

APPENDIX Q



**COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT
11 BEACON STREET, SUITE 525
BOSTON, MASSACHUSETTS 02108-3006
Phone: (617) 725-8050
Fax: (617) 248-9938**

July 15, 2020

BY EMAIL (amy.stewart@jud.state.ma.us)

Ms. Amy C. Stewart
Second Assistant Clerk
Office of Clerk Maura S. Doyle
Supreme Judicial Court for the County of Suffolk
1 Pemberton Square
Boston, MA 02108

RE: Paul M. Sushchyk v. Commission on Judicial Conduct, SJ-2020-0524

Dear Assistant Clerk Stewart:

Please find enclosed for filing in the above-referenced matter the "Commission on Judicial Conduct's Opposition to Judge Paul M. Sushchyk's Petition, Pursuant to M.G.L. c. 211, sec. 3, to Delay the Formal Hearing on the Charges of Judicial Misconduct against him."

If you need any additional information about this matter or have any questions or concerns, please feel free to contact me at 617-725-8050.

Thank you very much for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Howard V. Neff, III".

Howard V. Neff, III
Executive Director

Enclosure

cc: Mr. Michael P. Angelini, Esq. (with enclosure) (via email: mangelini@bowditch.com)

**The COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

IN RE: PAUL M. SUSHCHYK

SUFFOLK, ss.

SJC Case No. OE-143/SJ-2020-0524

**COMMISSION ON JUDICIAL CONDUCT'S OPPOSITION TO
JUDGE PAUL M. SUSHCHYK'S PETITION, PURSUANT TO G.L. 211, SEC. 3,
TO DELAY THE FORMAL HEARING ON THE CHARGES OF JUDICIAL
MISCONDUCT AGAINST HIM**

Now comes the Commission on Judicial Conduct ("Commission"), in the above-captioned matter, and respectfully requests that this Court deny Judge Paul M.

Sushchyk's ("Judge Sushchyk") petition, brought pursuant to M.G.L. c. 211, sec. 3, asking that the Court "order[] the Hearing [on the formal charges of judicial misconduct brought against him] be continued to a date when it can be conducted in person."

The Commission respectfully submits that granting Judge Sushchyk's petition based on his arguments, which are likely to come up in many, if not most, virtual hearings covered by the Court's Order of July 7, 2020 (attached hereto as Exhibit A) would effectively negate the Court's Order granting the Commission and other offices authority "to conduct any hearing virtually" "[t]o safeguard the health and safety of the public and personnel during the COVID-19 (coronavirus) pandemic." Exhibit 2 of Judge Sushchyk's own petition includes a July 9, 2020 email from the Hearing Officer appointed to this matter by the Court, Judge Bertha D. Josephson ("Judge Josephson"), in which she acknowledges the Commission's authority to conduct the hearing in SJC No. OE-143 virtually.

Moreover, granting Judge Sushchik's request to delay the formal public hearing would also violate the plain language of M.G.L. c. 211C, sec. 7, which establishes that "[t]he commission shall establish the time and place of the hearing," and Commission Rule 6U, which grants the Commission's Chair the authority "for good cause" to "extend the time for commencement of a hearing."

FACTS

The Formal Charges and Judge Sushchik's response to the Formal Charges were filed with the Supreme Judicial Court on February 11, 2020. Since that filing, the Hearing Officer appointed to this matter by the Court, Judge Josephson, Counsel for the Commission, Howard V. Neff, III, Esq. ("Mr. Neff"), and Counsel for Judge Sushchik, Mr. Michael P. Angelini, Esq. ("Mr. Angelini") have participated in remote conferences by phone or videoconference on April 9, May 22, June 15, and July 3, 2020.

Mr. Angelini deposed one party, Ms. Emily Deines, in person, on December 13, 2019. Following the closures forced by the ongoing pandemic, this matter has continued to move forward, albeit at a slower than normal pace. Four witnesses in this matter were deposed by video conference between March 2020 and the end of May 2020.

