

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2007 Term

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No. 33336

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**FILED**

**June 6, 2007**

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RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

IN THE MATTER OF: MAGISTRATE CAROLYN D. CRUICKSHANKS,  
MAGISTRATE FOR BRAXTON COUNTY

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MOTION TO BE SUSPENDED WITH PAY DENIED

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Submitted: May 9, 2007

Filed: June 6, 2007

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JUSTICE BENJAMIN delivered the opinion of the Court.

JUSTICES STARCHER AND ALBRIGHT concur in part and dissent in part and reserve the right to file separate opinions.

JUSTICE MAYNARD concurs and reserves the right to file a concurring opinion.

## SYLLABUS

1. “The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.” Syllabus, *Matter of Gorby*, 176 W.Va. 16, 339 S.E.2d 702 (1985).

2. “Under the authority of article VIII, sections 3 and 8 of the West Virginia Constitution and Rule II(J)(2) of the Rules of Procedure for the Handling of Complaints Against Justices, Judges, Magistrates and Family Law Masters, the Supreme Court of Appeals of West Virginia may suspend a judge, who has been indicted for or convicted of serious crimes, without pay, pending the final disposition of the criminal charges against the particular judge or until the underlying disciplinary proceeding before the Judicial Investigation Commission has been completed.” Syllabus, *Matter of Grubb*, 187 W.Va. 228, 417 S.E.2d 919 (1992).

3. Always mindful of the primary consideration of protecting the honor, integrity, dignity, and efficiency of the judiciary and the justice system, this Court, in determining whether to suspend a judicial officer with or without pay, should consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public’s perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer’s public persona, (3) whether the charges of

misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.

**Benjamin, Justice:**

This case is before this Court upon the March 22, 2007, Motion for Hearing of Magistrate Carolyn D. Cruickshanks, Magistrate for Braxton County. By our order of March 15, 2007, Magistrate Cruickshanks was suspended without pay from her position as Magistrate pursuant to Rule 2.14 of the West Virginia Rules of Judicial Disciplinary Procedure following a finding of probable cause that Magistrate Cruickshanks had engaged in a serious violation of the Code of Judicial Conduct. This Court has before it the Motion for Hearing as well as a Motion to be Suspended with Pay, the briefs of the parties and all matters of record. Following the arguments of the parties and a review of the record herein, this Court finds that the Rules of Judicial Conduct and existing case law support Magistrate Cruickshanks' suspension without pay. Accordingly, this Court affirms the suspension without pay.

I.

FACTS

Magistrate Cruickshanks is the mother of Jordan Grubb, who is incarcerated in the Central Regional Jail (hereinafter, "the jail") following his conviction for delivery of a controlled substance. On or about February 7, 2007, Grubb contacted his mother by phone and asked her to provide him with copies of certain legal documents. It would later be alleged

in a criminal complaint that those documents contained the statement of Philip Dailey, who was a witness against Grubb. Dailey had given his testimony as part of a plea deal with the State. Dailey is also an inmate at the jail.

The criminal complaint further alleges that Grubb told Magistrate Cruickshanks that he intended to get Dailey moved out of the pod in which he was currently housed and into the protective custody pod “where all the baby rapers and snitches were.” Grubb allegedly explained to Magistrate Cruickshanks that he needed to show the other inmates in Dailey’s current pod the statements which Dailey had made to authorities, apparently to prove that Dailey was a “snitch.” Magistrate Cruickshanks obtained the requested documents from Grubb’s attorney and delivered them to Grubb during a visit with him at the jail.

Grubb distributed the information his mother had given him to other inmates in the area where Dailey was housed. Dailey, who had apparently been having trouble with his fellow inmates at the jail since Grubb’s arrival, then reported to his mother that he was fearful that he was “going to get jumped” after Grubb had slipped the documents under the door of Dailey’s pod. Dailey reported that the other inmates in the pod “called him out” and “told him that he needed to go.” Dailey was subsequently moved elsewhere in the jail for his own safety.

Grubb then called Magistrate Cruickshanks from the jail, apparently to tell her

of the success of his plan. In accordance with the jail's policy, the call was monitored and recorded. On the recording of the call, Magistrate Cruickshanks is allegedly heard to say, "Well that was your plan, wasn't it?" Upon Grubb's affirmative reply, Magistrate Cruickshanks said, "Well, that's what he gets."

