

APPENDIX E

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Number 2019-27

FORMAL CHARGES

The Commission on Judicial Conduct ("the Commission"), acting pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), hereby notifies the Honorable Paul M. Sushchuk ("Judge Sushchuk"), Associate Justice of the Probate and Family Court Department, that it has found sufficient cause to issue Formal Charges in the above-numbered matter. These Formal Charges incorporate Commission Complaint Number 2019-27.

These charges grew out of the investigation of a complaint filed with the Commission by Chief Justice of the Supreme Judicial Court Ralph D. Gants on June 4, 2019. As a result of that investigation, on July 16, 2019, the Commission issued a Statement of Allegations pursuant to M.G.L. c. 211C, sec. 5(5). Judge Sushchuk received the Statement of Allegations on July 18, 2019. Judge Sushchuk's response to the Statement of Allegations was filed with the Commission on August 7, 2019 by his attorney, Mr. Michael P. Angelini, Esq. Judge Sushchuk appeared before the Commission with Mr. Angelini on September 10, 2019, pursuant to M.G.L. c. 211C, sec. 5(7). On November 12, 2019, the Commission issued an amended Statement of Allegations, pursuant to M.G.L. c. 211C, sec. 5(12). Judge Sushchuk received the amended Statement of Allegations through his attorney, Mr. Angelini, on November 14, 2019. Judge Sushchuk did not further respond to the amended Statement of Allegations.

The Commission also hereby notifies Judge Sushchuk that, pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), he has ten (10) days after service of these Formal Charges in which to file a written response with the Commission. The response should set forth in concise language all denials, affirmative defenses, and any other matters upon which Judge Sushchuk intends to rely at the hearing on these charges. Upon the filing of Judge Sushchuk's response or the expiration of the ten days, a copy of the Formal Charges and of Judge Sushchuk's response shall be filed with the Supreme Judicial Court. Upon this filing, the confidentiality of the Formal Charges and any response thereto shall cease.

The Commission charges that Judge Sushchuk has engaged in willful judicial misconduct that brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer, and has violated the Massachusetts Code of Judicial Conduct (Supreme Judicial Court Rule 3:09), by failing to comply with the law, including the Code of Judicial Conduct, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and/or by failing to avoid impropriety and/or the appearance of impropriety, in violation of Rule 1.2; by failing to perform the duties of judicial office without bias, prejudice, or harassment, in violation of Rule 2.3(A); by failing, in the performance of judicial duties, to refrain from manifesting bias or prejudice or engaging in harassment, in violation of Rule 2.3(B); by failing 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 2.8(B); and by participating 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).

The Commission charges Judge Sushchik for the following alleged conduct:

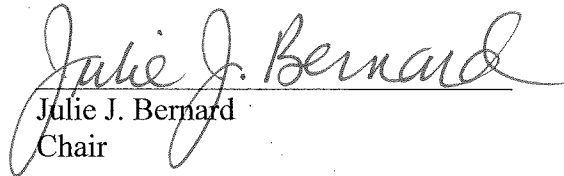
- A. Judge Sushchik was appointed as a judge in 2018. Judge Sushchik is an Associate Justice of the Massachusetts Probate and Family Court.
- B. Ms. Emily Deines ("Ms. Deines") is employed as a Field Coordinator for the Administrative Office of the Massachusetts Probate and Family Court. Ms. Deines has served in that position for approximately six to seven years. As part of her position, Ms. Deines was responsible for helping to plan a two-day judicial conference for judges of the Massachusetts Probate and Family Court at the Ocean Edge Resort and Golf Club ("Ocean Edge") in Brewster, Massachusetts on April 25 and 26, 2019. Ms. Deines was required to attend the entirety of that conference. Judge Sushchik also attended that conference.
- C. On April 25, 2019, Ms. Deines, Judge Sushchik and other participants in the judicial conference attended a dinner at Ocean Edge, which began at approximately 7:00 p.m. Following that dinner, Ms. Deines left the dining area and entered the Bayzo's Pub, which is also part of Ocean Edge. She sat on a bar-height stool at a bar-height table. She was at the Bayzo's Pub with three co-workers from the Massachusetts Probate and Family Court: Ms. Evelyn Patsos ("Ms. Patsos"), Ms. Jocelynne Welsh, and Ms. Christine Yurgelun.
- D. Beginning at approximately 9:00 p.m. on April 25, 2019, the following events then took place at the Bayzo's Pub:
 1. Judge Sushchik approached the table at the Bayzo's Pub where Ms. Deines was seated. When he reached the table, Judge Sushchik proceeded to walk behind Ms. Deines.
 2. As Judge Sushchik passed behind Ms. Deines, he intentionally, without justification or excuse, and without invitation or consent from Ms. Deines, placed one of his hands under Ms. Deines' buttocks or buttock and pinched or squeezed her buttocks or buttock.
 3. Judge Sushchik's touching of Ms. Deines' buttocks or buttock was unwelcomed by Ms. Deines. It also violated the Massachusetts Trial Court's January 7, 2013 "policy and procedure for the elimination of sexual and gender harassment in the workplace."