At the May 22, 2020 videoconference, Judge Josephson discussed setting July 13, 2020 or July 20, 2020 as prospective dates for the formal hearing in this matter, "subject to the Commission's approval and subject to courtroom availability and access to proceed." At its June 9, 2020 meeting, the Commission discussed the two prospective dates and tentatively set Monday, July 20, 2020 as the date for the formal hearing in this matter, subject to safety conditions relating to the ongoing pandemic. At the subsequent June 15, 2020 conference with Judge Josephson and Mr. Angelini, Mr. Neff advised

Judge Josephson and Mr. Angelini that the Commission had set July 20, 2020 as a tentative date for the formal hearing, subject to safety considerations relating to the pandemic.

During this June 15, 2020 conference, Judge Josephson mentioned the possibility that a courtroom at the Hampshire County Superior Court could be secured for purposes of the hearing in this matter. During this conference, Mr. Neff first raised a question regarding whether witnesses with safety concerns would be able to appear by videoconference, rather than in person. Judge Josephson took no position on that issue at that time, but did indicate that she would permit a single witness expected to be traveling during the week of July 20, 2020 to appear by videoconference, if necessary.

It was not until the next conference on July 1, 2020 that Judge Josephson notified Mr. Neff that a courtroom would be available for the hearing in this matter at the Hampshire County Superior Court. At that conference, among other matters discussed, Mr. Neff again inquired how Judge Josephson would respond to any witness concerns about appearing to testify in a public building during the ongoing pandemic. Judge Josephson declined to take a position, instead setting a deadline for Mr. Neff to advise her of any such issue(s) by July 10, 2020.

Beginning on Monday, July 6, 2020, Mr. Neff began notifying all prospective witnesses that a final date of Monday, July 20, 2020 had been set for the hearing in this matter and that the hearing would take place in the Hampshire County Superior Court in Northampton. Later that same day, the complaining witness in this matter, Ms. Emily Deines (“Ms. Deines”) reported to Mr. Neff that she had health and safety concerns for herself and her husband, particularly given that they had plans to be in contact with Ms.

Deines' elderly parents, one of whom (Ms. Deines' mother) was in poor health and currently has Stage IV cancer. Ms. Deines also advised Mr. Neff that an additional planned witness, her sister Ms. Allison Deines, lived out of state and would not be able to appear to testify in person without violating the Governor's current advisory that out-of-state visitors quarantine for at least fourteen days. Finally, Ms. Deines advised Mr. Neff that her husband, who is listed as a witness in this matter, Mr. Lawrence George, was the owner/operator of his own business and had concerns about potential, inadvertent exposure to his staff and customers, if he risked exposure to COVID-19 by appearing in a public courthouse.

On July 6, 2020, Mr. Neff advised Judge Josephson and Mr. Angelini of the concerns expressed Ms. Deines, by email. Mr. Angelini promptly lodged an objection to the health and safety-based requests of Ms. Deines and her family to appear remotely, particularly Ms. Emily Deines' request to appear remotely. One day subsequent to that email exchange, on July 7, 2020, this Court issued an Order granting the Commission authority to "to conduct any hearing virtually" to address precisely the legitimate life and death concerns expressed by Ms. Deines on her own behalf and on behalf of her family. After considering the legitimate health and safety concerns expressed by Ms. Deines and her family, the Commission voted to conduct the hearing in this matter virtually. On July 9, 2020, Mr. Neff advised Judge Josephson and Mr. Angelini that the Commission had voted to conduct the formal hearing in this matter remotely by videoconference, beginning on the planned start date of July 20, 2020.

In a July 9, 2020 email sent only to Mr. Neff and Judge Josephson, Mr. Angelini wrote that he would prefer "that the hearing be deferred so that it can be conducted

actually rather than virtually.” Mr. Angelini did not offer or predict a date on which an in-person or “actual” hearing could be conducted safely. Nonetheless, later that same day, Mr. Neff forwarded Mr. Angelini’s request to defer the formal hearing to the Commission’s Chair, Judge Julie J. Bernard (“Judge Bernard”), because, as Commission Chair, she is the only party vested with authority to postpone a formal hearing date. *See* CJC Rule 6U. After Mr. Neff advised the Commission’s Chair of Mr. Angelini’s request, Judge Bernard then spoke with Mr. Neff the following day and directed him to contact Mr. Angelini and Judge Josephson and advise them that she had considered and denied Mr. Angelini’s request to defer the hearing (portions of this exchange which took place by email are attached to Mr. Angelini’s petition as Exhibit 2).

