

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

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**IN THE MATTER OF:  
THE HONORABLE ELIZABETH BOSO,  
MAGISTRATE OF NICHOLAS COUNTY,**

**SUPREME COURT NO. 24-0436  
JIC COMPLAINT NO. 22-2024**

**Respondent.**

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**JUDICIAL DISCIPLINARY COUNSEL'S BRIEF**

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**I.**

**SUMMARY OF ARGUMENT**

Respondent was elected Magistrate of Nicholas County in the May 2024 election and was originally supposed to take office on January 1, 2025. Due to a vacancy, she was appointed Nicholas Magistrate and initially assumed the bench in July 2024. In January 2024, Respondent attempted to obtain the appointment to a vacant Kanawha County Magistrate position even though she was not domiciled there. In an effort to gain the seat, Respondent lied about her residence. Respondent admitted to the factual allegations and the violations of the Code of Judicial Conduct contained in the Formal Statement of Charges and agreed to a public censure, a two-month suspension without pay and the payment of costs.

The Judicial Hearing Board (“JHB”) found that Respondent violated Rules 1.1, 1.2, 2.16(A), 4.1(A)(9), and 4.2(A)(1) and (2) of the Code and appropriately recommended a public censure, a two-month suspension without pay and the payment of costs in the amount of \$618.45. By Order entered January 23, 2025, the Supreme Court of Appeals stated that “it does not concur with the recommended sanctions from the Judicial Hearing Board” and required the parties to brief the matter. Based upon the factors set forth in *Matter of Cruickshanks*, 220 W.Va. 513, 648 S.E.2d 19 (2007) and the discipline meted out by this Court in several recent cases, the discipline recommended by the JHB and agreed to by the Respondent is appropriate.

## **II.**

### **ASSIGNMENT OF ERROR**

The sole assignment of error is whether the discipline agreed to by the Respondent and recommended by the Judicial Hearing Board is appropriate given the facts of this case.

## **III.**

### **STATEMENT REGARDING ORAL ARGUMENT**

Although JDC would agree to submit this case on the briefs and record alone, the Court has indicated in its January 23, 2025 Order that the matter “shall be scheduled for oral argument under Rule 19 of the Rules of Appellate Procedure.”

## **IV.**

### **STATEMENT OF THE CASE**

#### **A. Applicable Case Law Regarding Domicile.**

W. Va. Code § 50-1-4 sets forth the qualifications to be a magistrate in West Virginia and provides in pertinent part that “[e]ach magistrate . . . shall reside in the county of his election.” W. Va. Code § 50-1-6 states that “when a vacancy occurs in the office of magistrate, the judge of the circuit court or the chief judge thereof . . . shall fill the same by appointment.” Thus, at the time of appointment, a candidate must reside in the County of his/her application. W. Va. Code § 51-3-18(a) and (c) provide:

- (a) The Legislature finds that when judicial offices created under the Constitution and laws of the state are vacant for extended periods of time, the proper functioning of the judicial branch of the government is impeded. The Legislature further finds that when a vacancy in a judicial office is to be filled by appointment, it is in the public interest that any questions regarding the qualifications or eligibility of the person nominated or appointed to fill the vacancy be determined expeditiously.

....

- (c) When, pursuant to the provisions of section ten, article VIII of the Constitution of West Virginia and the general laws adopted thereunder, a person is appointed to fill a vacancy in the office of magistrate, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after appointment.

W. Va. Code § 3-10-1(b) states that appointments shall be made within 30 days of the vacancy unless the code specifically states a different time period for the specific office. Black's Law Dictionary 99 (6<sup>th</sup> Ed. 1990) defines the term "appointment" as it relates to public office or function as:

The selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same. The term "appointment" is to be distinguished from "election." "Election to office usually refers to vote of people, whereas "appointment" relates to designation by some individual or group.

In *State ex rel. Sandy v. Johnson*, 212 W. Va. 343, 571 S.E.2d 333 (2002), the State Supreme Court addressed "residence" as it related to a Webster County Commission candidate. Two individuals were vying for one seat on the Commission. At the time, Webster was divided into three districts (Central, Northern and Southern) and no two commissioners could come from the same district. The vacancy involved the Southern District. Both the winner of the primary election and the challenger claimed to reside there. However, the winner also owned a farm in the Central District, where he had been living at least until November 2001, and in which he continued to operate on a daily basis.

After the election, the challenger filed a petition for writ of mandamus over the results. The challenger claimed that the winner was not a resident of the Southern District when he filed to run for the seat and therefore was precluded from holding the seat. The Circuit Court agreed and ordered the winner's name removed from the general election ballot. The winner then filed a

petition in the Supreme Court. The Court ultimately held that the winner had adduced competent evidence that he had changed his residence to the Southern District in a timely manner and could therefore remain on the ballot. The Court stated the following in Syllabus Points 5 through 9:

5. The West Virginia Constitution confers a fundamental right to run for public office, which the State cannot restrict unless the restriction is necessary to accomplish legitimate and compelling governmental interest.
6. In West Virginia, the term ‘residence’ is synonymous with the term “domicile” for election law purposes.
7. Domicile is a combination of residence (or presence) and an intention of remaining. If domicile has once existed, mere temporary absence will not destroy it, however long continued.
8. A [person] may live in several different places but he [or she] can have only one domicile. Domicile is a place a person intends to retain as a permanent residence and go back to ultimately after moving away.
9. The important facts in determining the domicile of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicile.

*Id.* (citations omitted). The Court also noted:

When this court weighs the evidence in a disputed residence case, we are mindful that “[a] domicile once acquired is presumed to continue until it is shown to have been changed . . . . In addition, where physical residency is a condition for election, “the residency requirement must be strictly construed”. . . . Finally, “[t]he party alleging a change of domicile has the burden of proof.”

*Id.* at 349-350, 571-S.E.2d at 339-40.

The Court found that the winner had provided “competent evidence” that he resided in the Southern District at the time he filed his candidacy papers. *Id.* The winner and his wife testified that he lived in the Southern District since November 2, 2001, and that he intended to make it his permanent home. *Id.* He acknowledged working daily at his Central District farm but indicated that he first spent six nights a week and eventually seven nights a week at his Southern District



home. *Id.* A Southern District neighbor also testified seeing the winner at his Southern District home “three fourths of the time” prior to the election including in January 2002. *Id.* According to the neighbor, he ran into the winner at the post office in January 2002 and was told that he was moving to the Southern District and running for County Commission there. *Id.* In 2001, the winner also began receiving his water, phone, electric and mail service at the Southern District residence. The mailing address for his homeowner’s policy for the Central District farm was also changed to the Southern District address. *Id.* Lastly, the winner changed his voters’ registration address in October 2001 to the Southern District address. The Court thus concluded that “this evidence proves that the winner resides” at the Southern District location and “that his intention is to remain there.” *Id.*

In 2020, the State Supreme Court again addressed the issue of the word “reside” in *State ex rel. Justice v. King*, 244 W. Va. 225, 852 S.E.2d 292 (2020). In that case, the Governor filed a petition for writ of prohibition seeking to stop the Circuit Court of Kanawha County from enforcing a constitutional provision requiring him to reside at the seat of government during his term of office. The Court denied the petition finding that the governor’s constitutional duty to reside at the seat of government during his term of office was a mandatory nondiscretionary duty.

