

**IN THE SUPREME COURT
OF FLORIDA**

INQUIRY CONCERNING A JUDGE,
THE HONORABLE ELIZABETH A. SCHERER
JQC No. 2022-785

SC23-_____

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FINDINGS AND RECOMMENDATION OF DISCIPLINE

The Investigative Panel of the Florida Judicial Qualifications Commission (“the Commission”) served a Notice of Investigation dated April 7, 2023, on Circuit Judge Elizabeth A. Scherer of the Seventeenth Judicial Circuit, pursuant to FJQC Rule 6(b) of the Florida Judicial Qualification Commission Rules. The Investigative Panel conducted a hearing pursuant to FJQC Rule 6(b) on April 27, 2023, at which Judge Scherer appeared with counsel and provided sworn testimony. Following that hearing, the Investigative Panel found probable cause that Judge Scherer violated Canons 1, 2A, 3B(2), 3B(3), 3B(4), 3B(5), and 3B(9) of the Code of Judicial Conduct.

Factual Findings

The Commission investigated allegations that Judge Scherer engaged in inappropriate behavior while presiding over the penalty-phase and sentencing proceedings in *State of Florida v. Nikolas J. Cruz* (Broward County Case Number 18001958CF10A). It was alleged that Judge Scherer was intemperate with defense counsel and gave the appearance of partiality to the prosecution. Since the proceedings were highly publicized, the Commission’s investigation centered on reviewing video footage from the courtroom, related court transcripts, and the sworn testimony of

Judge Scherer. The Commission substantiated some allegations, including that Judge Scherer unduly chastised defense counsel, wrongly accused defense counsel of threatening her children after defense counsel stated “Judge, I can assure you that if they were talking about your children, you would certainly notice,” failed to curtail vitriolic statements directed to defense counsel, and embraced members of the prosecution after sentencing. Judge Scherer acknowledged also embracing victims and family members of the victims in the courtroom. She contends that she offered to embrace defense counsel. On April 13, 2023, this Court, in *Tundidor v. State*, 2023 WL 2920534 (Fla. 2023), determined that Judge Scherer should be disqualified from postconviction proceedings in another death penalty case citing, in part, to this same behavior during and immediately after the *Cruz* matter.

The Commission is mindful that the *Cruz* proceedings were emotional and highly contentious. The prosecution sought to put Defendant Cruz to death for his crimes which took the lives of 17 people (only three of whom were over the age of 18). The worldwide publicity surrounding the case created stress and tension for all participants. However, regardless of the gravity of the accusations or level of attention given a matter, the Commission expects that a judge will ensure due process, order and decorum, and act always with dignity and respect to promote the integrity and impartiality of the judiciary. In limited instances during this unique and lengthy case, Judge Scherer allowed her emotions to overcome her judgment.

In her testimony before the Commission, Judge Scherer acknowledged that her conduct during and immediately after the *Cruz* trial at times fell short of the high

standards of conduct expected of Florida judges, and she admitted that her treatment of members of the defense team was at times not patient, dignified, or courteous.

Prior to this matter, Judge Scherer had an unblemished record. She was appointed to the circuit bench in 2012 and has had no prior discipline imposed by the Supreme Court or The Florida Bar. *State of Florida v. Nikolas J. Cruz* was Judge Scherer's first death penalty case, and it remained pending for nearly five years. Judge Scherer and her counsel cooperated and were candid during the Commission's investigative process. Judge Scherer recognized that at some points during the Cruz trial, her conduct created the perception of a bias against one party. The appearance of bias tarnishes public confidence in the fairness and impartiality of the judiciary.

Judge Scherer's recent resignation was not a condition of this agreement.

Recommendation as to Discipline

The Investigative Panel of the Commission has entered into a Stipulation with Judge Scherer pursuant to Rule 12 of the Florida Judicial Qualifications Commission Rules. In the Stipulation, Judge Scherer admits that she violated Canons 1, 2A, 3B(2), 3B(3), 3B(4), 3B(5), and 3B(9) of the Code of Judicial Conduct. She admits that her conduct fell below what is reasonably expected of a trial judge and had the potential to damage the perception of the judiciary and our system of justice in ways that cannot be easily cured. In reaching the Stipulation, the Commission was guided by the Court's opinion in *In re Wood*, 720 So. 2d 506 (Fla. 1998). In *Wood*, the Court required Judge Wood to appear for a public reprimand based on his repeated display of inappropriate behavior from the bench. The Court in *Wood* noted several other cases in which a

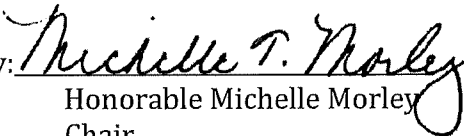
public reprimand was determined to be the appropriate discipline for a judge's rude or intemperate behavior in open court. See *In re Wright*, 694 So. 2d 734, 734-36 (Fla. 1997); *In re Perry*, 641 So. 2d 366, 367-69 (Fla. 1994); *In re Marko*, 595 So. 2d 46, 46 (Fla. 1992); *In re Carr*, 593 So. 2d 1044, 1045 (Fla. 1992); *In re Trettis*, 577 So. 2d 1312, 1312-13 (Fla. 1991). The Commission is also aware of *In re Shea*, 110 So. 3d 414 (Fla. 2013). In *Shea*, this Court approved a public reprimand and reiterated "the disparity in power between a judge and a litigant requires that a judge treat a litigant with courtesy, patience, and understanding."

This Court reviews the findings of the Commission to determine "whether the alleged violations are supported by clear and convincing evidence, and reviews the recommended discipline to determine whether it should be approved." *In re Woodward*, 919 So. 2d 389, 390 (Fla. 2006). Where a judge stipulates to the JQC's findings of fact, no additional proof is necessary to support the JQC's factual findings." *Id.* at 390-91.

Considering the facts and circumstances, the mitigating and aggravating factors, and prior precedent, the Commission finds and recommends that the interests of justice will be well-served by a public reprimand of Judge Elizabeth A. Scherer.

Dated this 2^d day of June, 2023.

INVESTIGATIVE PANEL OF THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION

By: 
Honorable Michelle Morley
Chair

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