On July 10, 2020, the Commission provided Judge Josephson and Mr. Angelini with a set of protocols it voted to adopt in connection with virtual hearings (attached hereto as Exhibit B).

As the matter currently stands, the Commission has notified fourteen of its planned fifteen witnesses that the Commission voted to make the July 20, 2020 hearing in this matter a remote one, for reasons of health and safety. After initially being advised that no court reporter was willing to travel to the Hampshire County Superior Court for reasons that included risk of exposure to COVID-19 (an email from the stenographic company is attached hereto as Exhibit C), the Commission was eventually able to arrange its usual court reporting service, Doris O. Wong, Inc., to remotely transcribe and record an audio/visual record of the formal hearing.

ARGUMENT

Counsel for Judge Sushchik correctly points out that M.G.L. c. 211C, sec 7(3) provides that “[t]he formal hearing shall be public and shall be conducted before the hearing officer appointed by the supreme judicial court . . . and the judge shall be accorded due process of law.” The Commission has every intention of making the hearing available to the public, by utilizing the Zoom videoconference platform, which permits up to 100 people to observe the hearing at any given time, and by including the Meeting ID and Password for that videoconference in a press release to be sent prior to the hearing (a draft press release is attached hereto (without enclosures) as Exhibit D).

Despite Mr. Angelini’s secondary, speculative attempt to argue that there is a right to a face-to-face confrontation in this matter because Judge Sushchik “is potentially subject to criminal prosecution,” the law simply does not support his position. There is no right to confrontation in a civil matter. Crawford v. Washington, 541 U.S. 36, 54 (2004). The hearing at issue is a civil administrative/disciplinary matter.

The Commission also respectfully suggests that Mr. Angelini’s expressed concerns related to due process and a “tilt[ing]” of the playing field “in favor of Commission’s prosecution” of this matter is completely unfounded. The Commission has made a reasoned and thoughtful decision, based upon unprecedented circumstances related to the ongoing pandemic, and the authority granted to it by its enabling statute, its Rules, and the Court July 7, 2020 Order, to deny Mr. Angelini’s request for an indefinite deferral of the hearing in this matter. Moreover, the Commission and Judge Sushchik will face the same potential challenges to presenting physical and/or photographic evidence and witness testimony to the Hearing Officer through a computer screen. The

experienced Hearing Officer appointed to this matter by the Court will remain able to make credibility determinations based on her observations of the tone, demeanor, and physical presentation of the witnesses. The Commission also has every confidence that the Hearing Officer will accommodate the reasonable requests of Judge Sushchuk to present visual demonstrations, if the same are deemed admissible, and any requests for the presentation of large exhibits.

Mr. Angelini also argues that a virtual hearing unfairly limits his use of photographs. Photographic exhibits used during a Zoom videoconference hearing can be displayed across the entire screen of a viewer and electronic copies of all exhibits will be provided to the Hearing Officer prior to the formal hearing. *See* Item 8(a) of the Commission's CJC Temporary Order Emergency Order on Protocols for Remote Formal Hearings. If the mere prospect of challenges presenting photographic exhibits were allowed to become a sufficient barrier to allow for an indefinite continuance of any virtual hearing, the Commission respectfully suggests that many of the hearings contemplated by the Court's July 7, 2020 Order would likely be subject to similar requests for indefinite deferral.

Finally, Mr. Angelini argues that a videoconference hearing will unfairly limit his ability to present a demonstration relating to Judge Sushchuk's alleged assault of Ms. Deines, using a barstool "comparable" to the one on which she was seated at the time of the alleged assault. In a May 21, 2020 letter relating to this matter, Mr. Angelini notified the Commission, as follows: "The only tangible item that I currently intend to present at the Hearing, in addition to deposition exhibits, is a barstool comparable to the barstool on

which Ms. Deines was seated or was about to be seated at the time of this alleged incident” (a copy of this letter is attached hereto (without enclosures) as Exhibit E).

