

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. 21-005547CF10A

Judge: SCHERER

v.

STEVEN CYRIACKS
Defendant.

_____/

MOTION FOR DISQUALIFICATION OF JUDGE

Pursuant to Florida Rule of Judicial Administration 2.330, the Defendant, by and through the undersigned attorney, requests this Court to enter an order disqualifying itself from all further proceedings in the above-styled cause. This motion is timely filed. In support hereof, Defendant offers the following law, facts, and legal analysis:

1. The Defendant has a reasonable fear that he will not receive a fair hearing, trial or sentencing from this Court and that this Court will not determine the issues in his case in an impartial manner due to this Court's demonstrated bias in favor of victims and the State's Attorney's Office and its open hostility to his attorney's office as shown by the Court's televised conduct on November 1 and 2, 2022.
2. A motion to disqualify a trial judge is governed by Florida Rule of Judicial Administration 2.330. The rule specifies:

The judge against whom an initial motion to disqualify under subdivision (e) is directed **may determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged...If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification** and proceed no further in the action.

Fla.R.Jud.Admin. 2.330(h) (2022) (emphasis added)

3. In other words, when a trial court is presented with a motion to disqualify, the court may only review the motion for its legal sufficiency; if a motion is legally sufficient, the court **must** grant the motion. *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978). A court may not grant or deny a motion to disqualify on the basis that it disagrees with the facts asserted therein. *Id.* The purpose of this requirement is to avoid creating an adversarial situation between a judge and a litigant. *Id.*
4. A motion to disqualify a judge is legally sufficient where it is: in writing; sworn or affirmed to by the movant; includes a separate certification by the attorney filing said motion on behalf of a litigant that such motion is made in good faith; includes any dates when other motions to disqualify were granted in the same case, if any; and alleges the specific facts and reasons that a movant is relying upon for disqualification, as well as the precise date(s) when

those facts and reasons were discovered. Fla.R.Jud. Admin. 2.330(c) (2022) Additionally, a motion to disqualify must be timely filed with 20 days of the event(s) alleged to be cause for disqualification. Fla.R.Jud. Admin. 2.330(g) (2022)

5. This motion and the Defendant's affidavit have been signed and filed within the 20 day time limit. Accordingly, this motion is timely filed.
6. This motion is therefore legally sufficient: it is in writing, it is sworn or affirmed to, it includes a certificate of good faith, and is timely filed. Further, no other motions to disqualify a trial judge have been filed or granted in the above-styled case. Moreover, the specific facts and reasons relied upon are discussed and dated herein, in detail, as required.
7. The specific facts and reasons relied upon for this motion are as follows:
 - a. On November 1 and 2, 2022, this Court presided over a sentencing hearing in a death penalty case where the defendant was represented by the Law Office of the Public Defender.¹ After a prolonged penalty phase hearing that lasted months, the jury returned a recommendation for life. Although the jury's verdict left only one permissible sentence available to this Court (a

¹ State of Florida vs. Nikolas Cruz, #18-001958CF10A, sentencing on November 1, 2022 and November 2, 2022; televised nationally, and reported upon and discussed widely in the print media and on social media.

Life sentence), victim impact statements from the 17 victims of attempted murder, and family members of the 17 victims of murder were expected and permitted. Based on the intense pain this crime caused in the local community, it was also anticipated that the 2-day sentencing hearing would include an outpouring of grief and frustration that the death penalty could not be imposed.² Statements attacking the jurors and the defense team proliferated online and in the news.³

- b. On November 1, victim impact statements began. Approximately twenty-two minutes into the hearing, this Court addressed a surviving victim as she concluded her statement.⁴ The Court said, “I know I speak for everyone when I say you are a hero...that’s how my staff and myself will always remember you...thank you for your service.”⁵ The Court later verbalized sympathy to a second victim, stating, “You are a hero...you have made such an impression on this

² “Parkland families’ outrage over Nikolas Cruz verdict highlights a key issue with death penalty trials”, <https://www.independent.co.uk/news/world/americas/crime/nikolas-cruz-death-penalty-sentence-b2215401.html>, (October 13, 2022) ; “Non-Unanimous Florida Jury Sentences Nikolas Cruz to Life Without Parole for Parkland School Shootings”, <https://deathpenaltyinfo.org/news/non-unanimous-florida-jury-sentences-nikolas-cruz-to-life-without-parole-for-parkland-shootings>