In Syllabus pt. 6, the Court stated:

For purposes of the residency provision located in Section 1 of Article VII of the West Virginia Constitution, “reside” means to live, primarily, at the seat of government; and requires that the executive official’s principal place of physical presence is the seat of government for the duration of his or her term of office. Residency, once established, is not lost through temporary absence. Rather, the controlling fact of residency is the intent to return to that principal place of physical presence.

*Id.* The Court also noted:

“[R]esiding” is not a matter of discretion, but rather one of intent – specifically, the intent to return to a certain place. As we previously have held when considering

the meaning of “residence,” “[t]he controlling factor is the intent, as evinced primarily by the acts of the person whose residence is questioned. If an absence from a residence is intended to be temporary, it does not constitute an abandonment or forfeiture of the residence.”

*Id.* at 239, 852 S.E.2d at 306.

**B. Respondent’s Inappropriate Attempt to Gain the Kanawha Magistrate Appointment.**

Respondent was a longtime Magistrate Assistant – first in Nicholas County, then in Kanawha County and again in Nicholas County. She ran in the May 2024 election for Magistrate of Nicholas County. She won and was supposed to take office on January 1, 2025. However, because of a resignation effective June 13, 2024, she took office in Nicholas County on or around July 1, 2024. At all times relevant to the matters in question, Respondent was either an applicant for Kanawha County Magistrate, a candidate for election to Nicholas County Magistrate or Magistrate-Elect.

On January 23, 2024, Respondent filed an application to fill a vacancy created by the resignation of Kanawha Magistrate Mike Ferrell on or about January 19, 2024 (Jt. JHB Ex. 5 at 107-108, 128-131). On the application, Respondent listed her address as “ \_\_\_\_\_ Street, Dunbar, WV” (emphasis added). On page 1, she stated above “Home County” that she was “**Working in Nicholas**” (emphasis added). On page 2, she stated that she worked as a Magistrate Assistant in **Nicholas from “03/23/2023 to 1/23/2024”** (emphasis added). She also listed working as a Magistrate Assistant in **Kanawha from “8/23/2019 to 3/22/2023”** (emphasis added).

On page 2, Respondent signed and dated the application effective January 23, 2024. By signing it, Respondent attested “**that the answers given herein are true and complete to the best of my knowledge**” (emphasis added). She also attached a resume listing the Dunbar address as her residence (Jt. JHB Ex. 5 at 109-110). The resume stated that she worked in Nicholas County

as a Magistrate Assistant from November 2005 to December 2016 and that she worked temporarily as a Magistrate Assistant in Kanawha from June 2019 to August 22, 2019.

On or about January 26, 2024, Earl Whittington was appointed to replace Magistrate Ferrell. Magistrate Whittington took office on or about February 16, 2024 (Jt. JHB Ex. 5 at 132-135). On January 26, 2024, Respondent filed a Certificate of Announcement with the Nicholas County Clerk declaring her candidacy for Magistrate, Division 2 and listed her current **“legal residence”** as **405 Main St., Summersville, WV 26651** (Jt. JHB Ex. 5 at 111).

On January 29, 2024, JDC received an email from the Honorable Maryclaire Akers, Judge of the 13<sup>th</sup> Judicial Circuit, alleging that Respondent lied on her Kanawha County Magistrate application about her address (Jt. JHB Ex. 5 at 112-113). She found out the Dunbar address provided by Respondent belonged to Kirstie Trabert, Magistrate Ferrell’s/Whittington’s Assistant, and that Respondent really lived in Nicholas County.

Judge Akers questioned Trabert who claimed the agreement existed for approximately three months but that she only had one payment receipt from mid-January 2024. She said there was no rental contract or agreement. Judge Akers also provided an email from Respondent, dated January 22, 2024, at 1:21:37 p.m., in which Respondent said, **“I had moved to Kanawha County in 2021 and, after transferring to Nicholas, I have maintained a residence in Kanawha due to wanting to run in the upcoming election for one of the new magistrate seats”** (Jt. JHB Ex. 5 at 113)( emphasis added).

On January 31, 2024, Judicial Disciplinary Counsel opened a complaint on Respondent (Jt. JHB Ex. 5 at 104-113). By letter dated February 12, 2024, Respondent replied to the complaint (Jt. JHB Ex. 5 at 114-115 ). Respondent stated:

**I absolutely applied and I used my current rental address on my application. My agreement with Kirstie Trabert was reached last year because I had every**

**intention of running for Magistrate in Kanawha County and per that agreement, I will be paying rent to her through May of 2024.**

(emphasis added). She also stated that “[i]t was never my intent, when I applied for the appointment to be anything other than transparent and honest” (emphasis added).

Respondent also said:

As my tax records show, I purchased a Condo in Charleston in 2021 because I was tired of driving to and from Summersville to Charleston every day and paying for a hotel room when I had weekend court or the weather was bad. My condo sold very quickly, so by the time I realized I wanted to be back in Charleston, the condo was gone.

The evidence adduced during the investigation clearly and convincingly demonstrated that Respondent was never domiciled in Kanawha County. On December 12, 2019, Respondent filled out a judicial employment application form to work as a Magistrate Assistant in Kanawha County and listed her home address as 405 Main Street, Summersville [Nicholas County] (Jt. JHB Ex. 5 at 116-120). Importantly, she never changed the address with the Court even though on September 22, 2021, she bought a condo at 1313 Lee Street East, Charleston, Kanawha County (Jt. JHB Exhibit 5 at 136-139). She sold the condo on June 9, 2023, after she began working as a Magistrate in Nicholas County.<sup>1</sup> While she owned the condo, she also kept her long term residence in Nicholas County, and her husband resided there. Her address on her driver’s license is and has always been in Nicholas County (Jt. JHB Ex. 5 at 121). Her voter’s registration address is and has always been in Nicholas County (Jt. JHB Ex. 5 at 122). She pays all real and personal property taxes in Nicholas County (Jt. JHB Ex. 5 at 123-126). She had real property taxes only for 2023 for the Kanawha County property, and as of her sworn statement had not paid them (Jt. JHB Ex. 5

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<sup>1</sup> On March 11, 2023, West Virginia House Bill 3332 passed the Legislature and gave Kanawha County three additional Magistrates as of January 1, 2025 following election of the same in May 2024. The bill went into effect 90 days from passage (Jt. JHB Ex. 5 at 139-156).

at 127). All of her utility bills are and have always been sent to her Nicholas County address (Jt. JHB Ex. 12 at 700-786).

On November 14, 2023, Respondent first made an attempt to rent a place in Kanawha County by contacting Kanawha Magistrate Assistant Megan Nearman via text message. Respondent stated, “Do you still have rental property . . . . I am needing an address in Kanawha County. What is rent?” (Jt. JHB Ex. 14 at 987). Nearman quoted a monthly fee and said, “If you are interested let me know. It’s a small little house very small” (Jt. JHB Ex. 14 at 988-989). Respondent asked where the house was and Nearman replied that it was in Kanawha County (Jt. JHB Ex. 14 at 990). Respondent then asked how far it was from the Courthouse and Nearman replied that it was 25 to 30 minutes (Jt. JHB Ex. 14 at 991). Respondent told Nearman that she would talk to her husband when he came home and that she “really want[s] to run there” (Jt. JHB Ex. 14 at 993). Respondent ultimately rejected the offer as costing too much.