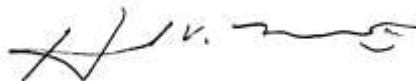
Mr. Angelini’s planned demonstration or experiment is opposed by counsel for the Commission, and Mr. Neff has filed a motion *in limine* to preclude that planned demonstration, which is currently pending before Judge Josephson. As of this writing, Mr. Angelini has failed to provide any information to Mr. Neff or the Hearing Officer regarding how the height, weight, configuration, quantity of cushioning, flexibility of cushioning, or materials used in the “comparable” barstool he intends to use during the formal hearing compare to the qualities of the barstool on which Ms. Deines was actually seated at the time she alleged that Judge Sushchuk improperly grabbed her buttock. As this Court knows, “[a] demonstration is appropriate if it is relevant, Commonwealth v. Darby, 37 Mass. App. Ct. 650, 653 (1994), if it is not substantially more prejudicial than probative, *see* Commonwealth v. Rosario, 444 Mass. 550, 557 (2005); Mass. G. Evid. § 403 (2013), and if it “sufficiently resembles the actual event so as to be fair and informative,” Commonwealth v. Perryman, 55 Mass. App. Ct. 187, 193-194 (2002), quoting Terrio v. McDonough, 16 Mass. App. Ct. 163, 173 (1983). *See* Commonwealth v. Butynski, 339 Mass. 151, 153 (1959). The Commission respectfully submits that Mr. Angelini has, as of this writing, failed to make any showing that his planned “demonstration” will produce relevant evidence and “will not be more prejudicial than probative. Serious questions remain whether Mr. Angelini will be able to present his demonstration, even if the hearing is “actual,” as opposed to “virtual.”

CONCLUSION

For the above reasons, the Commission respectfully submits that the Court correctly balanced the concerns of due process against the potentially life-threatening consequences of being exposed to COVID-19, when it issued its July 7, 2020 “Supplemental Order Regarding Virtual Proceedings and Administrations of Oaths and Affirmations,” granting the Commission authority “to conduct any proceeding virtually.”

Given present circumstances, where it is unclear when it will be ever truly be safe to have an actual or in-person hearing, the Commission respectfully submits that fairness to the complaining witness and due process require that the hearing in this matter be allowed to proceed virtually on Monday, July 20, 2020.

Respectfully Submitted,
For the Commission on Judicial Conduct,



by:

Howard V. Neff, III
BBO # 640904
Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108
(617) 725-8050

Dated: July 15, 2020

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

IN RE: PAUL M. SUSHCHYK

SUFFOLK, ss.

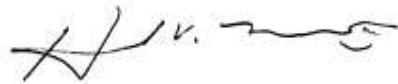
Case No. OE-143

AFFIDAVIT OF HOWARD V. NEFF, III

I, Howard V. Neff, III, Counsel for the Commission on Judicial Conduct in Case No. OE-0143, submit this Affidavit in support of the “Commission on Judicial Conduct’s Opposition to Judge Paul M. Sushchyk’s Petition, Pursuant to M.G.L. c. 211, sec. 3, to Delay the Formal Hearing on the Charges of Judicial Misconduct against him” and do hereby state the following:

1. I am presently employed as the Executive Director of the Commission on Judicial Conduct and have served in that capacity since September of 2012.
2. The assertions in the Commission’s “Commission on Judicial Conduct’s Opposition to Judge Paul M. Sushchyk’s Petition, Pursuant to M.G.L. c. 211, sec. 3, to Delay the Formal Hearing on the Charges of Judicial Misconduct against him” regarding my communications with Mr. Angelini, Judge Josephson, and the witnesses in this matter are true to the best of my knowledge and belief.

Signed under pains and penalties of perjury this 15th day of July, 2020.



Howard V. Neff, III
BBO # 640904
Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108
(617) 725-8050

Dated: July 15, 2020

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

OE-144

In Re: COVID-19 (Coronavirus) Pandemic

SUPPLEMENTAL ORDER REGARDING VIRTUAL PROCEEDINGS
AND ADMINISTRATION OF OATHS AND AFFIRMATIONS

To safeguard the health and safety of the public and personnel during the COVID-19 (coronavirus) pandemic, the Supreme Judicial Court (SJC), pursuant to its superintendence and rule-making authority, issues the following ORDER to clarify the scope of its prior orders concerning virtual operations:

1. Virtual proceedings by certain court-related entities. In light of the COVID-19 pandemic, various prior orders of this Court have required the courts of the Commonwealth to conduct most proceedings virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system). The Board of Bar Examiners, the Board of Bar Overseers, the Clients' Security Board, and the Commission on Judicial Conduct may also elect to conduct any proceeding virtually and may issue protocols to govern such virtual proceedings.

