

APPENDIX H

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February 24, 2020

VIA FACSIMILE 617-557-1145
AND FIRST CLASS MAIL

Mr. Francis V. Kenneally
Clerk of the Supreme Judicial Court for the Commonwealth
John Adams Courthouse, Suite 1400
One Pemberton Square
Boston, MA 02108-1724

Re: Commission on Judicial Conduct Complaint #2019-27

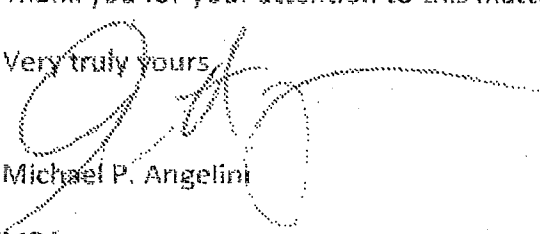
Dear Mr. Kenneally:

Enclosed please find the following in connection with the above-referenced matter:

1. Response by the Judge to the Motion to Impound and Cross Motion to Impound; and
2. Affidavit of Michael P. Angelini.

Thank you for your attention to this matter.

Very truly yours,


Michael P. Angelini

MPA:cas
Enclosure

cc: Mr. Howard D. Neff, III

4835-7624-3685.1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

COMMISSION ON JUDICIAL CONDUCT
COMMISSION COMPLAINT NUMBER 2019-27IN THE MATTER OF A JUDGEIMPOUNDEDRESPONSE TO MOTION TO IMPOUND AND CROSS MOTION TO IMPOUNDED

The undersigned represents the Judge with respect to this matter.

The Judge denies any improper contact whatsoever with the Complainant. He and his counsel certainly appreciate the sensitivity of this matter and wish to avoid any public disclosure of what we consider to be baseless claims. Obviously, given the Judge's position and responsibility, the disclosure of the Charges will be highly prejudicial.

It is ironic at best that while the Commission is seeking to protect the Complainant from public view, it has notified the Judge that when it files Formal Charges with the Supreme Judicial Court, it intends to issue a press release.

These Charges are of course unproven. No one, including the Complainant, witnessed any physical contact of this nature. If the alleged contact in fact occurred, the perpetrator is unknown. After it occurred, the Complainant first saw the Judge thirty seconds later. The Complainant has acknowledged that no percipient knowledge that the Judge committed this act, which allegedly occurred in a crowded bar. While there is no apparent reason, and no indicated reason, for any concern that she has about "media attention and possible threats being directed against the Complainant and her family when her identity becomes public," if this matter receives public exposure, it will almost certainly be to the much greater disadvantage of the Judge than it will be to her.

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It is highly doubtful that these claims made can be supported. If the Complainant is not prepared to take public responsibility for making them, she should not make them.

According to the Complainant, at the time of this incident she was seated on a backless bar-height stool. The Judge has acknowledged that he walked in the area behind the Complainant sometime that evening, but so did many others, and given her weight and the manner in which she was seated, what she has described is implausible. Expert testimony will demonstrate that the claim that anyone could have "placed one of his hands [under] her buttocks or buttock and pinched or squeezed her buttocks or buttock" would have been impossible without lifting her off of the bar stool. Moreover, she did not react in any way to indicate that anything like what is claimed had occurred. Indeed, according to the Complainant, as she was leaving the event later that evening she spoke with Chief Justice Casey and his wife, who were seated at the adjoining bar, and made no mention whatsoever of what she now claims had occurred.

The Commission's charge that the Judge "removed a silver flask from his coat pocket" is also inconsistent with the Complainant's sworn testimony, which is that at some point that evening, during the course of friendly banter with her and others, the Judge opened his suit jacket and showed those present a silver flask in the jacket's breast pocket. The claim that he "removed a silver flask from his pocket" is directly contrary to that sworn testimony.

The burden is on the Commission to prove these charges by clear and convincing evidence. The only evidence is circumstantial. Generously stated, it is that at some point the Complainant saw the Judge walking in her direction and that, approximately thirty seconds after this alleged incident, she saw the Judge standing to her left.

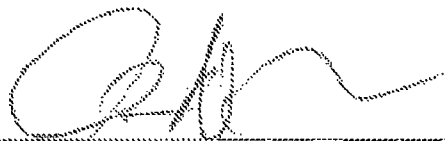
In the interest of protecting his rights of privacy and to be free of public ridicule without reason and in the interest of avoiding disparity of treatment, we request that these entire

proceedings be impounded or, in the alternative, that the name of the Judge and the Complainant each be impounded.

Respectfully Submitted,

HON. PAUL M. SUSHCHYK

By His Attorney,



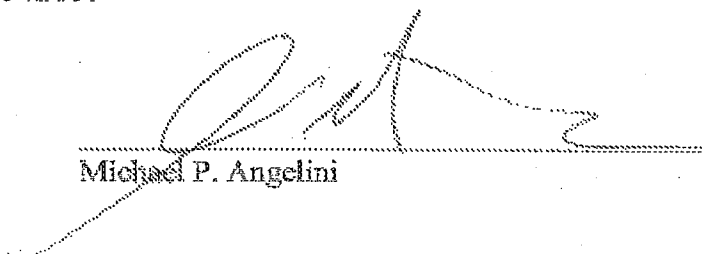
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Date: February 24, 2020

CERTIFICATE OF SERVICE

I, Michael P. Angelini, hereby certify that I have served a copy of the foregoing on the following by facsimile and mailing same, postage prepaid, this 24th day of February 2020, to:

Mr. Howard D. Neff, III
Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108



Michael P. Angelini

COMMONWEALTH OF MASSACHUSETTS


SUFFOLK, ss.

COMMISSION ON JUDICIAL CONDUCT
COMMISSION COMPLAINT NUMBER 2019-27IN THE MATTER OF A JUDGEIMPOUNDEDAFFIDAVIT OF MICHAEL P. ANGELINI

I, Michael P. Angelini, counsel for the Judge in this proceeding, submit this Affidavit, as follows:

1. The statements made in the accompanying Response by the Judge to the Motion to Impound and Cross Motion to Impound are true, to the best of my knowledge and belief.
2. If equity favors protecting the Complainant and her family from media attention, it certainly at least equally favors protecting the Judge from such attention.
3. The assertion that the Complainant has "concern about... possible threats against her and her family" is noticeably unsupported and implausible. To the contrary, the likelihood that the Judge (and therefore the judiciary) will be subjected to ridicule if there is public disclosure of this allegation is entirely predictable. This is an unwitnessed and entirely speculative claim. The effect of public disclosure will be extensive and irreparable, and not in the public interest.

Signed under the pains and penalties of perjury this 24th day of February, 2020.


Michael P. Angelini

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