On or about November 16, 2023, Respondent contacted Trabert via text message and asked her if she could rent a room from her:

Respondent: I was going to see if I could rent a room from you for an address until the election is over and if I win, I can find a regular place. I’ll pay you 150 a month to use your address for my purpose. We have to keep it way on the down low. People only need to know I’m renting from you and I’ll be able to work here [Nicholas County] with no issue.

Trabert: that would be totally fine with me

Respondent: Sweet!

(Jt. JHB Ex. 5 at 159-161). The two did not discuss Respondent renting a room again until January 2, 2024, when Respondent texted Trabert and asked her if she had PayPal (Jt. JHB Ex. 5 at 169). Respondent then asked Trabert if she was “still ok with me paying you 150 a month to be a roommate for a while.” Trabert replied, “Yeah!” (Jt. JHB Ex. 5 at 170-171).

The two did not discuss rent again until January 9, 2024 when Respondent said she had to get her paperwork in to run for Kanawha County Magistrate. She texted Trabert, “OMG! I gotta get my paperwork in. What is our address? I have to get my rent to you” (Jt. JHB Ex. 5 at 181-182). Trabert replied that the address was “\_\_\_\_\_ St., Dunbar, WV 25064” (Jt. JHB Ex. 5 at 182-183).

On January 11, 2024, Respondent contacted Trabert and told her that she was coming to Charleston tomorrow and would leave “your check on your desk” (Jt. JHB Ex. 5 at 192-193). On January 12, 2024, Respondent went to the Kanawha County Courthouse and supposedly gave Trabert \$150 in cash (Jt. JHB Ex. 5 at 195-197). On January 19, 2024, Trabert attempted to call Respondent twice. She then contacted Respondent by text message at 4:02 p.m. and told her to “call me ASAP” (Jt. JHB Ex. 5 at 204). Respondent called Trabert at 4:03:18 p.m. and the two spoke for three minutes. During that call, Trabert informed Respondent that Magistrate Ferrell resigned. At approximately 6:34 p.m., the following text exchange occurred between the two:

Trabert: I am to the point where I either want you to try and go to Akers to get appointed or imma go talk to her about being appointed for the rest of the term. I don’t want to run. But I also know that probably 2 of 4 people in this building are gonna try and get appointed that are running. . . .

Respondent: nahh . . . I would venture a guess that they will bring in a Senior Status to fill the gap because the election is so close.

(Jt. JHB Ex. 5 at 205-207).

During the evening of January 20, 2024, Trabert sent Respondent a copy of a WCHS article on Ferrell resigning via text message and said, “submit it!!! send ya application!” (Jt. JHB Ex. 5 at 217). Respondent replied that she would “do that tomorrow to get a head start!” (Jt. JHB Ex. 5 at 218) On January 22, 2024, the following text colloquy took place between the two:

Respondent: I’m applying for Mike’s [Ferrell’s] position.

Trabert: Good.

Respondent: I'm using our address.

Trabert: yayyyy

(Jt. JHB Ex. 5 at 226).

On Tuesday, January 23, 2024, Trabert texted Respondent and asked her if she sent in the application. Respondent replied, "I sent Judge Akers an email expressing my interest and I am sending my resume today. I had to think about who to use as references!" (Jt. JHB Ex. 5 at 227). Later, Respondent texted Trabert and said, "Application and resume sent . . for what it's worth" (Jt. JHB Ex. 5 at 228). That evening, Trabert told Respondent that Judge Akers "should be announcing [the new magistrate] Thursday" (Jt. JHB Ex. 13 at 846). Trabert then told Respondent, "I think out of everyone you have the best bet." Respondent replied, "Awwww . . thanks. I hope so . . we would be a great team!" (Jt. JHB Ex. 13 at 847). Trabert responded, "oh most definitely and that you haven't filed yet is great cause no politics lmao" (Jt. JHB Ex. 13 at 848). On Wednesday, January 24, 2024, Respondent told Trabert that she would be in Kanawha County on Friday to file paperwork to run in Kanawha. She also said, "If I do get the appointment I will be changing my address to a new rental address. You're an amazing landlord but we need our space." Respondent followed the latter statement with three laughing/tears of joy emojis (Jt. JHB Ex. 13 at 861).

Over the next two days, the two continued to exchange texts about the potential appointment. In a 1:17 p.m. text on Friday, January 26, 2024, Trabert informed Respondent that Earl Whittington had been appointed (Jt. JHB Ex. 13 at 897-898). Trabert then opined, "the only thing I think she [Judge Akers] could have tried to make an issue was your renting from me but the thing is we aren't related it doesn't matter" (Jt. JHB Ex. 13 at 899). Respondent said, "I am

pissed off. . . . I'm devastated. I have all this experience and passion and knowledge . . . ." (Jt. JHB Ex. 13 at 900-903).

By a text message dated Saturday, January 27, 2024, at 10:23 a.m., Respondent informed Trabert that she "filed in Nicholas" and that "if I win you're moving!" (Jt. JHB Ex. 13 at 910). On February 2, 2024, Respondent told Trabert the following by text message:

I'm under investigation by the Judicial Investigation Committee. . . Someone filed a complaint against me alluding to the notion that I was somehow aware of Ferrell quitting and trying to use your address to get the appointment. They have copies of my and Doug's real estate and tax records and shit. I haven't looked at it completely. . . . Fuckers. I have been actively looking for an apartment for several months to move back down there and when I paid my January rent to you we had absolutely no clue about Ferrell. I'm so pissed. . . . Whatever. I have all my emails to apartment places and facts are facts.<sup>2</sup>

(Jt. JHB Ex. 13 at 930-934). On February 13, 2024, Respondent sent Trabert a text letting her know that "I'm sticking my February and March rent in your Valentine's Day card. I'm sticking to our agreement and paying thru May" (Jt. JHB Ex. 13 at 939).

### **C. Trabert's First Sworn Statement.**

JIC had to subpoena Trabert as she would not agree to voluntarily submit to a sworn statement. JIC also subpoenaed the following documents from her: Copies of any and all rental and/or contractual agreements by and between Respondent and Trabert for rent or mortgage payments for \_\_\_\_\_ Dunbar, WV from January 1, 2024 to the present; copies of any and all canceled checks and/or receipt of payments for rent or mortgage from Respondent to Trabert from January 1, 2022 to the present; copies of any and all electric, gas, water, sewer, phone and/or cable bills paid by Trabert from January 1, 2022 to the present; and copies of any bank records

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<sup>2</sup> Respondent never submitted any of the emails to the JIC and a subpoena to the Supreme Court's IT Department did not turn up any work emails relating to renting living quarters in Kanawha County.



demonstrating the rental payments were received including but not limited to monthly statements, deposit slips, etc. from January 1, 2022 to the present.

A week before the sworn statement, Trabert contacted the undersigned and asked if she would have to appear personally if she submitted the documents via email. She was advised that she must appear and give a statement pursuant to the subpoena. On the appointed day, Trabert appeared but failed to bring the majority of the requested documents with her. Instead, she simply brought one receipt and two checks.