³ “Father of Parkland School Shooting Victim Speaks After Sentencing Trial”, NBC6 Video/ 6 South Florida/ Reaction to Jury’s Decision, Ryan Petty (October 13, 2022); “A jury recommends life in prison for Parkland shooter Nikolas Cruz”, <https://www.npr.org/2022/10/13/1128216085/parkland-shooter-nikolas-cruz-sentenced> (October 13, 2022); “Parkland school shooter avoids the death penalty after jury recommends life in prison”, <https://www.cnn.com/2022/10/1/us/nikolas-cruz-jury-deliberation-thursday> (October 13, 2022); “Jurors answer questions following conclusion of Parkland shooting trial penalty phase”, <https://www.youtube.com/watch?v=QZSX-aVPYpk> ; *online comments* (Oct. 13, 2022)

⁴ “Parkland school shooting trial: Nikolas Cruz formal sentencing” <https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022) at 22:14minutes.

⁵ *Id* at 22:14 - 22:30.

Court,” and to a third, “I am deeply sorry for your loss...thank you for being here.”⁶ At the times the court made these statements, the sentence had not yet been imposed.

- c. After the first morning break, the victim impact statements started attacking the defense attorneys directly and included angry and arguably threatening comments such as wishing the attorneys pain and mentioning their children.⁷
- d. The defense objected, noting that the defense team performed their constitutional duty to provide effective assistance of counsel; that victims do not have a right to personally attack the defense attorneys, their children, or the jurors. Counsel implored the Court to maintain the decorum in the proceedings and to support this system of justice which respects juries’ verdicts and discourages public backlash against unpopular jury decisions.⁸ When counsel stated that the Court knows the attacks on counsel are improper,

⁶ “Parkland school shooting trial: Nikolas Cruz formal sentencing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 1:15:57 and at 1:42:01, respectively.

⁷ Id. at 56:30; at 1:44:42; at “Judge and Defense clash, Families Unleash Anger at Parkland Shooter’s Sentencing,” <https://www.nbcmiami.com/news/local/sentencing-hearing-set-for-parkland-school-mass-murderer/2897032>, (Nov. 1, 2022).

⁸ “Parkland school shooting trial: Nikolas Cruz formal sentencing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 2:06:30; *see also*, “Parkland judge and defense shout during sentencing as victims’ families unleash grief, anger on Nikolas Cruz”

<https://www.fox13news.com/news/parkland-shooting-victims-loved-ones-confront-nikolas-cruz-during-sentencing-you-are-a-monster>, (Nov. 1, 2022).

this Court chastised her for “suggesting that I know something is improper.”⁹

- e. As counsel began to say, “we were appointed...,” the Court abruptly stopped her stating, “Okay okay, your objection is noted,” with an impatient tone of voice.¹⁰
- f. The Court did not rule on defense counsels’ objection and took no action to prevent further personal attacks on the defense team or the jury.
- g. When court resumed after lunch on November 1, 2022, Mr. Gordon Weekes, the elected Public Defender addressed the Court.¹¹ He calmly asked the Court to redirect the misplaced personal attacks on the attorneys back to the defendant, as permitted by Florida law,¹² and emphasized the importance of not inciting or encouraging threats to the defense or the jurors.¹³
- h. This Court acknowledged that two victims had made direct comments to the public defenders’ lawyers, but trivialized the impact of those statements saying, “I’m the judge, I understand that I’m in charge of the decorum and I feel that...a great percentage of what has been said has been appropriate...its best to just move

⁹“Parkland Judge Snaps at Defense Attorney Over Objection” <https://www.youtube.com/watch?v=FeHIO08ItSo> #ParklandShooting #LawAndCrime (November 1, 2022)

¹⁰ *Id* at 2:09:27

¹¹ “Parkland school shooting trial: Nikolas Cruz formal sentencing” <https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:17:49.

¹² Florida Statutes section 921.143 governs the appearance of victims at sentencing hearings. This statute mandates that the prosecutor **shall** advise victims that their statements shall relate only to the facts of the case and its impact on them. §921.143(2), Fla.Stat. (2022)

¹³ “Parkland school shooting trial: Nikolas Cruz formal sentencing” <https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:17:49 – 4:18:11.

on.¹⁴ Mr. Weekes politely accepted the Court's statement but reiterated the request to tamp down on the momentum of growing expressions of anger being witnessed.¹⁵

- i. The Court announced that any other arguments would not be heard unless put in writing.¹⁶ Unfortunately, such suggestion was meaningless, when the purpose of the objections was to prevent increasingly volatile rhetoric in the ongoing proceedings. A member of the defense team addressed the Court again and asked whether the Court "was willing to do anything ...to stop it from happening again?"¹⁷
- j. In response, this Court lashed out, attacked defense counsels' professionalism, and suggested that the victims' anger was deserved, saying, "When these people [the victims] are upset about specific things that have gone on from that table [the defense table]...when these people have sat in this courtroom and watched [defense counsels'] behavior from that table and they want to say that they're not happy about it, what is the problem?"¹⁸