2. Administration of oaths and affirmations. To the extent not already authorized, oaths and affirmations by witnesses may be administered remotely by telephone, videoconference, or comparable means, in any virtual proceeding conducted by the courts of the Commonwealth, the Board of Bar Examiners, the Board of Bar Overseers, the Clients' Security Board, or the Commission on Judicial Conduct, except where it would be inconsistent with constitutional or statutory requirements.

3. Suspension of rules. Any rules or orders that prohibit or otherwise restrict the courts of the Commonwealth, the Board of Bar Examiners, the Board of Bar Overseers, the Clients' Security Board, or the Commission on Judicial Conduct from conducting proceedings virtually or administering oaths and affirmations remotely are suspended until further order of this Court.

This Order is effective as of March 17, 2020, nunc pro tunc, and shall remain in effect until further order of the court.

RALPH D. GANTS)
) Chief Justice
)
BARBARA A. LENK)

)	
)	
<u>FRANK M. GAZIANO</u>)	Justices
)	
)	
<u>DAVID A. LOWY</u>)	
)	
)	
<u>KIMBERLY S. BUDD</u>)	
)	
)	
<u>ELSPETH B. CYPHER</u>)	
)	
)	
<u>SCOTT L. KAFKER</u>)	

Entered: July 7, 2020

Effective: As of March 17, 2020, nunc pro tunc

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

**COMMISSION ON JUDICIAL CONDUCT
SUPREME JUDICIAL COURT**

**CJC TEMPORARY EMERGENCY ORDER ON
PROTOCOLS FOR REMOTE FORMAL HEARINGS**

In light of the public health concerns regarding COVID-19 and the actions previously taken by the Supreme Judicial Court and the Governor in connection therewith, including the Supreme Judicial Court's July 7, 2020 Order granting the Commission on Judicial Conduct (CJC) authority to elect to conduct any proceeding virtually, the CJC issues the following order on protocols regarding the conduct of remote formal judicial disciplinary hearings held pursuant to CJC Rule 10.

Preliminary Matters:

On July 7, 2020, the Supreme Judicial Court authorized the CJC to conduct formal disciplinary hearings via remote teleconferencing. The court further authorized the CJC to issue temporary rules for such hearings. The rules are set forth herein:

As used herein, references to the "hearing officer" shall refer to the hearing officer appointed by the Supreme Judicial Court to preside over a formal judicial disciplinary proceeding, pursuant to CJC Rule 8.

Until the Supreme Judicial Court revokes its July 7, 2020 Order, remote disciplinary hearings are authorized in accordance with the following procedures, effective as of the date of these protocols.

1. Conduct of Hearings:

- a. Hearings shall be conducted using remote videoconferencing technology under the auspices of the CJC. It shall be the responsibility of the parties to ensure the ability of their respective witnesses (to the extent necessary) to participate remotely using such technology, and to provide the CJC, by email to cjcpressrelease@cj.state.ma.us, the names, addresses, telephone numbers, and email addresses of all witnesses who are expected to testify, at least seven days prior to the first day of the scheduled hearing.
- b. The CJC and/or the stenographic company employed by the CJC for the formal hearing shall be the meeting organizer for the videoconference hearing.

2. Display Name:

Each person appearing remotely must confirm that the device used to participate in the remote teleconference is "named" and associated to them. Any person who does not do so may

be excluded in the sole discretion of the hearing officer.

3. Public Access; Persons to be Excluded from the Physical Hearing:

In the interests of public health and safety, members of the general public and the media shall not be permitted to be physically present during any hearing. Except for any impounded portions of a hearing, the public (including the media) may attend remotely. Questions about remote public and media access, including requests to attend remotely, shall be directed to the CJC attorney assigned to the case. The CJC will make reasonable arrangements for remote public access to the public portions of hearings. All members of the public and media shall be required to mute their videoconferencing equipment at all times.

The hearing officer, in his or her sole discretion, may exclude from remote participation any member of the public or media whose behavior is deemed disruptive to the proceedings or who refuses to remain muted. This decision shall not be appealable.

4. Conduct of the Hearing; Stenographer:

As before the COVID-19 State of Emergency, all CJC judicial disciplinary hearings will be transcribed. A stenographer may perform transcription services remotely.

