally submitted a statement he knew to be untrue in an effort to affect the outcome.

“Further, Judge Sushchik’s written statement does not comport with the time-frame given by those present. His testimony at hearing was that he arrived at the Pub approximately 8:45PM, stood at the entrance for ten to fifteen minutes and then made his way to Ms. Paskos’ [sic] table. By all accounts, Ms. Deines left the table no more than fifteen minutes after Judge Sushchik arrived at it. While her colleagues lingered at the table with Judge Sushchik, Ms. Deines did not. She made her way out of the event and was in her car texting her sister at 9:24PM. Yet, in his written statement, Judge Sushchik recounts joining the table, offering drinks, ordering the drinks at the bar, bringing them back to the table, finishing his drink, leaving to use the men’s room and returning, all while Ms. Deines was still at the table. Had Judge Sushchik gone to the men’s room when he claimed he did in the written statement, Ms. Deines could not have been at the table. Accordingly, Judge Sushchik’s statement of having a memory of returning from the men’s room while Ms. Deines was at the table is also untrue. Judge Sushchik’s written account that places him behind her stool at any point other than as he joined the table—the point at which she clearly felt him grab her—simply does not comport with the timeframes and appears to be a further fabrication to support his initial invention of an innocent, accidental touching that Ms. Deines misperceived.”¹²⁴

IV. FINDINGS AND CONCLUSIONS AS TO FORMAL CHARGES

Whether the Formal Charges in this matter have been proven by clear and convincing evidence hinges on an assessment of the credibility of the witness testimony, and for the reasons stated above, the Hearing Officer was in the best position to assess witness credibility. For those reasons and based upon the above factual findings, the Commission agrees with and adopts the Hearing Officer’s Findings and Conclusions as to the Formal Charges.

Based upon its review of the Respondent’s “Post-Hearing Memorandum of Law,” dated July 30, 2020,¹²⁵ and Commission counsel’s “Post-Hearing Memorandum of Law,” dated August 3, 2020,¹²⁶ the Commission also agrees with and adopts the Hearing Officer’s legal determination as to the burden of evidence that must be presented to support a finding that the Formal Charges have been proven by clear and convincing evidence.

¹²⁴ Hearing Officer’s Report, at p. 3-13.

¹²⁵ The Respondent’s “Post-Hearing Memorandum of Law” is enclosed with the Commission’s Report as Appendix BB.

¹²⁶ The Commission’s “Post-Hearing Memorandum of Law” is enclosed with the Commission’s Report as Appendix CC.

In the Hearing Officer's Report to the Commission, the Hearing Officer made the following legal determination regarding the standard of clear and convincing evidence, and made the following Findings and Conclusions regarding the above facts:

"The Commission's burden is to prove its case against Judge Sushchyk by clear and convincing evidence. G.L. c. 211C, section 7(4). That standard of proof is greater than the standard applicable in most civil cases which require proof by a fair preponderance of the evidence, but is less than proof beyond a reasonable doubt required to support a criminal conviction. Callahan v. Westinghouse Broadcasting Co., 372 Mass. 582, 58 (1977). To be 'clear and convincing' the evidence must be sufficient to prove 'to a high degree of probability' that the charge is true. Tosti v. Ayik, 394 Mass. 482, 493 n.9 (1985).

"Conceding that the state of the law does not require it, the defense suggests that independent collaboration should be necessary to satisfy the standard. In support of its argument, the defense relies on cases from other jurisdictions and one Massachusetts case. None are applicable to this case. Cases from outside the Commonwealth provide no precedential effect and the ones relied on by the defense offer no persuasive value as they involve claims far different than the type of claim here. In the Massachusetts case cited, the uncorroberated [sic] hearsay testimony of a social worker who had not witnessed any abuse was found insufficient to support the termination of parental rights. Adoption of Iris, 43 Mass. App. Ct. 95 (1997), aff'd, 427 Mass. 582 (1998). In contrast, Ms. Deines is a percipient witness with direct knowledge of the facts she related. Moreover, were any corroboration necessary, it exists in the form of Ms. Deines' first complaint within minutes of the event, Ms. Patsos' confirmation of Ms. Deines' attempt to signal her, and Judge Sushchyk's own statements.