¹⁴ *Id* at 4:18:32

¹⁵ *Id* at 4:19:34 – 4:19:50; *see also*, "Parkland judge and defense shout during sentencing as victims' families unleash grief, anger on Nikolas Cruz" <https://www.fox13news.com/news/parkland-shooting-victims-loved-ones-confront-nikolas-cruz-during-sentencing-you-are-a-monster>, Nov. 1, 2022

¹⁶ "Parkland school shooting trial: Nikolas Cruz formal sentencing" <https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:20:36

¹⁷ *Id* at 4:21:54 – 4:22:00

¹⁸ *Id* at 4:22:00 – 4:22:22; *see also*, "Judge scolds Nikolas Cruz defense attorneys after remark about her children", WPTV. 5-<https://www.wptv.com/news/parkland-shooting/judge-scolds-nikolas-cruz-defense-attorneys-after-remark-about-her-children> 11/01/2022

- k. Counsel explained that “the problem” was when it involved his and the other attorneys’ children to which this Court commented that it had not heard any inappropriate comments about defense counsels’ children. Counsel replied, “If they were talking about your children, you would definitely notice it.”¹⁹
- l. The Court exploded, yelling, “You need to sit down right now! You’re out of line!” and then, “In fact, you’re excused. You need to go sit in the back with your Chief Public Defender.”²⁰ This Court accused counsel of threatening her children, which was a gross mischaracterization of his statement, and continued to angrily berate him.²¹ The Court yelled, “That just violated about every rule of professional responsibility that I have ever; I have never!”²²
- m. Mr. Weekes returned to the podium to address what had just happened. This Court falsely accused Mr. Weekes of instructing his attorney to “suggest something about [her] children.”²³ This Court knew Mr. Weekes had not

¹⁹“Parkland school shooting trial: Nikolas Cruz formal sentencing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:22:50 -4:22:54; *see also*, “Judge Elizabeth Scherer removes public defender from Parkland school shooter sentencing hearing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> #ParklandShooting #LawAndCrime

²⁰ “Parkland school shooting trial: Nikolas Cruz formal sentencing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:22:54 -4:23:40; *see also*, “Judge Elizabeth Scherer removes public defender from Parkland school shooter sentencing hearing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> #ParklandShooting #LawAndCrime

²¹ *Id.*

²² *Id.*

²³ “Parkland school shooting trial: Nikolas Cruz formal sentencing”

<https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:23:40 -4:23:45

- so instructed his attorney, nor could he have from their respective positions on opposite sides of the courtroom.
- n. The Court yelled at Mr. Weekes, “Sit down!...I am summarily dismissing you!” The Court screamed that lead defense counsel made a “spectacle” of her own children during the trial by her own choice and seethed at Mr. Weekes, “You don’t threaten the Court’s children; your assistant just did that...You have absolutely no right to have one of your assistants come up here and suggest something about one of my children...You’re inappropriate and out of line.”²⁴
 - o. The Court denied Mr. Weekes’ request for a brief recess to speak to his attorneys and dismissed him from the podium.
 - p. Derogatory comments about the jurors and defense team continued in the ensuing statements.²⁵
 - q. The following day, at the conclusion of the sentencing hearing, on November 2, 2022, this Court exited the bench while still wearing its judge’s robes, and while news cameras were still recording, and embraced the prosecutors, which was broadcast by multiple news outlets and reported widely in the media.²⁶

²⁴ *Id* at 4:23:45 – 4:25:00; *see also*, “Video shows heated exchange between judge, Parkland shooter’s defense”, <https://www.local10.com/news/local/2022/11/01/judge-asks-broward-public-defender-to-leave-courtroom-during-sentencing-hearing/> (November 1, 2022)

²⁵ *See*, e.g., “Parkland school shooting trial: Nikolas Cruz formal sentencing” <https://www.youtube.com/watch?v=VEhAvq4sfds> (November 1, 2022), at 4:30:36, 4:32:30 and 4:38:26.