5. Swearing Witnesses:

A witness may be sworn by the stenographer or any other notary public in the presence of the witness. If no notary is available to swear in a witness in person as provided by Mass. General Laws chapter 222, then a remote notary may administer the oath to witness using the procedures outlined in chapter 71 of the Acts of 2020.

6. Examination of Remote Witnesses:

- a. After being sworn in, each remote witness shall, at the beginning of the examination, be questioned about the following: (1) where they are physically located; (2) who is physically in the room with them; (3) what materials and devices they have with them; (4) what is currently on their screen or screens; and (5) whether they are in communication with any persons other than those conducting their examination. At the completion of their examination, witnesses will be asked whether any of the answers to these questions have changed during their testimony. If there are recesses (during the day or at the completion of a day), the witness will be asked the same series of questions at the beginning and end of each session.
- b. Unauthorized communications, including but not limited to private “chats” or other virtual meetings or communications between any counsel and a witness while testifying, or ex parte communications between one counsel and the hearing officer, constitute a violation of Mass. R. Prof. C. 3.5, and 8.4(c), (d) and (h), and is strictly prohibited.

- c. Private communication between co-counsel through the text exchange available in the videoconference platform shall be permitted at all times. Private communication between a represented party and his/her counsel by text exchange shall be permitted at all times, except while that represented party is testifying. Private communication between the Hearing Officer and the stenographer by text exchange shall be permitted at all times during a hearing.

7. Sequestration of Witnesses:

No provision of the Rules of the CJC or S.J.C. Rule 3:09 specifically authorizes or permits the sequestration of witnesses. In light of the logistical difficulties of admitting and excluding witnesses and the general public, sequestration will only be allowed by order of the hearing officer upon motion and for good cause shown with specificity. A general request for sequestration will not be granted.

8. Exhibits:

- a. The parties shall work to assemble a set of agreed and contested exhibits that they may seek to introduce during the formal hearing, with lettered exhibit numbers, in digital form, by a date set by the hearing officer prior to the formal hearing. That set of exhibits will then be provided to the hearing officer prior to the formal hearing.
- b. The parties are encouraged to send (electronically or hard copy) in advance of their testimony any agreed exhibit to witnesses who may be asked to refer to it during their testimony.
- c. Before inquiring of a witness concerning a contested exhibit, counsel shall give advance notice to the hearing officer, opposing counsel, and the meeting organizer of the exhibit letter of the contested exhibit and wait for the hearing officer's instructions before proceeding further. If there is an objection to the proposed exhibit, the document cannot be shown or quoted to the witness until after a ruling by the hearing officer.
- a. All proposed agreed and contested exhibits must be scanned in advance and emailed to the opposing counsel and/or the meeting organizer.
- b. If an exhibit is admitted into evidence, the stenographer shall, as in the usual course, affix an exhibit number sticker to the digital copy entered into evidence, and after the conclusion of the hearing, then provide numbered exhibits to the parties along with the transcript of the hearing.
- c. A document may be used to refresh the recollection of a witness (or for impeachment) without being offered into evidence. However, before inquiring of a witness

concerning such a document, counsel examining a witness about a document shall identify the document to counsel and the hearing officer.

9. General Considerations:

- a. Any matter not explicitly covered by this Temporary Emergency Order will be subject to an order of the CJC Chair, who shall have discretion to resolve procedural issues as they arise. To the extent not covered by this Temporary Emergency Order, the Rules of the CJC shall apply, and if necessary, be adapted for use in remote hearings.
- b. An audio visual recording of the proceedings shall be made solely by the stenographic company employed by the CJC. No other party shall record video and/or audio of these proceedings. Unauthorized recordings of virtual proceedings are impermissible. No participating attorney or witness may record the proceedings. No other person involved in the proceeding or viewing it as a member of the public shall record the proceeding.
- c. Counsel may request, and the Hearing Officer may grant in his/her discretion, a recess from the hearings, and upon request, parties will be placed in private chat rooms.

For the Commission on Judicial Conduct,
Per order of the CJC Chair,

Julie J. Bernard^{HVN}

Julie J. Bernard, Chair

Date: July 10, 2020

EXHIBIT C

Public hearing July 20, 21, 22, 23, 2020

Connie Psaros <cpsaros@doriswong.com>

Wed 7/8/2020 12:16 PM

To: Howard V. Neff, III <hneff@cjc.state.ma.us>;

Dear Mr. Neff:

Thank you for your phone call yesterday regarding the public hearing in Northampton, MA.