The receipt is for a cash payment of \$150. The receipt date is left blank. The property address is listed as “\_\_\_\_\_ Street, Dunbar, 25064.” The tenant’s name is listed as “Elizabeth Boso.” The rental period is listed as “January 1, 2024 to January 31, 2024.” The date payment received is listed as “January 12, 2024.” The payment type was “Cash.” The Total Owed and Amount Paid were each listed as “\$150.” And the remaining balance was listed as “0.” There was no evidence in the bank records that Trabert subsequently provided to show that the cash was ever deposited into Trabert’s bank accounts (Jt. JHB Ex. 5 at 233, Ex. 6 at 318, and Ex. 9 at 409-444).

The first check is from Respondent to Trabert in the amount of \$300. The check was dated “2-12-24,” or the same day as Respondent’s written response to the ethics complaint. The memo line indicated it was for “Feb & Mar” rent payments. Respondent mailed the check and Trabert remote deposited the money into her bank account on or about February 21, 2024 (Jt. JHB Ex. 5 at 229-230, Ex. 6 at 319 and Ex. 9 at 428).

The second check is from Respondent to Trabert in the amount of \$300. The check was dated “4-19-24.” The memo line indicated it was for “April & May Rent.” Respondent mailed the check and Trabert remote deposited the money into her bank account on or about May 9, 2024, or the date of her first sworn statement (Jt. JHB Ex. 5 at 231-232, Ex. 6 at 320 and Ex. 9 at 444).

Until June 2023, Trabert lived in an apartment in Charleston (Jt. JHB Ex. 6 at 244, 246 and 292-293). On or about June 20, 2023, Trabert bought a two bedroom/one bath house at \_\_\_\_\_, Dunbar (Jt. JHB Ex. 6 at 244-246, 294-317). The house is 865 square feet and also contains a kitchen, living room and laundry room (Jt. JHB ex. 6 at 246, 294-317). Trabert moved into the home in late June 2023 with her cat and dog (Jt. JHB Ex. 6 at 246). She paid \$113,000 for the house, and her monthly mortgage payment is a little less than \$850.00 (Jt JHB Ex. 6 at 246-47, 294-317). Trabert testified that all utilities – electric, gas, water, sewer, trash and wi-fi -- have been in her name since she purchased the property and that Respondent's name has never been on any of the bills (Jt. JHB Ex. 6 at 247).

Trabert testified that after Respondent left Kanawha County's employ and sold her townhouse, she would occasionally come to Charleston for a visit. She indicated that the trips were just "day trips" and that Respondent never spent the night at Trabert's house. She said that Respondent never stayed at her Dunbar residence between June 2023 and December 31, 2023 (Jt. JHB Ex. 6 at 252).

Trabert also said that Respondent never stayed at the property when Trabert was there but did not know whether Respondent stayed there when she was gone. Trabert's details about when she was present or absent from her apartment were sketchy at best. However, she did say that she provided Respondent with a key (Jt. JHB Ex. 6 at 256-257, 259-262). When asked if she had done anything with Respondent between January and May 2024, Trabert testified:

A. The only thing I can recall right now is the day that I saw her when she came to visit which was on the 12<sup>th</sup> [of January]. There's probably more, but that's the only thing I can sit here and picture in my head.

Q. And she didn't spend the night on the 12th; is that correct?

A. No.

(Jt. JHB Ex. 6 at 263).

Trabert testified that Respondent never left any personal belongings at the Dunbar address (Jt. JHB Ex. 6 at 272). Trabert also testified she never saw any evidence of anyone being inside her house when she hadn't been there (Jt. JHB Ex. 6 at 273). Trabert said she had a security camera inside her house to observe her animals but never saw Respondent in any video (Jt. JHB Ex. 6 at 273).

Although they talked about Respondent renting a room from Trabert on prior occasions, Trabert acknowledged that Respondent didn't give her any money until January 12, 2024 (Jt. JHB Ex. 6 at 254). Respondent never looked at the house before agreeing to rent from Trabert (Jt. JHB Ex. 6 at 263). According to Trabert, the agreed upon price was \$150 a month (Jt. JHB Ex. 6 at 254). Trabert said she received the money from Respondent in cash. Trabert said there was never a written rental agreement (Jt. JHB Ex. 6 at 255, 263). When asked why she only charged Respondent \$150 a month when her mortgage was close to \$850, Trabert replied, "It was just temporary . . . . I know that she was still looking for a place to move back down here. . . . (Jt. JHB Ex. 6 at 255-256). Trabert acknowledged that she paid approximately \$250 a month in utilities; Respondent and she never discussed Respondent paying utilities; and the \$150 a month rental payment did not include utilities.

Trabert was adamant that the verbal agreement was month to month and was not a six month lease (Jt. JHB Ex. 6 at 258). However, Trabert acknowledged that Respondent had made payments for February, March, April and May.

Trabert testified that she found out that Magistrate Ferrell resigned on the day of his resignation (Jt. JHB Ex. 6 at 243). Trabert lied to the undersigned and stated that she did not know how Respondent found out about his resignation but that she did not tell her (Jt. JHB Ex. 6 at 253).

Trabert said that prior to Earl Whittington being selected Magistrate, Respondent and she never discussed whether it was permissible for her to rent a room to someone who may be her boss. She said she didn't think about it. She also acknowledged that she never asked anyone about the arrangement (Jt. JHB Ex. 6 at 269-271).

She said at some point Judge Akers asked to speak to her about the rental arrangement. Trabert told Judge Akers that she was in fact renting a room to Respondent and provided her with a copy of the January 2024 receipt (Jt. JHB Ex. 6 at 271). Trabert testified:

- A. So she asked me if Elizabeth Boso was renting a room from me, if our addresses were the same. She asked if I was letting her just use my address, but I told her she was renting a room from me.

(Jt. JHB Ex. 6 at 274-275).

**D. Trabert's Second Sworn Statement:**

Trabert was given an opportunity to correct any misstatements she made in her second sworn statement which occurred on May 22, 2024. This time she brought Attorney Dave Pence to represent her. By this time or shortly thereafter, Trabert had provided everything requested of her. She provided copies of her work schedule and her time sheets for the relevant period (Jt. JHB Ex. 8). She also turned over her pertinent bank information (Jt. JHB Ex. 9). She provided her telephone records which demonstrate only six calls between the two between November 1, 2023, and May 9, 2024:

<u>Date &amp; Time</u>	<u>Caller</u>	<u>Length</u>
11/03/2023 @ 11:20:29 a.m.	Trabert called Respondent	10 min.
12/21/2023 @ 4:47:05 p.m.	Respondent called Trabert	51 min.
1/19/2024 @ 3:58:39 p.m.	Trabert called Respondent	1 min.
1/19/2024 @ 4:01:41 p.m.	Trabert called Respondent	1 min.
1/19/2024 @ 4:03:18 p.m.	Respondent called Trabert	3 min.

3/13/2024 @ 11:01:46 a.m.

Trabert called Respondent

10 min.

(Jt. JHB Ex. 10 at 445-448). Lastly, Trabert turned over copies of her utilities which demonstrate that she was listed on all bills while Respondent was not listed on any (Jt. JHB Ex. 11).