4. Judge Sushchyk then continued to walk behind Ms. Deines and toward Ms. Patsos.
5. Judge Sushchyk then began speaking with Ms. Patsos. While still in the area of the table Ms. Deines was seated at, Judge Sushchyk removed a silver flask from his coat pocket. Judge Sushchyk stated that the flask contained whiskey.

Through the above-described conduct, the Commission charges that Judge Sushchyk has violated the Massachusetts Code of Judicial Conduct (Supreme Judicial Court Rule 3:09), by failing to comply with the law, including the Code of Judicial Conduct, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and/or by failing to avoid impropriety and/or the appearance of impropriety, in violation of Rule 1.2; by failing to perform the duties of judicial office without bias, prejudice, or harassment, in violation of Rule 2.3(A); by failing, in the performance of judicial duties, to refrain from manifesting bias or prejudice or engaging in harassment, in violation of Rule 2.3(B); by failing 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 2.8(B); and by participating 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).

The Commission also charges that the conduct set forth above constitutes willful judicial misconduct, conduct prejudicial to the administration of justice and unbecoming a judicial officer, and brings the judicial office into disrepute, in violation of M.G.L. c. 211C.

For the Commission on Judicial Conduct,


Julie J. Bernard
Chair

Date: February 5, 2020

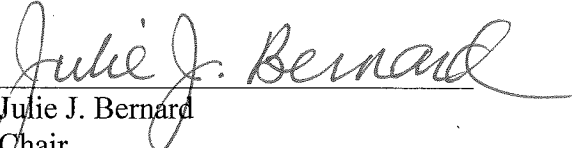
NOTICE OF DISCOVERY RIGHTS PURSUANT TO FORMAL CHARGES

Complaint Number 2019-27

The Commission hereby notifies Judge Paul M. Sushchuk that, pursuant to Commission Rule 9A, the Commission shall, within a reasonable time, make available for inspection upon the written request of the judge all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Commission which are relevant to the issues of the disciplinary hearing, and any written or electronically recorded statements within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding. The failure of the Commission to furnish timely any such materials provided for herein shall not affect the validity of any proceedings before the Commission, provided that such failure is not substantially prejudicial to the judge.

As specified in Commission Rule 9C, nothing in this Notice of Discovery Rights shall be construed to require the discovery of any report made to the Commission by its staff or Special Counsel. Furthermore, in granting discovery, the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of its staff, Special Counsel, or other representative.

For the Commission on Judicial Conduct,


Julie J. Bernard
Chair

Date: February 5, 2020

**COMPLAINT
NUMBER
2019-27**



RALPH D. GANTS
CHIEF JUSTICE

SUPREME JUDICIAL COURT
JOHN ADAMS COURTHOUSE

2019-27

Received
JUN 04 2019
Commission on
Judicial Conduct

June 4, 2019

CONFIDENTIAL

Honorable Julie Bernard
Chair, Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108

Dear Judge Bernard:

Probate and Family Court Chief Justice John Casey sent me the enclosed materials regarding an alleged incident involving a judge in the Probate and Family Court Department. I forward the materials to you for such action as the Commission on Judicial Conduct deems appropriate.

Sincerely,

Ralph D. Gants

Enclosures

cc: Chief Justice Paula M. Carey
Chief Justice John D. Casey
Howard V. Neff, III, Executive Director, CJC



John D. Casey
CHIEF JUSTICE

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Administrative Office
3 Center Plaza, Suite 210
Boston, MA 02108

2019-27

Telephone: (617) 788-6600

Linda M. Medonis
DEPUTY COURT ADMINISTRATOR

Received

JUN 04 2019

Commission on
Judicial Conduct

May 28, 2019

Hon. Ralph Gants
Chief Justice
Supreme Judicial Court
One Pemberton Square, Suite 2500
Boston, MA 02108

&

Hon. Paula M. Carey
Chief Justice
Executive Office of the Trial Court
One Pemberton Square, Suite 1M500
Boston, MA 02108

Dear Chief Justices Gants and Carey,

Enclosed is an investigation summary of an alleged incident involving Associate Justice Paul M. Sushchyk along with two (2) statements for your review.