I have discussed this with my reporters, and they all have concerns regarding Covid-19, the participant who wants to appear remotely, the strength of the internet connection there, the logistics if everyone were to appear remotely, etc

I'm afraid there are too many moving parts for us to be comfortable accepting this assignment. I sincerely apologize for not being able to accommodate you this time.

Best regards,

Connie Psaros, RPR, CMRS

Vice President

Celebrating our 50th anniversary



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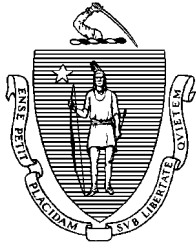
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EXHIBIT D



**COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT
11 BEACON STREET, SUITE 525
BOSTON, MASSACHUSETTS 02108-3006
Phone: (617) 725-8050
Fax: (617) 248-9938**

PRESS RELEASE

CONTACT: Howard V. Neff, III
Executive Director
(617) 725-8050

FOR IMMEDIATE RELEASE
[DATE]

**COMMISSION ON JUDICIAL CONDUCT FILES
FORMAL CHARGES AGAINST JUDGE PAUL M. SUSHCHYK
AND SETS JULY 20, 2020 DATE FOR VIRTUAL FORMAL HEARING**

BOSTON, MA ([DATE]) -- On February 11, 2020, Formal Charges were filed with the Supreme Judicial Court against Judge Paul M. Sushchyk, Associate Justice of the Probate and Family Court Department. Judge Sushchyk's response to the Formal Charges has also been filed with the Supreme Judicial Court. Copies of both documents are attached and have been docketed by the Supreme Judicial Court as SJC No. OE-0143.

The Supreme Judicial Court has appointed retired Judge Bertha Josephson as the Hearing Officer to preside over the public formal hearing in this matter. The Commission has scheduled the formal hearing in this matter to begin on Monday, July 20, 2020, in accordance with G.L. c. 211C and Commission Rule 8. More information about the Commission and its procedures is available on its website: www.mass.gov/cjc.

Pursuant to the Supreme Judicial Court's July 7, 2020 Order permitting virtual hearings during the ongoing COVID-19 pandemic, this hearing will take place with all parties and participants

appearing remotely through the “Zoom” videoconference platform. For those wishing to observe the hearing, the Meeting ID for the videoconference will be 858 2480 1094 and the password will be 538233. Please be advised that participation in, and viewing of, this hearing will be subject to the attached CJC Temporary Emergency Order on Protocols for Remote Formal Hearings.

#

EXHIBIT E

Michael P. Angelini
Direct telephone: 508-926-3400
Direct facsimile: 508-798-3537
Email: mangelini@bowditch.com

May 21, 2020

VIA EMAIL AND FIRST CLASS MAIL

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

Re: Complaint No. 2019-27/SJC OE-0143

Dear Mr. Neff:

The only tangible item that I currently intend to present at the Hearing, in addition to deposition exhibits, is a barstool comparable to the barstool on which Ms. Deines was seated or was about to be seated at the time of this alleged incident. I read Rule 9B(1)(a) as requiring that this response be made prior to the hearing and I reserve the right to identify additional items.

Other than Judge Sushchuk and persons identified in your March 16, 2020 communication to me, I do not currently intend to call any witnesses. It is possible that I will call an expert to provide testimony that the event alleged by Ms. Deines could not have occurred as she has described it and I reserve the right to supplement this response.

Without establishing any precedent or conceding in any way that you are entitled to them, I am enclosing email communications which I have received from some of the persons whom you have identified. I decline to produce any of my notes from any of my conversations with any of those individuals or with others.

Very truly yours,



Michael P. Angelini

MPA:sp

Enclosures

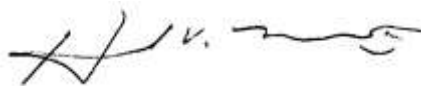
cc: Hon. Bertha Josephson (Ret.) (via email only)

CERTIFICATE OF SERVICE

I, Howard V. Neff, III, attorney for the Commission on Judicial Conduct, hereby certify that I have this day served a copy of the foregoing document upon the party of record in this proceeding, as follows:

By email (mangelini@bowditch.com):

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Dated: July 15, 2020