"In summary, Ms. Deines gave a cogent, credible, consistent account of what occurred. Based on her testimony and my observations of her over the hours she testified, including during rigorous cross-examination, I believe her. The variations in accounts highlighted in defense of Judge Sushchyk do not detract from the believability of her version of events. Other credible evidence further supports it. Ms. Deines' complaint that Judge Sushchyk grabbed her buttock was made within minutes of the incident and has remained essentially unchanged since. Her behavior at the time of the event and after, both in her facial gestures at the table as confirmed by Ms. Paskos [sic] and in her nearly immediate text to her sister conveying her shock and disbelief, serve to further bolster the reliability of her account. Her later statements and testimony remain, in my view, consistent with the events as she has recounted them. Indeed, Judge Sushchyk's first account confirmed that he had 'contact with a portion of her lower body.'

"In contrast, Judge Sushchyk has not been honest in his accounts. He was

not forthright in his written statement. He generated a statement he knew to be false in which he invented out of whole cloth a version of events in which Ms. Deines' very clear perception of what happened to her person was to be dismissed as misimpression or an exaggeration. He admitted under oath that, in truth, what he wrote had happened simply had not. He falsely claimed to the Court administration investigating the matter that he had a recollection of incidental contact, a falsehood he knowingly provided in an attempt to exculpate himself. Such misdirection during the investigation not only evinces a consciousness of guilt, but is wholly inconsistent with the oath of office and ethical conduct required of a judge.

“Judge Sushchik’s explanation of why he wrote a false account is equally problematic. In essence, he says he did not think Ms. Deines would lie so he did. One problem with lying is once it begins, it’s hard to know when it ends. Judge Sushchik’s lack of candor at the inception of this matter undermines his credibility at hearing. His initial response suggests that he did what he was accused of doing and sought to minimize his culpability for it. I do not find Judge Sushchik’s testimonial denials of intentional contact with Ms. Deines reliable or believable. Ms. Deines’ immediate, consistent and credible complaint that she was grabbed by Judge Sushchik is not only more believable than his reworked denials, it is bolstered by them. I find Judge Sushchik’s testimony at hearing is a further instance of his failure to be truthful in this matter.”¹²⁷

V. CONCLUSIONS AS TO FORMAL CHARGES

Based on the above-described factual findings and standard of proof, the Commission concludes, by the standard of proof of clear and convincing evidence, that Judge Sushchik violated the Canons/Rules of the Massachusetts Code of Judicial Conduct (SJC Rule 3:09), as charged in the Formal Charges, and that he violated M.G.L. c. 211C, secs. 2(5)(b), 2(5)(d), and 2(5)(e), as follows:

1. CANON 1, RULE 1.1

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines’ buttock, as described in the above findings, Judge Sushchik violated the Massachusetts Trial Court’s January 7, 2013 “policy and procedure for the elimination of sexual and gender harassment in the workplace;” violated M.G.L. Chapter 151B; M.G.L. Chapter 211C, sec. 2(5); M.G.L. Chapter 214, sec. 1C; Title VII of the Civil Rights Act of 1964; and the Code of Judicial Conduct (SJC Rule 3:09). In doing so, he failed to comply with the law, including the Code of Judicial Conduct, in violation of Rule 1.1.

¹²⁷ Hearing Officer’s Report, at p. 13-15.

2. CANON 1, RULE 1.2

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, as described in the above findings, Judge Sushchyk failed to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and/or failed to avoid impropriety and/or the appearance of impropriety, in violation of Rule 1.2.

3. CANON 2, RULE 2.3(A)

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, as described in the above findings, Judge Sushchyk failed to perform the duties of judicial office without bias, prejudice, or harassment, in violation of Rule 2.3(A).