²⁶ “Judge’s hugs after Parkland school shooter’s sentencing become controversial” <https://www.local10.com/news/local/2022/11/03/judges-hugs-after-parkland-school-shooters-sentencing-become-controversial/>

8. The Defendant in the present case is represented by the Law Office of the Public Defender.
9. The Defendant is aware of this Court's recent and publicly displayed animus toward the Law Office of the Public Defender, as well as this Court's overt and public displays of physical affection and sympathy for the State, and the victims, as detailed herein. As a result, Defendant "reasonably fears he will not receive a fair trial or hearing" from this Court. *See*, Fla.R.Jud. Admin. 2.330(e)(1) (2022)
10. This Court's responses to the attorneys from the Law Office of the Public Defender, and to Mr. Weekes himself, on November 1, 2022, were not neutral or impartial but instead were angry and dismissive.²⁷ The Court screamed at attorneys, furrowed its brow, and pointed its finger. The Court's facial expressions matched its tone. This Court was disrespectful to the head of the Law Office of the Public Defender, Mr. Gordon Weekes, summarily dismissing him and denying his request for a recess to speak to his attorneys. This Court falsely accused Mr. Weekes of instructing his attorney to approach the bench with inappropriate argument.²⁸ This Court's demeanor, tone, and chosen words during these exchanges on November 1, 2022, demonstrated an anger and

²⁷ "Video shows heated exchange between judge, Parkland shooter's defense", <https://www.local10.com/news/local/2022/11/01/judge-asks-broward-public-defender-to-leave-courtroom-during-sentencing-hearing/>

²⁸ "Video shows heated exchange between judge, Parkland shooter's defense", <https://www.local10.com/news/local/2022/11/01/judge-asks-broward-public-defender-to-leave-courtroom-during-sentencing-hearing/>

dismissiveness aimed at defense counsel and at the Law Office of the Public Defender as a whole.

11. This Court equated Mr. Weekes' advocacy, as well as that of his attorneys, as a personal attack on the Court, and as "inappropriate" and "out of line."²⁹
12. This Court treated counsels' concerns with disdain and contempt, dismissing attorneys from the defense table and from the podium. This court demeaned the work public defenders do and the integrity of the criminal justice system.
13. As much as the Court's demeanor reflects its disrespect for the defense bar and the Law Office of the Public Defender, the Court's conduct also reflects its sympathy for the victims and the State.
14. This Court's conduct was on the record, and/or broadcast in every major news outlet, in print and on social media.
15. As a direct result of the Court's conduct on November 1 and 2, 2022, the Defendant has a reasonable fear that this Court will not fairly consider his motions when presented by his assigned public defender. He has a reasonable fear that when his public defender makes any argument on his behalf, this Court will dismiss his attorney and not fairly consider his arguments or fairly evaluate the matters presented. The Defendant has a

²⁹ *Id.*

reasonable fear that his assigned Assistant Public Defender will be treated no differently, or with even less professionalism, than was the elected Public Defender who this Court disrespectfully and summarily dismissed.

16. In short, the Defendant harbors a well-founded and reasonable fear that he will not receive a fair hearing, trial or sentencing before this Court because he is represented by the Law Office of the Public Defender.

17. Disqualification is proper where there is prejudice against a party's attorney. *See, Siegel v. State*, 861 So. 2d 90 (Fla. 4th DCA 2003). In *Siegel*, the Fourth District Court of Appeal reiterated that the inquiry into a litigant's concern that he or she will not receive a fair trial focuses on whether a defendant may reasonably question a judge's impartiality; it does not focus on the judge's personal perception that it is able to be fair and impartial. *Siegel* 861 So. 2d at 92; *see also, Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983) The purpose of such a limitation is to "ensure public confidence in the integrity of the judicial system." *Livingston*, 441 So. 2d at 1086. The Florida Supreme Court explained, in *Livingston*,

Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself [sic]. **No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.**

. . . .

The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of the litigants in a fair and impartial adjudication of the issues raised.

Livingston, supra, at 1085-86 (internal citation omitted, emphasis added).

18. “A trial court's prejudice against an attorney may be grounds for disqualification when such prejudice is of a degree that it adversely affects the litigant.” *Franco v. State*, 777 So. 2d 1138, 1140 (Fla. 4th DCA 2001). In *Franco*, the motion to disqualify the trial judge and accompanying affidavit asserted that the judge “exhibited...animosity and disrespect” for defense counsel, raised his voice and yelled at defense counsel, made facial gestures and conducted itself in a manner that showed a “lack of control and a lack of judicial temperament.” *Id.* There, the defendant believed that the judge’s animosity against his attorney would interfere with his ability to have a fair sentencing from that judge. *Id.* The Fourth District Court of Appeal agreed that the defendant’s motion to disqualify should have been granted and ruled that his new trial must be reassigned to a different judge. *Id.*

19. This Court’s treatment of the assistant public defenders and the elected Public Defender is strikingly similar to the conduct detailed in *Franco, supra*. In the present case, however, this Court’s apparent bias against the defense, is

compounded by its flagrant show of preference to the prosecution by openly embracing those attorneys, while still in the courtroom, while still in judicial robes, and immediately following its angry dismissals of the defense attorneys. This Court's conduct has vitiated any belief of Defendant here that he will be treated fairly and impartially.

