

No. 33336 – In the Matter of: Carolyn D. Cruickshanks, Magistrate for Braxton County

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OF WEST VIRGINIA

Maynard, Justice, concurring:

I wholeheartedly agree with the majority opinion’s reasoning and disposition of this case. I write separately to refute the partial dissent’s accusation that a majority of this Court arbitrarily suspended Magistrate Cruickshanks’ pay without a shred of evidence to support our decision.

Incredibly, the partial dissent avers that the majority unfairly suspended Magistrate Cruickshanks’ pay based solely on “unsubstantiated,” “unvarnished” and “bald” accusations, despite the fact that there have been two separate findings of probable cause. As noted in the majority opinion, Magistrate Cruickshanks was arrested and charged with conspiracy to retaliate against a witness. Obviously, this arrest required a finding by a judicial officer of probable cause. Thereafter, the Office of Judicial Disciplinary Counsel presented its report to this Court after it conducted an investigation into this matter, and this Court found probable cause to believe that Magistrate Cruickshanks violated certain canons of the Code of Judicial Conduct. Far from constituting “unsubstantiated,” “unvarnished” and “bald” accusations, the facts and circumstances of this case raise a reasonable belief that Magistrate Cruickshanks likely committed the crime and violations charged. To suggest

otherwise is to demean the impartial operation of the judicial system.

Specifically, there is probable cause to believe that Magistrate Cruickshanks gave to her incarcerated son, Jordan Grubb, legal documents containing the statements of Philip Dailey, who was a witness against Grubb and who is incarcerated in the same jail as Grubb. Grubb had explained to Magistrate Cruickshanks that he needed to show the other inmates in Dailey's pod the statements which Dailey had made to authorities for the apparent purpose of proving that Dailey was a "snitch." Thereafter, Grubb showed these documents to other inmates in Dailey's pod. The resulting animosity exhibited toward Dailey by these other inmates caused the jail authorities to move Dailey elsewhere in the jail. When Grubb later told Magistrate Cruickshanks of the success of his plan, she replied of Dailey, "Well, that's what he gets." Such conduct by an officer of the court is unconscionable and reprehensible and strikes at the heart of the efficient operation of the criminal justice system.

As set forth in the majority opinion, "[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." Syllabus, *Matter of Gorby*, 176 W.Va. 16, 339 S.E.2d 702 (1985). I agree with the majority that the misconduct alleged, retaliating against a witness, is related to the administration of justice and a flagrant abuse of Magistrate Cruickshanks' position. This Court's suspension of

Magistrate Cruickshanks without pay until the underlying judicial disciplinary proceeding is completed sends a strong message to judicial officers that they must scrupulously adhere to the Code of Judicial Conduct. It also helps to create public confidence in the integrity of judicial officers. Anything less than a suspension without pay in an egregious case like the instant one would likely create public cynicism.

In conclusion, the majority has a very sound basis for suspending Magistrate Cruickshanks without pay based not on “unsubstantiated,” “unvarnished” and “bald” accusations but rather on facts and circumstances that give rise to probable cause to believe that Magistrate Cruickshanks violated the Code of Judicial Conduct. Accordingly, I concur.