4. CANON 2, RULE 2.3(B)

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, as described in the above findings, Judge Sushchyk, in the performance of his judicial duties, failed to refrain from, by words or conduct, manifesting bias or prejudice or engaging in harassment, including bias, prejudice, or harassment based upon a person's status or condition, in violation of Rule 2.8(B).

5. CANON 2, RULE 2.8(B)

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, as described in the above findings, Judge Sushchyk failed to be dignified, and/or courteous to litigants, witnesses, lawyers, court personnel, and others with whom he deals in an official capacity, in violation of Rule 2.3(B).

6. CANON 3, RULE 3.1(C)

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, as described in the above findings, Judge Sushchyk participated in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, in violation of Rule 3.1(C).

7. M.G.L. c. 211C, secs. 2(5)(b), (d), and (e)

In its Formal Charges, the Commission charged, under M.G.L. c. 211C, that Judge Sushchyk engaged in "willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer."

By engaging in an intentional, nonconsensual, and unwelcome touching of Ms. Deines' buttock, while attending a work-related conference of the Probate and Family Court, as described in the above findings, Judge Sushchyk engaged in "willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer," in violation of M.G.L. c. 211C, sec. 2(5).

VI. RECOMMENDATION AS TO DISCIPLINE

After careful deliberation, including consideration of the statements made by Ms. Deines, on her own behalf, and by Mr. Angelini, on behalf of Judge Sushchyk, at the public hearing on October 5, 2020, regarding the Commission's recommendation for discipline, the Commission respectfully recommends that Judge Sushchyk be publicly censured, that he be ordered to pay the costs of the Commission in connection with this matter, and that he be suspended without pay from his judicial office, until further order of the Court, for a reasonable time to permit the executive and legislative branches to consider, if they wish, the question of whether he should retain his judicial office, on the basis of such factors as they think appropriate, including the record of evidence before the Commission.

The Commission also recommends that, in connection with this disposition, the Court grant the Commission permission to share information and evidence from its investigation of this matter with the legislative and/or executive branches that, in the Commission's discretion, the Commission feels may assist the legislative and/or executive branches in any consideration of whether Judge Sushchyk should retain his judicial office.¹²⁸

¹²⁸In this matter, the Hearing Officer has recommended "retirement from office pursuant to G.L. c. 211C, section 8(4)(b) or removal from office pursuant to G.L. c. 211C, section 8(4)(a)," as the appropriate discipline to impose on Judge Sushchyk for his misconduct. While this Court has ruled that those provisions of M.G.L. c. 211C are not within the constitutional authority of the Commission or the Court, the Commission agrees with the Hearing Officer that the disposition of this matter must include a sanction that prevents Judge Sushchyk from continuing to serve and receive compensation as a judge. This Court has described the framework for a constitutional alternative to removing a judge from office. In In the Matter of Robert M. Bonin, 375 Mass. 680 (1978), the Court ruled, as follows:

"We recognize that the question whether the Chief Justice should continue to serve and to receive compensation as such is one which is not assigned to the judicial department under the Constitution of the Commonwealth. See Matter of Troy, 364 Mass. 15, 21-22 (1973); Matter of DeSaulnier (No. 4), 360 Mass. 787, 807-809 (1972). But we deem it appropriate, pursuant to our constitutional and statutory powers of supervision over the courts of the Commonwealth, that the suspension of the Chief Justice should extend for a reasonable time to permit the executive and legislative branches to consider, if they wish, the question of the continuance of the Chief Justice in office, on the basis of such factors as they think appropriate, including, perhaps, the record before us and the conclusions we have drawn from it. A transcript of this proceeding and the exhibits are available to the Governor and the Legislature on request. The order of suspension shall continue in effect until further order of this court, but that order will be continued only for a reasonable period, as described above." In the Matter of Robert M. Bonin, 375 Mass. at 711-12.