Dailey, who had seen the documents that were slipped under the door by Grubb, later identified the documents as a copy of the plea agreement which he had entered into with the State as well as a copy of the proceedings in Dailey's plea hearing before the Circuit Court of Braxton County. Another inmate who had seen the documents slipped under the door identified them as the same documents identified by Dailey. That same inmate also told authorities that he saw Grubb distribute at least parts of those documents to Dailey's pod.

On March 12, 2007, Magistrate Cruickshanks was arrested and charged under W. Va. Code § 61-10-31 with conspiracy to commit an offense against the State of West Virginia, that offense being retaliation against a witness as set forth in W. Va. Code § 61-5-27(c). Upon being made aware of her arrest and the charges pending against her, this Court issued an Order on March 12, 2007, finding that Magistrate Cruickshanks had been charged with a serious offense within the meaning of Rule 2.14 of the West Virginia Rules of Judicial Disciplinary Procedure. Magistrate Cruickshanks was suspended with pay. On March 13, 2007, the Administrative Director of the Courts filed a complaint against Magistrate Cruickshanks with the Judicial Disciplinary Counsel alleging that Magistrate Cruickshanks

had violated Canons 2A and 2B of the Code of Judicial Conduct.

On March 14, 2007, the Office of Judicial Disciplinary Counsel presented its report to the Court. The Court entered an Order the following day finding probable cause and suspending Magistrate Cruickshanks without pay, pursuant to Rule 2.14(d)(2) of the West Virginia Rules of Judicial Disciplinary Procedure. Magistrate Cruickshanks subsequently filed her Motion for Hearing as well as a later Reply to Complaint denying any and all ethical misconduct.

## II.

### DISCUSSION

This Court has long recognized that “[t]he purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.” Syl., *Matter of Gorby*, 176 W. Va. 16, 339 S.E.2d 702 (1985). We reiterated our commitment to that principle in *In re Toler*, 216 W. Va. 743, 747, 613 S.E.2d 604, 608 (2005), wherein we stated, “This Court will not retreat from its duty to the justice system.”

In order to carry out this duty, the Court has established the Rules of Judicial Disciplinary Procedure. Rule 2.14(d)(2) states that:

If the Court finds probable cause pursuant to Rule 2.14(c)<sup>1</sup> to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct or has become unable or unwilling to perform official duties, the Court may direct that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

This power to suspend was explained in the Syllabus Point of *Matter of Grubb*, 187 W. Va.

228, 417 S.E.2d 919 (1992):

Under the authority of article VIII, sections 3 and 8 of the West Virginia Constitution and Rule II(J)(2) of the Rules of Procedure for the Handling of Complaints Against Justices, Judges, Magistrates and Family Law Masters, the Supreme Court of Appeals of West Virginia may suspend a judge, who has been indicted for or convicted of serious crimes, without pay, pending the final disposition of the criminal charges against the particular judge or until the underlying disciplinary proceeding before the

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<sup>1</sup>Rule 2.14(c) of Rules of Judicial Disciplinary Procedure states that:

Upon receipt of the report, from the Chief Justice, the Supreme Court shall determine whether probable cause exists. A finding of probable cause hereunder shall be in lieu of a probable cause finding made pursuant to Rule 2.7(c). If it is determined that probable cause exists, the Court may:

(1) direct the Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and,

(2) provide notice to the judge of a right to a hearing on the issue of temporary suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or

(3) in the alternative, remand the complaint for proceedings pursuant to Rules 2.7(d) and Rule 4.

Judicial Investigation Commission has been completed.

In this case, Magistrate Cruickshanks is accused of violating Canons 2A and 2B of the Code of Judicial Conduct:

**CANON 2. A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES**

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act *at all times* in a manner that promotes public confidence in the integrity and impartiality of the judiciary (emphasis added).

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Specifically, it is alleged that Magistrate Cruickshanks participated in a conspiracy with her son, Grubb, to retaliate against a fellow inmate who was a witness against Grubb by delivering to Grubb certain documents which he used to show other inmates that Dailey was a "snitch." Magistrate Cruickshanks denies that there was any conspiracy and asserts that whatever happened, it happened outside of her duties as a magistrate; therefore, she did not violate the Code of Judicial Conduct.<sup>2</sup> However, as highlighted above, Canon 2A admonishes

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<sup>2</sup>Magistrate Cruickshanks further argues that the documents were public in nature—open to anyone's inspection—and that she was merely acting as a courier between

members of the judiciary to “act *at all times* in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Emphasis added.)

Despite her denial of wrongdoing, Magistrate Cruickshanks acknowledges that the Court has the power to suspend her without pay. Nonetheless, she asks the Court to reconsider its decision and restore her pay. She asserts that her salary as a magistrate is her only source of income and points out that, usually, those magistrates suspended without pay while facing disciplinary action have already been convicted of crimes. Magistrate Cruickshanks has not been convicted.