During this sworn statement, Trabert acknowledged that her testimony was significantly different from what she gave in the prior sworn statement (Jt. JHB Ex. 7 at 336). Initially, Trabert testified that it was her idea to have Respondent move in (Jt. JHB Ex. 7 at 336). According to Trabert, it was because Respondent wanted to work somewhere in Kanawha County and was looking for jobs here including outside the Courthouse (Jt. JHB Ex. 7 at 330-331). However, there was never any indication as such in any text messages by and between the two. After some lengthy questioning, Trabert admitted that the idea to move in with her probably came from Respondent (Jt. JHB Ex. 7 at 353-361).

Trabert testified that she had no knowledge that Respondent ever stayed at her house from November 16, 2023 through the present:

Q. Did she ever leave dirty clothes? Did you notice dirty dishes, things in the trash? Did you receive any text messages from her thanking you for the stay, anything to reflect that she'd ever stayed at your house?

A. No.

Q. Was that – was the room available to Ms. Respondent if she ever chose to stay at your house?

A. Yes.

Q. Did she have free rein to come and go into that spare bedroom as she chose?

A. Yes.

Q. Now, you mentioned before that you'd spent some nights away from your house during January, and there was a discussion about other places you may have stayed. Do you have any reason to believe that while those nights you were gone that Ms. Respondent stayed at your house?

A. No.

(Jt. JHB Ex. 7 at 332-333). Focusing on January 2024, Trabert testified that the only time she was outside of the Charleston area was on January 21, 2024, when she went to Wheeling (Jt. JHB Ex. 7 at 345). She then acknowledged that the only day she was unaware as to whether Respondent was at her house during the month of January would be January 21, 2024 (Jt. JHB 7 at 345).

Concerning the receipt for the cash payment on January 12, 2024, Trabert testified to the following:

Q. And the receipt that is in Exhibit 4 [of the 5/9/2024 Tr.], where did that come from? Is that something you automated, that you created or is it something else?

A. Something I looked up on Google and just made a receipt.

Q. And when did you create that document?

A. The day she handed me the cash.

(Jt. JHB Ex. 7 at 333). Trabert acknowledged that she did not put the money in her bank account (Jt. JHB Ex. 7 at 346). She also could not say what she did with the money or why after receiving it she used her debit card twice on the same day to make two minor food purchases (Jt. JHB Ex. 7 at 346-349). Concerning the lease, Trabert testified that it was month to month and that she thought it would terminate “whenever [Respondent] was done, whatever, if she moved back here, if she didn’t whenever she decided what she was doing” (Jt. JHB Ex. 7 at 335).

Despite text messages to the contrary, Trabert denied discussing the ethics complaint with Respondent (Jt. JHB Ex. 7 at 367). She also denied having any discussions with Respondent about her original sworn statement (Jt. JHB Ex. 7 at 367). She admitted that Respondent told her if elected to the position of Nicholas County Magistrate, she would have her as her magistrate assistant (Jt. JHB Ex. 7 at 52).

**E. Respondent's Sworn Statement.**

Like Trabert, Respondent did not bring certain items subpoenaed of her prior to the sworn statement. Originally, she only produced some text messages by and between Trabert and she that Respondent thought we might want to see. Upon demand, she subsequently produced all text messages between the two (Jt. JHB Ex. 4 at 48-49). She originally failed to produce any utility bills for her Nicholas County home but did so subsequent to the sworn statement (Jt. JHB Ex. 4 at 19).

Respondent acknowledged that she was a resident of Nicholas County and had lived at the same address there since 2005 (Jt. JHB Ex. 4 at 20). Concerning her application for appointment to the Kanawha County Magistrate Position where she placed "Working in Nicholas County" above "Home County," Respondent explained, "I put in there that I was working in Nicholas because I thought that was where you put the home county or the county that you are currently working in" (Jt. JHB Ex. 4 at 27). Respondent admitted that she "probably should have" put that she lived in Nicholas County on the application but she "just put the address that I was going to use if I ran there . . . . I mean I did what I did. I can't make excuses for that. I put the address on there that I thought she would want to see that I was renting, you know, that it was the address that I was going to use if I stayed down here." She further testified:

Q. [Y]ou understand if you substitute the word "appointment" for "election" and you have to reside at the time of your appointment, you weren't residing in Kanawha County, correct?

A. At that point, I was not. Correct. . . .

Q. Well, the appointment was May the 26<sup>th</sup>.

A. Yes.

Q. And at the 26<sup>th</sup>, you had never stayed at that address.

A. Correct.

- Q. So it's fair to say you never resided in Kanawha County at the time the appointment was made, correct?
- A. Correct. I considered that I had a rental address. I did not reside here, correct.
- Q. Okay. And so then immediately after listing your address here in Dunbar, on the 27<sup>th</sup>, you turn around and now say you reside in Nicholas County?
- A. It was the afternoon, the 26<sup>th</sup>, yes, because my address was in Nicholas County. . . .

(Jt. JHB Ex. 4 at 81-82).

When shown her application to run for Nicholas County Magistrate, Respondent acknowledged that her legal residence as of January 26, 2024 was 405 Main Street, Summersville [Nicholas County] (Jt. JHB Ex. 4 at 30). It should be noted that January 26, 2024 was approximately the same time that Earl Whittington was appointed Kanawha County Magistrate. She stated that her “primary residence is in Nicholas County” (Jt. JHB Ex. 4 at 84). She also agreed that she was not domiciled in Kanawha County at the time she applied for Magistrate of Kanawha County or at the time the appointment was made (Jt. JHB ex. 4 at 84).

Concerning the statement in the email to Judge Akers, where Respondent falsely stated that she had “maintained a residence in Kanawha County” after transferring back to Nicholas in order to run in Kanawha County, Respondent admitted it was a “misstatement” and that she had no residence in Kanawha County between June 2023 and January 12, 2024 (Jt. JHB Ex. 4 at 32, 36 and 87). Despite Trabert’s testimony to the contrary, Respondent maintained that the rental agreement between the two was from January to May, 2024 or through “election season” (Jt. JHB Ex. 4 at 34-35). However, Respondent could not provide any evidence as to the veracity of the statement.

Respondent stated that she knew in March 2023 that there were going to be three additional Magistrates placed in Kanawha County who would have to run in the 2024 election (Jt. JHB Ex.



4 at 46-47, 71). She also admitted that she was considering a run for Magistrate in Kanawha County at that time (Jt. JHB Ex. 4 at 73-74). Respondent said she sold her Kanawha County Condo in June 2023 because:

My HOA wouldn't let me rent it out. So when I decided to go back, [my husband] wanted me to come back to Summersville. We were going to try and mitigate some of our financial burden at that point, and my HOA absolutely said, you cannot rent the property out. So we had no choice but to sell it. . . .

(Jt. JHB Ex. 4 at 71).

Respondent admitted that she never stayed at Trabert's address (Jt. JHB Ex. 4 at 49, 68-70). She admitted never going to look at the property or "never actually physically be[ing] there (Jt. JHB Ex. 4 at 49). When asked what she meant in a text to Trabert about renting a room for an address, Respondent replied:

A. In order to file for down here, I felt that I had to have like an address, a mailing address in Kanawha to run. . . . So I was just going to rent it, and I'm not going to lie, I was going to use her address as a rental property as my address in Kanawha County.