In determining its recommendation for discipline in this matter, the Commission considered the merits and specific circumstances of the present case, weighing the effect of Judge Sushchik's misconduct upon the judiciary and the public's perception of the judiciary. This Court has stated that the purpose of the Code is "to preserve the integrity, independence, and impartiality of the judiciary and, moreover, to preserve public confidence in the integrity, independence, and impartiality of the judiciary." Matter of Killam, 388 Mass. 619, 622 (1983). This Court has also observed that, "[b]ecause 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." Matter of Morrissey, 366 Mass. 11, 16-17 (1974). In Morrissey, the Court also stated that public "assurance" is an important factor in what "disciplinary measures" are appropriate. Id. at 17 ("[T]he resulting disciplinary measures have served to give assurance to the public that such conduct will not be tolerated and that the judiciary itself is ever ready to carry out the corrective process when necessary.").

Based on the Court's prior decisions and orders in connection with cases involving judicial misconduct, the Commission's recommendation for discipline in this matter considered the following factors in connection with its recommendation for discipline:

1. Judge Sushchik's misconduct has brought "undeserved discredit to the administration of justice in the Commonwealth." Matter of Larkin, 368 Mass. 87, 91-92 (1975).

As in the In re: Thomas Estes, the nature of Judge Sushchik's misconduct has not only brought undeserved discredit to the administration of justice in the Commonwealth; it will prevent him from ever again "command[ing] the respect and authority essential to the performance of his judicial function." In re: Thomas Estes, Supreme Judicial Court, SJC No. OE-136 (May 24, 2018).¹²⁹

In the Estes matter, the Court's Order suspending Judge Thomas Estes indefinitely without pay included the following reasoning:

"Clearly, the Judge's misconduct has damaged the esteem of the judicial office in the public's eye. The sanction we impose is severe not because we seek to punish the Judge severely, but because, like the Commission, we seriously question whether he can command the respect and authority essential to the performance of his judicial function. In furtherance of our duty to assure the public that Massachusetts judges are held to high standards of conduct and that the Commonwealth's judiciary is worthy of their trust and confidence, we conclude that Judge Estes shall be and hereby is publicly censured, and that effective June 15, 2018, he shall be suspended without pay indefinitely or until further order of this court, and

¹²⁹ A copy of the Court's Order in SJC No. OE-136 is enclosed as Appendix BB.

it is so ORDERED. A copy of this order shall be delivered to the Governor and the Legislature.”

By the standard of clear and convincing evidence, both the Hearing Officer and the Commission have found that Judge Sushchuk engaged in an intentional, nonconsensual, and unwelcome touching of Ms. Deines’ buttock on April 25, 2019, while attending a Probate and Family Court conference.

By a standard of clear and convincing evidence, both the Hearing Officer and the Commission have found that Judge Sushchuk knowingly provided a false statement to Chief Justice Casey during his initial investigation of Ms. Deines’ complaint.

By a standard of clear and convincing evidence, both the Hearing Officer and the Commission have found that Judge Sushchuk’s sworn testimony during the Formal Hearing of this matter was not entirely “truthful.”¹³⁰

Accordingly, Judge Sushchuk’s conduct will prevent him from “command[ing] the respect and authority essential to the performance of his judicial function.”

2. Judge Sushchuk’s misconduct relates to actions he took acting in his official capacity. Matter of DeSaulnier (No. 4), 360 Mass. 787 (1972).

In connection with the Hearing Officer’s recommendation for discipline, the Hearing Officer found, as follows:

“That the incident occurred at a Court event, sponsored and conducted by the Court, makes it even more troubling. The judicial and other court-employed attendees at the conference were there because of their official positions, whether or not they were then performing their usual job responsibilities. The group seated at the table was part of a structure in which a judge occupies a position of unique power. In that structure, the people who provide support function as subordinates, in that their role is mainly defined by what a judge needs to perform her/his/their duties. Ms. Deines and the staff attorneys at the table are high-level professionals who must be afforded the respect, courtesy and deference due them and owed all Trial Court employees. Judge Sushchuk’s conduct was not in keeping with the dignity, regard and professionalism he owed them and his position.

