



November 3, 2022

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Hon. Jack Tuter
Chief Judge, Seventeenth Judicial Circuit
Broward County Courthouse
201 SE 6th Street
Fort Lauderdale, Florida 33301
div07@17th.flcourts.org

RE: Judge Elizabeth Scherer

Dear Chief Judge Tuter,

The Florida Association of Criminal Defense Lawyers is troubled and feels obligated, as representatives of the Criminal Defense Bar, to express dismay at the behavior of the Hon. Elizabeth Scherer. This letter addresses events which took place during sentencing proceedings for Nikolas Cruz on Tuesday, November 1st, 2022. Judge Scherer's hostile and demeaning treatment of defense counsel, one of whom is the elected Public Defender, exposed seemingly deep disdain for the role defense lawyers play in the criminal justice system. We also take the position that Judge Scherer's hostility reveals a temperament ill-suited to the criminal bench. Judge Scherer's comments and actions were not only offensive but were also ultimately detrimental to the integrity of the judiciary and the judicial system.

We urge you to address this with Judge Scherer and take all appropriate steps to ensure she is not in a position to prejudice any other criminal cases.

Surely you have seen the exchanges between Judge Scherer and elected Public Defender Gordon Weekes and his assistants. When Mr. Weekes rose to address comments by victims' families made earlier in the day, Judge Scherer dismissed him. In fact, when he asked to be heard further, the court admitted she was "summarily dismissing" him. Judge Scherer's comments were directed to an elected constitutional officer whose demeanor was respectful and calm. Mr. Weekes deserved better.

Judge Scherer told both Mr. Weekes and chief assistant public defender David Wheeler to "go sit down". She said this in the course of misrepresenting the arguments each had made. The image of a judge relegating an elected public defender and his top assistant to sit in the corner like misbehaving children is offensive and discounts their very vital and difficult role in this system.

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The irony of Judge Sherer's approach is that she became rude and animated in response to a straw man which she herself had established. The attorneys objected to what they perceived as threats to them and their families. They politely and plainly asked the court to prevent further "victim impact testimony" which included thinly veiled threats towards counsel. These thinly veiled threats were coming from the lectern in Judge Sherer's courtroom. She was physically present and acknowledged the inappropriate comments. Judge Sherer suggested the thinly veiled threats simply be ignored. When Mr. Wheeler suggested that Judge Scherer would view the comments differently were they about her and her family, she turned that on its head and said the lawyer was threatening her children. Mr. Wheeler never did any such thing.

All this occurred, not incidentally, after Mr. Weekes had asked to address the issue at sidebar rather than in full public view. The court refused that invitation before inflaming the rhetoric rather than maintaining Mr. Weekes civil and measured tone.

Canon 1 of the Florida Code of Judicial Conduct declares that "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved."

Judge Scherer did not uphold the edict of Canon 1, and her behavior undermines public confidence in the integrity and independence of all judges.

The Parkland sentencing was a dramatic and painful, yet critical, exhibition of our criminal justice system. Defense attorneys vigorously represented their client knowing how reprehensible his actions were and how appalling most people found him. To stand by those who all else would readily condemn is the test of not just a great defense lawyer, but also of the Constitution itself.

Defense counsel provided a critical function of our system, necessary to maintain its integrity. The Court had an obligation to treat all litigants and counsel with the dignity their roles and humanity deserved. Judge Sherer failed in that obligation. Such failures by judges undermine, in the public eye, the entire criminal justice system.

Sincerely,

Ernest L. Chang

Ernest L. Chang
Florida Association of Criminal Defense Lawyers, President