Q. So you really had no intent to stay there; is that correct?

A. No. I would've. I had planned to come down because I would've had to have worked, you know, to run. So I was going to stay there for the duration of the election season . . . . So I would have a place to stay when I came down to like campaign or whatever.

(Jt. JHB Ex. 4 at 66-67). When asked by what she meant about keeping the rental on the "downlow," Respondent said she wanted to keep her job in Nicholas even though she said that a Magistrate Assistant's job was not dependent on county residency (Jt. JHB Ex. 4 at 68-69).

Contrary to Trabert's assertion, Respondent said Trabert talked to her about her first sworn statement "after the interview had taken place" (Jt. JHB Ex. 4 at 50, 63). Respondent said Trabert advised:

A. [Y]ou all had gone down to the Judicial Annex building and had talked with her and that she was upset. And then she stated that she had hired, after about an hour or something, that she had contacted, I think it was Dave

Pence, to come down and represent her. And that she was in the meeting for like three hours. And they wanted copies of all of our text messages and copies of all of her utility bills from the thing, which is where I got a little confused on the other. I thought you wanted copies of her utility bills. I didn't realize it was mine. I'm sorry that was my fault. And that she was going to keep the subpoena open. And I told her to just be honest because I'm like, "Kirstie, I never stayed there." I mean we reached the agreement we talked about last fall because I wanted to run. I had planned on running in Kanawha County. . . . So I had the conversation with her, but I told her, I said, "I've never stayed there. You know, you can just tell them I didn't." I mean the facts are the facts.

Q. Did she tell you what was asked?

A. She was asked about just the contents of our text messages, that you all wanted her to turn over all the messages and stuff. And she was upset because some of them are personal, dealing with her health issues and who she was dating and things like that.

Q. Did you talk to her at any other time after that about the investigation.

A. No. She knew that – well, I told her that I had an appointment coming up, that you all were – that Judge Akers had filed a complaint on me over the fact of the addresses and that I had used her address, you know, that I had thought that was totally on me. That was my fault. I misread the canons. I mean I'm not going to lie about that.

. . . .

Q. So if she came here yesterday and told us she never talked to you, that was a lie?

A. I did talk to her.

Q. So that was a lie.

A. Yes.<sup>3</sup>

(Jt. JHB Ex. 4 at 50-52). The conversation occurred on May 9, 2024, following Ms. Trabert's sworn statement (Jt. JHB Ex. 4 at 62-63).

Even more importantly, Respondent claimed she never saw the January 12, 2024 rental receipt created by Trabert:

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<sup>3</sup> During her sworn statements, Trabert stated that Respondent and she communicated only by text and phone. However, Respondent testified they also communicated extensively by Facebook Messenger (Jt. JHB Ex. 4 at 53, 57-59).

Q. And she wrote the receipt out.

A. I never got a receipt for that. I've never seen a receipt. . . .

Q. You never saw a receipt.

A. I never got a physical receipt, no.

Q. She never emailed you one or handed you one?

A. No, ma'am.

Q. So on the 12<sup>th</sup>, she never gave you a receipt?

A. No.

Q. And you've never, to this day, seen a receipt?

A. No.

(Jt. JHB Ex. 4 at 77). Respondent also testified that she was unaware that Trabert had provided Judge Akers a receipt (Jt. JHB Ex. 4 at 78).

While Respondent admitted discussing making Trabert her assistant in Nicholas County if she won the election, she also claimed that it was “just chit-chat. I knew she wouldn't move” (Jt. JHB Ex. 4 at 89). When asked if she understood what she did wrong, Respondent stated:

I did not establish a permanent home base in Kanawha County before I opted to run. I should've done that. I probably should never have used one of my friends as a place to stay. I definitely should not have. And looking at it now, I guess I misrepresented where I lived when I sent my resume in to Judge Akers. And I should've definitely read through the rules more clearly.

(Jt. JHB Ex. 4 at 91).

#### **F. Procedural History.**

On August 2, 2024, the Judicial Investigation Commission voted 7-0, with two members absent, to issue a one count formal statement of charges against Respondent alleging violations of Rules 1.1, 1.2, 2.16(A), 4.1(A)(9), and 4.2(A)(1) and (2) of the Code of Judicial Conduct. On or about August 9, 2024, the Statement of Charges was filed in the Supreme Court Clerk's Office.

In early September 2024, the JDC and Respondent entered into an agreement whereby Magistrate Boso agreed to admit to all of the factual allegations and Code violations contained in the formal charges. Furthermore, both parties agreed to recommend to the JHB that Respondent receive a public censure, a two-month suspension without pay and pay the costs of the proceeding.

On October 25, 2024, the JHB held a hearing in the matter. At that time, both parties jointly entered JHB Exhibits 1-15 into evidence. Respondent took the stand and admitted to all of the factual allegations contained in the formal statement of charges and that as a result she violated Rules 1.1, 1.2, 2.16(A), 4.1(A)(9) and 4.2(A)(1) and (2) of the Code of Judicial Conduct.

Later that same day, the JHB issued its recommended decision which consisted of the following proposed discipline: a public censure; a suspension without pay for a period of two (2) months; and costs in the amount of \$618.45. As mitigation, the JHB found that Respondent “was cooperative during the investigation of the instant complaint and admitted her wrongdoing.”

Importantly, the JHB stated, “The preceding Agreement [between the parties] having been thoroughly considered by the Board, and the evidence and argument presented at the hearing, is unanimously recommended to the Supreme Court of Appeals for adoption.” Undoubtedly, the JHB would not have agreed to the recommended discipline if it had not believed that it was consistent with the discipline given in similar cases.

On October 27, 2024, JDC filed its consent to the JHB recommendation, and on November 21, 2024, Respondent filed her consent to the recommendation. By Order entered January 23, 2025, this Court said it did not concur with the recommended sanctions from the JHB and set forth a briefing schedule for the parties. It is from this Order, that petitioner timely files this brief.

## V.

### ARGUMENT

#### A. **RESPONDENT’S MISCONDUCT SHOULD RESULT IN A CENSURE, A TWO-MONTH SUSPENSION WITHOUT PAY AND THE PAYMENT OF COSTS.**

##### 1. **The Application of the *Cruickshank* Factors Warrants the Recommended Discipline by the JHB.**

WVRJDP 4.12 sets forth the permissible sanctions and provides in pertinent part:

The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to \$5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges’ retirement system or public employees retirement system. . . .

The Rule also provides that “the extent to which the judge knew or should have reasonably known that the conduct involved violated the Code of Judicial Conduct may be considered in determining the appropriate sanction.” *Id.* The Court may impose one sanction per violation of the Code of Judicial Conduct or multiple sanctions for each violation. *Matter of Callaghan*, 238 W. Va. 495, 796 S.E.2d 604 (2017). The Court may run the sanctions concurrently or consecutively, and it may impose a suspension without pay which is greater than the judge’s term of office. *In re Toler*, 218 W. Va. 653, 625 S.E.2d 731 (2005).

