

APPENDIX U

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

COMMISSION ON JUDICIAL CONDUCT
COMMISSION COMPLAINT NUMBER 2019-27

IN THE MATTER OF A JUDGE

RESPONDENT'S PROPOSED FINDINGS OF FACT

1. I find that there is no clear and convincing evidence indicating who allegedly slid his or her hand under Ms. Deines' left buttock and grabbed her (the "alleged incident") or that, if this occurred, it was done by Judge Sushchyk.

2. I find that the only purported basis for the claim that Judge Sushchyk had intentional physical contact with Ms. Deines while she was seated is her testimony that at a point in time prior to the alleged incident he was to the right of where she was sitting and that at another point in time after the alleged incident he was to the left of where she was sitting and her conclusion that he was the only person behind her at the time of the alleged incident. She claims that she saw him to her right approximately 15 to 20 seconds before the alleged incident (Tr. Vol. 1, p. 157), that the alleged incident lasted somewhere between 5 to 15 seconds (Tr. Vol.1, p. 160) and that within 30 seconds later she saw him to her left (Tr. Vol. 1, p. 179).

3. I also find that Judge Sushchyk had been speaking with Attorney Patsos for far longer than thirty seconds after the alleged incident, and was most likely speaking with Attorney Patsos at the time that Ms. Deines experienced physical contact with her buttocks. According to Ms. Deines "When I turned around – so I turned around and he was having a conversation with Evelyn and – about what they were drinking, and he opened his coat pocket and pulled out a flask." Tr. Vol 1, p. 82. According to Attorney Patsos, and consistent with the testimony of Judge Sushchyk, the first conversation with Judge Sushchyk after he arrived at the table was that "he offered to buy us a drink" (Tr. Vol. 2, p. 181) and he then went up to the bar, bought the

drinks and returned. The conversation regarding the flask came up later, after he returned (Tr. Vol. 2, p 183), which was necessarily at least several minutes, not thirty seconds, after the alleged incident.

4. I find that the claim of Judge Sushchuk's involvement in the alleged incident is purely a matter of speculation, based in part on a speculative assumption that he was the only person who could have done so and that, according to the evidence, that assumption is not supported by any evidence.

5. I find, as Ms. Deines has acknowledged, that she has no knowledge as to who or how many persons were behind her at the time of the alleged incident. Her testimony that "there was no one else directly behind me at that time that I know of, no" (emphasis added) (Tr. Vol. 1, p. 75) was technically accurate because, as she has acknowledged, she had and has no knowledge whatsoever of who or how many people were behind her at that time. Her assumption that Judge Sushchuk was the only person behind her that evening is simply speculative.

I find that at the time of the alleged incident Ms. Deines was conversing with Attorney Jocelyne Welsh, who was seated directly across from her at the small "high top" table at which she was seated on a bar stool, leaning forward with her body against the table, with her elbows and hands on that table and directing her attention towards Attorney Welsh. She had no knowledge whatsoever of anything occurring behind her, including any knowledge as to who, if anyone behind her, initiated physical contact with her.

6. I find that at the time of the alleged incident the area directly behind Ms. Deines' seat was a passageway between the restaurant and bar sections of the Bayzos Pub, through which people would pass to go to and from the bar. Tr. Vol. 1, p. 146. ("That was the route to get to the bar from the restaurant area, right?" Answer: "yes.")

7. She was seated in a crowded area, within 5 to 7 feet of a crowded bar and in the area were people where “milling about, talking with each other and moving around” (Tr. Vol. 1, p. 129), that the bar area was crowded (Tr. Vol. p. 77) and that the Pub had become increasingly crowded from the time that she and her colleagues first sat down. Tr. Vol. 1, p. 145.

8. I find that Ms. Deines’ statement submitted of April 29, 2019 at 3 p.m. that she believed that Judge Sushchuk was the person who grabbed her “because he had recently come over the table where I was seated and was the only person directly behind me at the time of the grab” (emphasis added) is not based on personal knowledge and is not true.

9. I credit Ms. Deines’ testimony that if there were other people behind her any one of them could have grabbed her (Tr. Vol. 1, p. 159), and I find that at the time of the alleged incident there were other people behind her, within a foot of her. Tr. Vol. 3, p. 59.

10. I find that Ms. Deines did not know who was behind her at the time of the grab because as she acknowledged, “I had not turned around before it happened.” Tr. Vol. 1, p. 177.

11. I find that on the evening of April 25, 2019 Judge Sushchuk was not inebriated or in any way under the influence of alcohol, as supported by the testimony of Ms. Deines, Attorney Patsos, Attorney Welsh and Judge Sushchuk.

12. I credit the testimony of Attorney Patsos and I find that the conversation involving her and Judge Sushchuk and Ms. Deines and others later in the evening of April 25, following the alleged incident, was friendly and sociable. Tr. Vol. 2, pp. 196-197.

13. I find that Attorney Patsos was present during the entire period of time at which Ms. Deines was seated at the bar height table and that she had a clear view of Judge Sushchuk and Ms. Deines and saw nothing which was in any way unusual. Tr. Vol. 2, p. 197

14. I credit the testimony of Attorney Patsos and find that she observed Judge Sushchuk as he moved behind Ms. Deines and that he continued moving until he reached Ms. Patsos. In her answers to the Hearing Officer's inquiry she stated emphatically that he was in motion all the time he was moving behind Ms. Deines and that he did not stop behind Ms. Deines. "I did not observe him to stop at any time." Tr. Vol. 2, pp. 200-201.