“G.L. c. 214, section 1C, provides in pertinent part, “[a] person shall have the right to be free from sexual harassment, as defined in” G.L.

¹³⁰ Hearing Officer’s Report, at p. 15.

c. 151B and 151C. G.L. c. 214, section 1C, provides, ‘all employees are protected against sexual harassment in the workplace.’ See, Lowery v. Klemm, 446 Mass. 572 (2006). In any work place, a supervisor engaging in such misconduct toward a subordinate could reasonably be expected to be removed from his position. The public can expect at least as much of the Court as a work place.”¹³¹

The Commission agrees with the Hearing Officer’s above findings and analysis that Judge Sushchik’s misconduct took place at a “Court event,” that “[i]n any work place, a supervisor engaging in such misconduct toward a subordinate could reasonably be expected to be removed from his position,” and “[t]he public can expect at least as much of the Court as a work place.”

The Trial Court’s new policy on sexual and gender harassment, which was not in effect at the time of Judge Sushchik’s misconduct, provides: “Conduct prohibited by this Policy includes conduct not only in the workplace, but also in any work-related settings, such as work-related trips, meetings or conferences, or designated court social gatherings during work hours or after work hours.” Personnel Policies and Procedures Manual, Section 5.100, “Policy Prohibiting Discrimination, Harassment, Retaliation, and Complaint Resolution Procedure,” p. 5-2 (effective November 4, 2019).¹³²

Although the Commission did not rely on this policy in connection with its recommendation for discipline, the Commission notes that the Trial Court’s new policy on sexual and gender harassment includes a zero tolerance policy, providing, as follows: “It is the goal of the Trial Court to promote a workplace that is free of sexual and gender harassment. Sexual and gender harassment of employees occurring in the workplace or impacting users of the Trial Court or in other settings associated with one’s employment or one’s use of the Trial Court will not be tolerated.” Personnel Policies and Procedures Manual, Section 5.100, “Policy Prohibiting Discrimination, Harassment, Retaliation, and Complaint Resolution Procedure,” p. 5-2 (effective November 4, 2019).

The Trial Court’s prior policy on sexual and gender harassment, which took effect on January 7, 2013 and remained in effect at the time of Judge Sushchik’s misconduct, provides: “[Sexual and/or gender harassment] is unacceptable in any form and in any work-related setting, including conferences, meetings, or work-related social events whether during or outside of regular business hours.” Personnel Policies and Procedures Manual, Appendix E, “Massachusetts Trial

¹³¹ Hearing Officer’s Report, at p. 18-19.

¹³² A copy of the Trial Court’s November 4, 2019 policy on sexual and gender harassment is enclosed with the Commission’s Report as Appendix CC.

Court Policy and Procedure for the Elimination of Sexual and Gender Harassment in the Workplace,” p. E-3 (effective January 7, 2013).¹³³

Although the Commission also did not rely on this policy in connection with its recommendation for discipline, the Commission notes that the Trial Court’s policy on sexual and gender harassment, which took effect on January 7, 2013 and remained in effect at the time of Judge Sushchuk’s misconduct, had a zero tolerance policy for sexual and gender harassment, providing, as follows:

“In the situation where an employee has not come forward with a specific complaint, but the manager is aware of an incident that might be in violation of this policy, the manager has a range of options ... The manager might choose to hold a staff meeting to discuss the provisions of this policy, distribute a copy of the policy and remind staff that sexual and gender harassment will not be tolerated in the court. The manager may remind staff that they work in a system dedicated to justice and fairness, and that this type of conduct undermines the integrity of the entire court system.”

Personnel Policies and Procedures Manual, Appendix E, “Massachusetts Trial Court Policy and Procedure for the Elimination of Sexual and Gender Harassment in the Workplace,” p. E-8 (effective January 7, 2013).