A reprimand, which is a less severe sanction, “constitutes a severe reproof to a judge who has engaged in conduct which violated the Code of Judicial Conduct.” *See* WVRJDP 4.12. A censure, which is the most serious of the written reprimands, “constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct.” *Id.*

This Court is the final arbiter of judicial ethics in West Virginia. *See Callaghan, supra*. The longstanding rule is that the Court will make an independent evaluation of the record and recommendations of the Judicial Hearing Board. *Id.* The review is *de novo*. *Id.* *See also Judicial Inquiry Commission v. Dostert*, 165 W. Va. 233, 271 S.E.2d 427 (1980). Included “within this independent evaluation is the right to accept or reject the disciplinary sanction recommended by the Board.” *Matter of Crislip*, 182 W.Va. 637, 638, 391 S.E.2d 84, 85 (1990).

The Court will generally defer to the factual findings of the JHB unless there is some apparent irregularity in the proceedings, or the charged misconduct is especially serious. *Matter of Baughman*, 182 W. Va. 55, 386 S.E.2d 910 (1989). In the *Matter of Browning*, 192 W.Va. 231, 234, n. 4, 452 S.E.2d 34, 37, n. 4 (1996), the Court stated “that substantial consideration should be given to the Hearing Board’s findings of fact. This consideration does not mean that this Court is foreclosed from making an independent assessment of the record, but it does mean that absent a showing of some mistake or arbitrary assessment, findings of fact are to be given substantial weight.” Thus, it only stands to reason that the Court often defers to the Judicial Hearing Board on its conclusions of law, recommended mitigation and recommended discipline unless they are irregular, in error or contain arbitrary assessments.

This Court has consistently held that 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. *See Syl. Pt. 1, Cruickshanks, supra*. The Court has stated that “[m]atters of suspension due to accusations of judicial misconduct are reviewed and decided based on the unique facts and circumstances of each case.” *In re Fouty*, 229 W. Va. 256, 260, 728 S.E.2d 140, 144 (2012). The Court has set forth the following non-exhaustive list of factors to consider when determining whether it is appropriate to suspend a judicial officer:

(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. *See Cruickshanks, supra*.

In *Cruickshanks*, a magistrate was suspended without pay for allegedly participating in a conspiracy with her incarcerated son to retaliate against a fellow inmate who was a witness against the son. *Id.* Specifically, the magistrate gave her son certain documents in the witness' case to prove that he was a snitch and have him moved to another pod in the jail. *Id.* The witness, fearful that he would be jumped by other inmates was moved to another facility. *Id.* The magistrate was subsequently charged with a criminal offense and an extraordinary proceeding was brought against her pursuant to Rule of Judicial Disciplinary Procedure 2.14. *Id.* Following the filing of the 2.14 petition, the Magistrate was suspended without pay pending the outcome of the criminal matter. *Id.* She challenged her suspension before the Supreme Court and this body upheld its earlier ruling after applying the factors which in reality were specifically crafted from the case. *Id.*

The Court found that while the allegation "does not involve the disposition of any of the cases assigned to [the Magistrate], we believe that it still directly related to the administration of justice and arguably reveals a callous disregard by [the Magistrate} of the system of justice she took an oath to uphold. Retaliation against witnesses strikes at the core of our system of justice. . . ." *Id.* at 517, 648 S.E.2d at 23.

The Court also disagreed that the nature of her visits with her son at the jail and the phone calls between them were entirely personal in nature. *Id.* The Court stated:

[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 [the Magistrate] 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.

*Id.*

The Court also noted that the charges do not involve violence on the part of the Magistrate.

*Id.* However, the consequences of her alleged actions could “easily” have brought violence on the witness and endangered his safety. *Id.* Interestingly, the Court did not really address aggravating or mitigating factors. *Id.* Importantly, the Court in *Cruickshanks* stated that the five factors were not all inclusive and that it could base its decision on other considerations.

The applicable *Cruickshank* factors and other considerations warrant a two month suspension in the instant case. While having a criminal indictment or charges in connection with a disciplinary matter certainly makes the decision to suspend without pay easier such a requirement is not necessary for the follow through. *See Callaghan, supra* (circuit judge suspended for two years without pay for running a false campaign ad against a sitting judge in violation of Rules 4.1(A)(9), 4.2(A)(1) and 4.2(A)(4)); *Matter of Camilletti*, Supreme Court No. 22-557 (W. Va. 9/20/2022) (FCJ suspended for twelve months including an actual unpaid suspension of 30 days without pay for repeated intemperate behavior in violation of Rules 1.1, 2.5 and 2.8(B)); *Matter of Pauley*, Supreme Court No. 17-068 (W. Va. 1/3/2018) (magistrate suspended for 45 days without pay for his improper handling of a DVP including falsely claiming in a JIC response that the petitioner had provided a written statement of facts that she brought with her to night court in violation of Rules 1.1, 1.2, 2.5(A) and (B), 2.12(A) and 2.16(A)); *Matter of Snyder*, Supreme Court No. 18-0027 (W.Va. 6/5/2018) (magistrate suspended without pay for thirty-five days for



mishandling a vicious dog case in violation of Rules 1.1, 1.2, 2. 2.5(A) and 2.6(A)).

The charges relate to both the administration of justice and the public's perception of the administration of justice. Magistrates are supposed to reside in the county where they are elected or appointed. A Magistrate who does not reside in the county has no authority to act in that county unless he/she is acting under color of "special magistrate." Quite simply, citizens and voters expect their magistrates to live in their county. Moreover, citizens also expect their magistrates to be truthful as they themselves are required to be when they take an oath as a witness in court. Moreover, Respondent's conduct is a mixture of both personal in nature and relating to the judicial officer's public persona. Respondent wanted the job for her own economic benefit and for the prestige of the title. She engaged in a scheme to illegally obtain the position with Trabert which would have also enriched the latter by ensuring her continued employment. Respondent did more than just fill out forms incorrectly. She proactively sent an email in which she falsely claimed to Judge Akers that she had maintained a residence in Kanawha County since 2021. She took that step to secure the judicial appointment. This wasn't just one lie but a series of falsehoods. She also lied to the JIC about when she reached the rental agreement with Trabert and about her search for a place to live in Kanawha County. As we all know a house built on lies will eventually collapse from the truth as it did in this case. The public perception of judges is that they are truthful because they expect candor from others. If the public cannot trust its judges then who can it trust? Lies in and of themselves indicate a callous disregard for our system of justice which again is based on integrity. How can a system based on integrity stand if it is built on lies? It can't which is why truth is an essential aspect of our system of justice.

In *Callaghan*, the judge received two years for lying in part because he harmed his opponent by the lie, refused to admit any violation of the Code of Judicial Conduct and exhibited

no remorse. In this case, while Respondent's lie could have created severe adverse physical effects on the caseload of the judiciary if she had been selected as Magistrate of Kanawha County her scheme came to light before any real damage could be done. Instead, her lies are tantamount to another black eye on the integrity of the system which because of her cooperation and remorse should result in a two month suspension without pay, a public censure and costs in the amount of \$618.45.

**2. The Recommended Discipline is Consistent With  
Discipline Issued in Other Cases.**

In *Matter of Rock*, 249 W. Va. 631, 900 S.E.2d 57 (2024) which is the most recent disciplinary case issued by this Court, a FCJ was publicly reprimanded for violations of Rules 1.1 and 1.2 and two violations of Rule 2.16(A) for misrepresentations to disciplinary authorities regarding her involvement with a letter written by another FCJ over a pending disciplinary matter. The discipline in part matched the agreed upon discipline recommended by the Special JDC in the companion case *Matter of Stotler*, Supreme Court No. 22-0227 (W. Va. 10/12/2023) for violating Rules 1.1, 1.2 and 2.10 of the Code of Judicial Conduct.