Conviction is not, however, a predicate to suspension. In *In re McCourt*, 219 W. Va. 261, 633 S.E.2d 17 (2006), the magistrate in question had not even been charged criminally, let alone convicted, yet we upheld his suspension without pay. Such actions derive from our duty to promote and protect the honor, integrity, dignity, and efficiency of the judiciary and the justice system.

We decline to create a bright-line rule for determining when a suspension should

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Grubb and his attorney. Magistrate Cruickshanks asserts that she did not even know what documents she was delivering as they were contained in a sealed envelope.

be with pay as opposed to without pay.<sup>3</sup> Every case is different. The circumstances for each case are unique. A bright-line rule is unworkable and impractical. As a Court, we review matters of suspension stemming from accusations of judicial misconduct on a case-by-case basis.

Always mindful of the primary consideration of protecting the honor, integrity, dignity, and efficiency of the judiciary and the justice system, this Court, in determining whether to suspend a judicial officer with or without pay, should consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors

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<sup>3</sup>The matter cannot be taken lightly. In *Matter of Grubb*, we highlighted the New Jersey decision of *In re Coruzzi*, 95 N.J. 557, 472 A.2d 546 (1984), in which that court recognized the New Jersey Supreme Court's duty "to preserve public confidence in the judiciary by not allocating public funds to pay salary to members of the judiciary who have conducted themselves in a manner that warrants suspension." *See Grubb*, 187 W. Va. at 233, 417 S.E.2d at 923. We are also cognizant that members of the judiciary, as elected public figures, may become the target of malicious and unwarranted accusations and prosecutions or of politically-motivated charges, especially in the time prior to elections, which may never prove to be true, but which may lead to a member of the judiciary being forced to defend his or her name. We must, therefore, ensure that each case before us is weighed on its own merits and that the process itself does not lend itself to the improper goals of malicious or politically-motivated accusations.

which might exist. Though the misconduct alleged here (retaliating against a witness) does not involve the disposition of any of the cases assigned to Magistrate Cruickshanks, we believe that it is still directly related to the administration of justice and, arguably, reveals a callous disregard by Magistrate Cruickshanks of the system of justice she took an oath to uphold. Retaliation against witnesses strikes at the core of our system of justice.

Magistrate Cruickshanks argues that the nature of her visit and phone conversations with her son are entirely personal in nature. We disagree. Magistrate Cruickshanks, a judicial officer, cannot so conveniently shed the obligations of her office. To permit a judicial officer to simply pick and choose when he or she wishes to be subject to the obligations of his or her judicial position would result in an unworkable system where ethics are subject to personal whims. The charges against Magistrate Cruickshanks present a disturbing allegation of a judicial officer who abused her position in order to benefit her son or to retaliate against a witness against him. And while the charges of misconduct do not involve violence on the part of Magistrate Cruickshanks, the consequences of her alleged actions could easily have brought violence on Dailey and endangered his safety. Indeed, Dailey had to be moved into protective custody after the documents that Magistrate Cruickshanks allegedly delivered to her son were made available to Dailey's pod mates.

We are not insensitive to Magistrate's Cruickshanks' pleas that she not be deprived of her only source of income. However, should Magistrate Cruickshanks prevail in

her criminal case as well as the pending disciplinary investigation, she is entitled to seek backpay to make her whole again. *Grubb*, 187 W. Va. at 234, 417 S.E.2d at 925. In the meantime, in the event she finds that she is unable to hire an attorney to defend the charges against her, she can file a *pauperis* affidavit and seek court-appointed counsel as any indigent defendant can.

In the end, our duty is to defend the integrity of the judicial system, and we believe that there exists here sufficient evidence to believe that Magistrate Cruickshanks has engaged in a serious violation of the Code of Judicial Conduct and that her suspension without pay is justified. Moreover, we believe that the profound nature of the pending criminal charges against Magistrate Cruickshanks seriously diminish the “public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.” As we have found before, “[w]e find that the overriding public interest in preserving the integrity of the judiciary demands that we subordinate the personal interests of [Magistrate Cruickshanks]....” *Grubb*, 187 W. Va. at 234, 417 S.E.2d at 925. This is such a case.

III.

CONCLUSION

Accordingly, we affirm our decision that Magistrate Cruickshanks be suspended without pay until the underlying judicial disciplinary proceeding is completed.

Reconsideration denied.