3. Judge Sushchuk did not commit a wide variety of improprieties, both on and off the bench, occurring over an extended period of time. Matter of Troy, 364 Mass. 15 (1973).

Although this matter does not involve a wide variety of improprieties, both on and off the bench, occurring over an extended period of time, the Commission agrees with the reasoning of the Hearing Officer that that does not diminish the serious nature of Judge Sushchuk’s misconduct. In the Hearing Officer’s Report to the Commission, the Hearing Officer wrote, “That the misconduct was confined to a single act of short duration neither excuses it nor diminishes its impact or serious nature. The touching engaged in here was offensive and an affront to one’s bodily integrity and dignity.”¹³⁴

4. In connection with its recommendation for discipline, the Commission considered the following aggravating factors:
 - a. Judge Sushchuk’s misconduct was related to his judicial office and was

¹³³ A copy of the Trial Court’s January 7, 2013 policy on sexual and gender harassment is enclosed with the Commission’s Report as Appendix DD.

¹³⁴ Hearing Officer’s Report, at p. 18.

“willful.” M.G.L. c. 211C, sec. 2(5)(b).

Both the Commission and the Hearing Officer found, by the standard of proof of clear and convincing evidence, that Judge Sushchyk engaged in an intentional or “willful,” nonconsensual touching of the left side of Ms. Deines’ buttocks, while attending a Probate and Family Court conference, as described in the above findings.

- b. Judge Sushchyk knowingly and intentionally provided an inaccurate written statement to Chief Justice of the Probate and Family Court John Casey, during Chief Justice Casey’s investigation of Ms. Deines’ complaint against Judge Sushchyk, as described in the above findings; and as Judge Josephson found in her Hearing Officer’s Report, “Judge Sushchyk’s testimony at hearing is a further instance of his failure to be truthful in this matter.”

The Commission agrees with the findings and reasoning of the Hearing Officer in connection with the Hearing Officer’s recommendation for discipline in this matter. In connection with the Hearing Officer’s recommendation for discipline, the Hearing Officer found, as follows:

“While the range of sanctions is broad, in this case, there are few appropriate ones available, not only because of the nature of of [sic] the misconduct, but also because it has been compounded by Judge Sushchyk’s misrepresentations during the investigation. His written account to the Chief Justice contained deliberate falsehoods, as Judge Sushchyk admitted at hearing. The suggestion that his initial account of inadvertent, fleeting touching was concocted in deference to his belief in Ms. Deines’ veracity, fails to recognize that his written version of events was a fiction that excuses his wrong-doing and falsely attacks Ms. Deines’ perception of reality. If Judge Sushchyk indeed knew he did not do as Ms. Deines claimed, he was required to tell that truth rather than invent a tale. The path he chose supports the conclusion that he was attempting evade responsibility for his act.

“Further, Judge Sushchyk tried to bolster his lie by manufacturing details that were not true either. He denied contact at a time that would support Ms. Deines version of events, instead inventing a trip away from and back to the table while Ms. Deines was present when that simply was not true. He offered that he was ‘unsteady in his feet’ owing, in part, to alcohol, and then denied under oath that he had difficulty or was affected by alcohol. He initially admitted touching Ms. Deines inadvertently, but under

oath denied he had any unintentional contact. He presented his written account as his specific recollection when, in fact, he had no such recollection of events he recounted because they never occurred. The lapses here are intentional and were designed to mislead the authority investigating the claim. His testimony at hearing also was contrary to the facts proven by clear and convincing evidence.”¹³⁵

5. In connection with its recommendation for discipline, the Commission did not find that there were any mitigating factors to consider.

VII. CONCLUSION

For all of the above reasons, the Commission respectfully recommends that the Supreme Judicial Court adopt the Commission’s Recommendation for Discipline against Judge Sushchyk.

Respectfully submitted,
For the Commission on Judicial Conduct,

Julie J. Bernard HVN

Julie J. Bernard
Chair

Dated: November 23, 2020

¹³⁵ Hearing Officer’s Report, at p. 19-20.