In *Rock*, Special Judicial Disciplinary Counsel challenged the JHB's recommended decision of a public reprimand. In upholding the JHB, the Court stated, "[o]ur own review of judicial suspensions involving Rule 2.16(A) violations reveal that any Rule 2.16(A) violation proven in those cases was collateral to serious underlying misconduct reflecting over abuse of judicial office." *Rock* at 646, 900 S.E.2d at 72. The Court went on to cite *Matter of Ferguson*, 242 W. Va. 691, 841 S.E.2d 887 (2020) and *Matter of Williams*, 248 W. Va. 106, 887 S.E.2d 231 (2023) as examples. The Court then stated that "[j]udicial suspensions not involving Rule 2.16(A) violations have historically involved pervasive and grave misconduct." *Rock* at 646, 900 S.E.2d at 72. The Court then went on to cite *Callaghan, supra*, *In re Wilfong*, 234 W. Va. 394, 765 S.E.2d

283 (2014), *In re Toler*, 218 W. Va. 653, 625 S.E.2d 731 (2005); *In re Watkins* 233 W. Va. 170, 757 S.E.2d 594 (2014); and *In re Riffle*, 210 W. Va. 591, 558 S.E.2d 590 (2001). However, it should be observed that prior to the implementation of the current Code of Judicial Conduct in late 2015 there was no provision equivalent to Rule 2.16(A) contained within the Code.

In *Riffle*, a magistrate was indicted on five felony counts of attempting to fraudulently secure workers compensation benefits, three misdemeanor counts of providing false or misleading information to the State Police and two misdemeanor counts of falsely reporting an emergency incident. *Id.* Following the indictment, the Administrative Director filed a Rule 2.14 complaint against the magistrate and this Court suspended her without pay pending the outcome of the criminal case. A jury subsequently convicted her of all seven charges. *Id.* The JIC then filed formal charges against her alleging violations of Canons 1, 2A, 3A and 3B(2) of the former Code of Judicial Conduct. *Id.*

The magistrate appealed her criminal convictions to this Court. *Id.* While the appeal was pending, the Judicial Hearing Board and the magistrate agreed that if this Court upheld the convictions, then her criminal acts would have violated the canons charged and the Board would consider what sanctions, if any, to apply. *Id.* After this Court refused the criminal appeal, the Board issued its recommended decision which consisted of a public censure, a suspension for one year without pay and a \$5,000.00 fine. *Id.* The magistrate then challenged the Board's findings before this Court arguing in part that suspension was unnecessary because she was no longer a magistrate and that she had been suspended without pay pending her criminal conviction for approximately two years, that she was innocent of the underlying charges so sanctions were not necessary and that she was adequately punished by her criminal sentence. *Id.*

In adopting the recommendation of the Hearing Board as to the public censure and the suspension, this Court stated:

The commentary to Canon 2 notes that “[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges. [The magistrate} did not avoid impropriety in her actions. Because of the severity of the offenses for which [the Magistrate] was convicted and the likely effect that her misconduct, while serving as a judicial officer, would have on the public’s confidence in our judiciary, we agree with the Board that public censure of Magistrate Riffle is appropriate. We further agree that suspension for 1 year is warranted.

*Id.* at 593, 558 S.E.2d at 593. In essence, the magistrate received a one year suspension without pay for lying to secure worker’s compensation benefits, lying to the State Police three times and lying about an emergency situation on two separate occasions. She was charged criminally, did not admit her wrongdoing, did not cooperate in the investigation and showed no remorse. Her conduct not only cast disrepute on the Court system as a whole but she profited from her own misdeeds.

If the benchmark is *Riffle* which is a public censure and a one year suspension without pay, and the other end is *Rock* at a public reprimand then the discipline warranted in the instant case must be something in between.<sup>4</sup> Respondent was not charged with any criminal violations. She lied on her forms and resume that she submitted for the magistrate appointment. She proactively and without prompting lied to Judge Akers in her email to her concerning the appointment. These lies prompted the Rule 1.1, 1.2, 4.1(A)(9) and 4.2(A)(1) and (2) violations. She also lied to Disciplinary Counsel about having attempted to consistently find lodging in Kanawha County in violation of Rule 2.16(A). She did not really hurt anyone but herself but had she been appointed would have harmed someone who had the appropriate credentials to serve in Kanawha County.

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<sup>4</sup> Unlike the instant case, the judges in *Callaghan*, *Ferguson*, *Williams* and *Rock*, did not admit any wrongdoing, did not exhibit any remorse and did not really cooperate in the investigation. Additionally, *Williams* and *Ferguson* involved minor misdemeanor convictions. *Williams*, *Ferguson*, and *Callaghan* involved harm not only to the judicial system but to another individual.

She did harm the integrity of the Court system as a whole because she lied to the judge and to disciplinary counsel but unlike Rock and Riffle she cooperated in the investigation, admitted her actions and was remorseful.

A lie is a lie whether it be to disciplinary counsel, the state police or a judge. The decision to discipline a judge for lack of candor must be based on the act of lying itself and not on who is lied to. Respondent, the JIC, and the JHB believed her lies were serious enough to warrant a public censure, a two month suspension without pay and costs. Certainly, if the JHB believed that a more or less serious sanction should be imposed it would have done so. By agreeing with Respondent and the JIC it indicated that the suggested discipline was within the acceptable limits. As this Court recognized in *Rock*, “judicial disciplinary cases are ‘rarely apples to apples,’” Id at 645, 900 S.E.2d at 71. As such they cannot be pigeonholed into specific discipline categories. Discipline should be meted out based on the totality of circumstances and where one case may warrant a one year suspension and another simply a reprimand, the next case may sufficiently resolve with a two month suspension without pay and a public censure as it does in this case.

## **VI.**

### **CONCLUSION**

**WHEREFORE**, the JDC respectfully requests that this Court impose the following sanctions:

- a Respondent receive a public censure;
- b. Respondent receive a two month suspension without pay; and
- c. Respondent be ordered to pay the costs of the investigation and prosecution

of the disciplinary matter in the amount of \$618.45.

Respectfully submitted,

by,



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**BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**IN THE MATTER OF:  
THE HONORABLE ELIZABETH BOSO,  
MAGISTRATE OF NICHOLAS COUNTY**

**SUPREME COURT NO. 24-0436  
COMPLAINT NO. 22-2024**

**CERTIFICATE OF SERVICE**

I, Teresa A. Tarr, JDC Counsel, do hereby certify that on the 7<sup>th</sup> day of March, 2025, I served a true and accurate copy of the JDC Brief by placing the same in the United States mail, first-class postage prepaid, to Respondent and addressed to the Honorable Elizabeth A. Boso, Magistrate of Nicholas County, 511 Church Street, Summersville, WV 26651 and by email to [elizabeth.boso@courtswv.gov](mailto:elizabeth.boso@courtswv.gov).

Respectfully submitted,



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