20. While a judge may feel sympathy for one party or another, the integrity of the judiciary demands that its outward demeanor remain impartial. *See Parker v. State*, 3 So.3d 974 (Fla. 2009) (the reasons given for disqualification must show the judge's undue bias, prejudice or sympathy); *see also, Dabbs v. State*, 330 So.3d 50 (Fla. 4th DCA 2021). This Court's open expressions of sympathy for victims in a pending case departed from the neutrality the law demands.
21. The act of hugging the prosecutors on November 2, 2022, in court and while still in judicial robes, showed more clearly than any words could have that this Court favors the State and has a bias in the State's favor. A special relationship between a judge and an attorney may be a legitimate basis for disqualification of a judge. *See, Neiman-Marcus Group, Inc. Robinson*, 829 So.2d 967 (Fla. 4th DCA 2002) Furthermore, this open and obvious show of preference for the State violated several Canons of the Code of Judicial Conduct. Canon 1 demands that "A Judge Shall Uphold the Integrity and Independence of the Judiciary." Public confidence in the

impartiality of the judiciary is indispensable and requires adherence to this Canon. Fla. Code of Jud. Conduct, Canon 1 (*commentary*). When a judge on the criminal bench physically embraces the attorneys from the State's Attorney's Office, in open court, everyone watching must necessarily question that judge's independence. Similarly, Canon 2 demands that "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities." By hugging the prosecutors in that case, this court "covey[ed] the impression that [the State is] in a special position to influence the judge" See Fla. Code of Jud. Conduct, Canon 2(B).

22. Finally, Canon 3(E) of the Code of Judicial Conduct requires a judge to disqualify itself in any proceeding where it's impartiality might reasonably be questioned. See Fla. Code of Jud. Conduct, Canon 3(E).
23. This Court's open display of affection and sympathy for the prosecution should give every criminal defendant appearing before it a serious, well-founded and reasonable concern that this Court will not be fair and impartial, but rather will favor the office seeking his or her criminal conviction and punishment.
24. In the present case, Defendant does have a serious, well-founded and reasonable concern that this Court will not be fair and impartial, but rather will favor the office seeking his criminal conviction and punishment. This Court's statements and actions evidence bias against his attorney, the Office of

the Public Defender, and therefore against him. Further, this Court's statements and actions publicly demonstrating sympathy to the State evidence a bias in favor of his prosecution. Such demonstrated bias causes the Defendant to reasonably fear that this Court will not fairly and impartially consider the issues in this case.

CONCLUSION

In the present case, the motion is legally sufficient and timely filed. Further, disqualification is appropriate, because the facts alleged herein "would place a reasonably prudent person in fear of not receiving a fair and impartial trial". *See Livingston v. State*, 441 So. 2d at 1087.

WHEREFORE, based upon the foregoing, the Defendant requests this court to grant the Motion for Disqualification of Judge

and allow another circuit court judge to be randomly assigned to
preside over this case.

Respectfully Submitted,

GORDON WEEKES
Public Defender
17th Judicial Circuit

S/ LISA S. LAWLOR

LISA S. LAWLOR, Esq.

Fla. Bar No. 0015288

Chief Assistant Public Defender

Attorney for the Defendant

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CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that the foregoing motion and the
Defendant's statements contained in the attached affidavit are
made in good faith.

S/ LISA S. LAWLOR

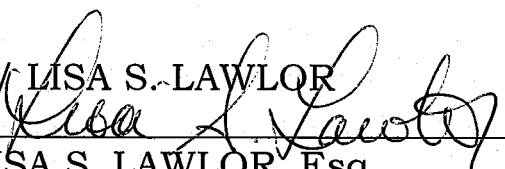
Chief Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, at courtdocs@sao17.state.fl.us, Broward County Courthouse, 201 SE 6th Street, 8th Floor, Fort Lauderdale, Florida, 33301, and to the Honorable Judge Elizabeth Scherer at divfj@17th.flcourts.org, Broward County Courthouse, 201 SE 6th Street, Room NW7760, Fort Lauderdale, FL 33301, this November 14, 2022.

GORDON WEEKES
Public Defender
17th Judicial Circuit

S/ LISA S. LAWLOR


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