Please let me know if I can be of further assistance.

Sincerely,

John D. Casey
Chief Justice

Enc.

CONFIDENTIAL

Investigation Summary prepared by Chief Justice John D. Casey,
Probate and Family Court Department, The Trial Court of the
Commonwealth of Massachusetts on May 28, 2019.

INTRODUCTION

The Probate and Family Court conducts two judicial conferences each calendar year. Attendance is mandatory for all judges unless excused by the Chief Justice. Currently, there is a two day program in the Spring and a one day program in the Fall. The two day program includes one overnight accommodation which is paid from the Department budget allowance.

The Spring Conference was held this year at the Ocean Edge Resort & Golf Club located at 2907 Main Street, Brewster, MA on April 25 and 26, 2019.

Day one of the conference ended shortly after 3:00pm when all judges gathered in their robes for a group photograph. The evening dinner included in the cost of the conference was scheduled for 7:00pm at the resort. Our judges were encouraged to attend but not required. Attendees could purchase beer, wine and other alcoholic and non-alcoholic drinks at their own expense.

Emily Deines is a Field Coordinator for the Administrative Office of the Probate and Family Court. Ms. Deines assists in planning, organizing and overseeing the Conference along with a staff member from the Judicial Institute. Her attendance is required for duration of the conference. The Chief Justice of the Department extended an invitation to the administrative staff attorneys to attend the conference. There

were four administrative staff attorneys who attended the Conference and dinner.

ALLEGATION

Emily Deines is assigned to the western divisions. Her office is located in our Hampden Division. One of her duties is to support the Education Committee and to be the on-site coordinator at the conferences. She, in fact, was the coordinator present at the Spring Conference.

On Thursday, May 2, 2019, Ms. Deines contacted me and asked to speak with me about an incident that occurred the evening of April 25, 2019. She reported that at approximately 9:00pm on April 25, 2019 that Associate Justice Paul M. Sushchuk had grabbed her posterior, below the waist and above the thigh while they were both in the Bayzos Pub at the Ocean Edge Resort. She stated that she did not know how to react and waited a short time and left the Pub. She was sitting with three of the administrative staff attorneys at a high top table, one of whom was Evelyn Patsos. Ms. Deines reported that she looked to Attorney Patsos for any indication that she may have seen the incident. There was no such indication at that time and Ms. Deines then left and returned to her room.

Ms. Deines reports that she spoke with her husband about the incident and also with Attorney Patsos, who indicated that she did not observe the incident. Ms. Deines expressed some reservation about reporting the incident as she was concerned this allegation could have a negative impact on her career.

I told Ms. Deines that this was a very serious matter that could not be ignored given that the Trial Court has a zero tolerance policy as reflected in our sexual and gender harassment policy. I advised Ms.

Deines that I would discuss the matter with Trial Court Chief Justice Carey and advise Ms. Deines what steps would be taken concerning this allegation. I also asked her if she would please prepare a written statement which she agreed to do. A copy of her statement is attached and hereby referred to as "Exhibit 1".

I spoke with Chief Justice Carey and Probate and Family Court Deputy Court Administrator Linda M. Medonis. I decided that I would begin my investigation by speaking privately with Judge Sushchyk. I scheduled a meeting with Judge Sushchyk and met with him on May 10 in his lobby.

I handed the written statement of Ms. Deines to the Judge and asked him to read the statement. He appeared to read the statement, folded it, placed it on his desk and stated that he "couldn't have done this" that he "could not recall this incident" and that "if anything like that had happened he would be able to recall it".

Judge Sushchyk stated that he had one drink at the bar at the resort. He then went on to explain that he had a serious health condition which required surgery five years prior and that it was embarrassing but one of the side effects of the surgery was that he had no sexual drive.

The Judge stated numerous times that "I would never do anything like that" and that "I am not that kind of person, I would never intentionally hurt anyone, but especially a woman". The judge also stated numerous times that he would apologize to Ms. Deines in-person or in-writing, if she preferred.

I advised the Judge that I would be sharing the results of my investigation with Ms. Deines, Chief Justice Carey and Supreme Judicial Court Chief Justice Gants. I suggested he consider preparing a written statement regarding the incident. A copy of his statement is attached and hereby referred to as "Exhibit 2".

I offered to provide Ms. Deines with a copy of the statement but she requested instead that I summarize the statement for her, which I did.

I also met with Attorney Evelyn Patsos of the Administrative Office. She had been made aware of the incident directly by Ms. Deines. She confirmed that she, Ms. Deines, Administrative Staff Attorneys Christine Yurgulen and Jocelynn Welsh were sitting at a high top table of the Bayzos Pub at approximately 9:00pm on April 25, 2019.