15. I find that for the alleged incident could not have involved Judge Sushchuk without him stopping for the 5 to 15 seconds during which she claims that she was improperly physically contacted, that the physical contact which she has described would not have been initiated by a person moving, and that he did not stop as he passed behind Ms. Deines.

16. I find that Attorney Patsos and Attorney Welsh were work colleagues of, and friendly with Ms. Deines and I credit their testimony as impartial and reliable.

17. I find that on the evening of April 25 Attorney Welsh was seated directly across the bar height table from Ms. Deines and was fully able to observe everything which occurred behind Ms. Deines (Tr. Vol. 2, pp. 221-222) and that she had an unobstructed view of Ms. Deines, Judge Sushchuk and Attorney Patsos as Judge Sushchuk was approaching the table. Tr. Vol 2., p. 227.

18. I credit the testimony of Attorney Welsh and find that she observed Judge Sushchuk move past Ms. Deines "probably to chat with Evelyn Patsos" (Tr. Vol. 2, p 227) and that "I do not think there was any time element that I recall with Judge Sushchuk stopping behind Emily" and I find that as a fact.

19. I credit the testimony of Attorney Welsh and find that as Judge Sushchuk approached the table, the first time he was next to Attorney Patsos and Attorney Welsh did not

observe any contact between Judge Sushchuk and Ms. Deines on April 25, 2019. Tr. Vol. 2, p. 233.

20. I find that in order for Judge Sushchuk to have committed the act which the Commission has charged him with, he would have had to stand behind Ms. Deines for period of 5 to 15 seconds. I find that this did not occur, crediting the testimony of Judge Sushchuk as well as that of Attorney Patsos and Attorney Welsh that as he approached the tale and passed behind Ms. Deines he did not stop until standing next to Attorney Patsos.

21. I credit the testimony of Attorney Patsos that she observed nothing unusual and no physical contact between Ms. Deines and Judge Sushchuk and find that if there had been any such contact, it would have been observed by Attorney Patsos.

22. I find that there is no credible evidence which supports the claim made by the Commission regarding physical contact between Judge Sushchuk and Ms. Deines.

23. I find that even aside from the absence of any evidence that Judge Sushchuk had any intentional physical contact with Ms. Deines, the Commission has produced no evidence suggesting any motive, inclination or purpose attributable to Judge Sushchuk which would indicate any plausible connection between him and the alleged incident. There is no evidence of any pattern or practice of Judge Sushchuk ever doing anything of this nature and nothing to suggest any inclination on his part to do anything of this nature, particularly at an event with his colleagues of Probate Court Judges.

24. I find that there is no evidence which would support any motive by Judge Sushchuk to do anything at all harmful to Ms. Deines and find that on April 25 he did not even recognize her as someone he had previously met.

25. I also find that Ms. Deines' statements regarding the alleged incident reflect her uncertainty regarding it. Her text message on April 25 at 9:25 pm (Exhibit 5) notably says that "I think one of the judges grabbed my butt on purpose." (emphasis added). That same text messages indicates that " he is also carrying a hip flash, so maybe just fell? Except it was a distinct pinch." Whether there was a distinct pinch, whether someone fell, whether the incident happened by accident and who was involved with it was a matter of about which, within an hour after something is claimed to have occurred, Ms. Deines was obviously not certain. That uncertainty is confirmed by what she wrote the next afternoon to two of her friends, indicating not that someone had grabbed or pinched her and slid a hand under buttocks but that she had been "palmed." Tr. Vol. 1, p. 198-199, 207 and Exhibit 7. The latter text does indicate that even at that time she felt that this may have been "a mistake", a conclusion inconsistent with what is claimed by the Commission.

26. That she claimed to have concluded that it was not a mistake because, she said, Judge Sushchuk spent the day "hovering uncomfortably around me" raises additional doubt about what had actually occurred, since both her and Judge Sushchuk's testimony established that he did nothing of the sort. Tr. Vol. 1, p. 208. Aside from her claim that she saw him "at a distance" sometime that morning and that, according to her, they sat at different tables in the same room for a group luncheon. I find there was no interaction whatsoever between them that day and that Judge Sushchuk did not hover around her. I find that Ms. Deines "perception" that Judge Sushchuk spent the day of April 26 "hovering around" her is inconsistent with the facts and demonstrates the unreliability of what she has perceived regarding what is claimed to have occurred on the prior day. Tr. Vol. 1, p. 200.

27. I find that Ms. Deines' description of what occurred changed in significant terms over time. In the first communication, at 9:25 p.m. on April 25, it was described as "a distinct pinch." Exhibit 5, Tr. Vol. 1, p. 91. In her second communication, at the 3 p.m. on the next day, it was described that someone had "palmed" her. Exhibit 7, Tr. Vol. 1, p. 198-199, 207. In her third communication on April 29, 2019 at 3 p.m. (Exhibit 6) she described it as "a grab that lasted a few seconds and felt like it was made using a full hand." Tr. Vol.1, p. 106. It was not until her conversation with Judge Casey on May 1 that it was described as someone sliding his hand under her left buttocks.

28. I find that if Ms. Deines was in fact physically touched by someone who slid one of his hands under her buttocks and pinched or squeezed her buttocks, it was someone other than Judge Sushchyk.

Respectfully Submitted,

HON. PAUL M. SUSHCHYK,
By His Attorney,




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Date: July 29, 2020

CERTIFICATE OF SERVICE

I, Michael P. Angelini, hereby certify that I have served a copy of the foregoing on the following by electronic mail, this 29th day of July 2020, to:

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



Michael P. Angelini