She stated that shortly before that time Judge Sushchuk approached the table and stood between her and Ms. Deines. Attorney Patsos and Judge Sushchuk knew each other because of their past dealings when she worked as a Family Court Facilitator at the Worcester County Registry of Probate and he was a practicing attorney doing business with the Registry.

Attorney Patsos affirmed that Ms. Deines had asked her if she observed any physical contact initiated by the Judge against Ms. Deines. She said that she had not noticed any such contact but did recall Ms. Deines leaving the Pub shortly after 9:00pm.

On Tuesday, May 14, I met with Ms. Deines in-person and updated her as to the status of the investigation. I explained that I would be preparing a written report which would be provided to Chief Justices Gants and Carey and that ultimately, Chief Justice Gants would decide what if any action should be taken. She repeated that she wanted closure and that if the Judge acknowledged the incident, apologized and she had reason to believe it would not happen again that is the only relief she wanted. I explained that the decision would be up to Chief Justice Gants and that it was possible that my report and the written statements would be forwarded to the Commission on Judicial Conduct. Ms. Deines stated that she would respect whatever decision was made and that she would cooperate with any further investigation.

I also informed Judge Sushchuk of the same procedures and he became emotional and again said he did not intentionally touch Ms. Deines and that if he had, it was a complete accident, and that he would apologize to Ms. Deines. He stated that he would never drink alcohol at any future judicial conferences and that he would treat Ms. Deines with the utmost respect in any future dealing they might have.

CONCLUSION

It appears that a combination of factors including alcohol consumption and the layout of the Pub resulted in there being non-consensual physical contact between Ms. Deines and Judge Sushchuk on the evening of April 25, 2019, which was initiated by the Judge.

Exhibit 1

Emily Deines, typed 4/29/19 at 3 PM

At or around 9 PM on Thursday April 25, 2019, someone grabbed my left buttock while I was seated on a stool at the Bayzos Pub at the Ocean Edge Resort during the Probate and Family Court's Spring Judicial Conference. I believe the person who grabbed me was Paul Sushchuk because he had recently come over to the table where I was seated and was the only person directly behind me at the time of the grab. The following other individuals were either seated at the table with me or were in the direct vicinity:

Evelyn Patsos

Jocelynn Welsh

Christine Yurgelun

The grab lasted a few seconds and felt like it was made using a full hand. I did not address this with Judge Sushchuk, or anyone else at the table, at the time. I did try to make eye contact with Evelyn Patsos before leaving a few minutes later.

Statement

I, Paul M. Sushchuk, make the following statement of events of the evening of April 25, 2019, to my best belief and knowledge.

After the conclusion of the evening dinner event at the 2019 Probate and Family Judicial Conference, I, along with a number of other colleagues, went to the Bayzos Pub.

The Bayzos Pub is in the basement of main building at the Ocean Edge. The Pub has a long bar against the back wall, which seats approximately 10-12 persons. Opposite the bar are two square brick pillars, which form arches supporting the roof.

On the evening of April 25, 2019, there was a high round table, with four stools, in front of one of the brick pillars. There were other tables immediately to the left, rear and right side. The seats at the bar were full and patrons were sitting at the other tables.

I saw Atty. Patsos sitting on a stool at the round table in front of the brick pillar. She was there with four other women at the table. I had become acquainted with Atty. Patsos when she worked at the Worcester Registry of Probate Office. I came over to the table where she was sitting and joined the table.

I recall that Ms. Patsos was to my left. Opposite me were Ms. C. Yurgelun, Ms. J. Welsh and Ms. Deines. I recall that Ms. Deines occupied the seat at the table adjacent to the brick pillar.

I inquired and ordered drinks for two of the persons present and then one (Jameson whisky and water) for myself. I had one alcoholic drink (whisky and water) during the evening, at the hospitality suite gathering prior to the evening meal.

Over a period of time, I consumed a portion of the whisky and water and then excused myself from the table to use the men's room. I walked around the backside of the brick pillar, and threaded my way to the men's room, between the tables and seated patrons.

Having completed my use of the facilities, I began my return to our table, again threading my way between the patrons and the tables. I was somewhat unsteady on my feet, feeling the effects of past hip replacement surgery, the long day (I had driven to Brewster that morning from Sterling), the evening meal and the alcohol consumed. 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. I then returned to my seat at the table, rejoining Ms. Patsos, Ms. Yurgelun, Ms. Welsh and Ms. Deines.

Signed this 20th day of May, 2019.

/S/

Paul M. Sushchuk