

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
KURT JOSEPH POMRENKE**

VSB DOCKET NO. 18-102-111050

**AGREED DISPOSITION MEMORANDUM ORDER
NINE-MONTH SUSPENSION WITHOUT TERMS**

On November 27, 2018 this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of Michael A. Beverly, 2nd Vice Chair, Yvonne S. Gibney, Jeffrey L. Marks, John D. Whittington and Martha J. Goodman, Lay Member. The Virginia State Bar was represented by Edward J. Dillon, Jr., Senior Assistant Bar Counsel. Kurt Joseph Pomrenke was present and was represented by counsel Frank K. Friedman. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Jennifer L. Hairfield, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's response, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive a Nine-Month Suspension without Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective November 27, 2018.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the

Revocation or Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the Revocation or Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Revocation or Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at his last address of record with the Virginia State Bar at 17763 Mahogany Dr., Abingdon, VA 24210, and a copy to Frank K. Friedman, Respondent's counsel at WoodsRogers PLC, 10 South Jefferson Street, Suite 1400, P.O. Box 14125, Roanoke, VA 240389-4125, and a copy hand-delivered to Edward J. Dillon, Jr., Senior Assistant Bar Counsel, Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

Enter this Order this 27th day of November, 2018
VIRGINIA STATE BAR DISCIPLINARY BOARD



Michael A. Beverly
nd Vice Chair



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KURT JOSEPH POMRENKE

VSB Docket No. 18-102-111050

AGREED DISPOSITION
(Nine-Month Suspension without Terms)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Edward J. Dillon, senior assistant bar counsel; Kurt Joseph Pomrenke, Respondent; and Frank Kenneth Friedman, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Kurt Joseph Pomrenke ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. At all relevant times, Respondent has been married to Stacey Pomrenke.
3. In or about July 2013, Respondent became a Juvenile and Domestic Relations District Court Judge for the 28th District.

Improper Communication with Potential Witnesses

4. In or about 2013, the federal government began investigating possible corrupt practices and tax fraud at the Bristol Virginia Utilities Authority ("BVU").
5. Stacey Pomrenke was the chief financial officer at BVU at that time. BVU continued to employ Mrs. Pomrenke as its CFO throughout the course of the federal government's investigation into possible corrupt practices and tax fraud at BVU (the "BVU Investigation").
6. In or about November 2014, BVU hired Donald L. Bowman as its president and chief executive officer. During the course of the BVU Investigation, Mr. Bowman, sometimes with the assistance of Mrs. Pomrenke, gathered, reviewed, and produced to federal prosecutors documents responsive to subpoenas issued to BVU. Mr. Bowman generally cooperated with the BVU Investigation.

7. By letter to Mrs. Pomrenke's attorney dated July 2, 2015, the U.S. Attorney's Office for the Western District of Virginia notified Mrs. Pomrenke that she had been designated a target of the BVU Investigation.
8. In a letter to BVU's attorney dated August 21, 2015, Mrs. Pomrenke's attorney, Steven Minor, stated that "[i]t has come to [his] attention that one or more members of the Board of Directors of the BVU Authority want the Board to discuss Ms. Pomrenke's employment at a future meeting." Mr. Minor also advised BVU that only the BVU president – not the BVU board of directors – could "take action regarding Ms. Pomrenke's employment."
9. On or about October 26, 2015, a federal grand jury indicted Mrs. Pomrenke on 15 criminal charges. The case was styled U.S. v. Pomrenke, Case No. 1:15CR00033 (the "Criminal Case").
10. By Order entered October 27, 2015, the United States District Court for the Western District of Virginia (the "Federal Court") released Mrs. Pomrenke on bond subject to certain conditions, including that she "avoid contact outside the presence of his/her counsel with any alleged victims or potential witnesses regarding his/her case." Respondent was present at the bond hearing and heard the judge instruct Mrs. Pomrenke not to communicate with potential witnesses.
11. Mr. Bowman testified that, prior to November 18, 2015, the U.S. Attorney's Office had informed him that he could be a witness in the Criminal Case against Mrs. Pomrenke.
12. On or about November 18, 2015, Respondent sent a handwritten note (the "Note"), along with one of his judicial business cards, to Mr. Bowman. The Note stated:

Hi Don:

I just wanted to sincerely thank you for your kindness and understanding and support for Stacey during these horrible times. By now I am sure you would agree she is absolutely honest, truthful, ethical, and innocent! It is horrible what our government is doing to her. She will be proven innocent. Thank you for believing in her.
Kurt Pomrenke

13. Mr. Bowman testified that he was "shocked" to receive the Note from Respondent and that he immediately contacted the U.S. Attorney's Office. He also testified that he disagreed with the statements contained in the Note and that he believed the Note "was an attempt to change [his] view[.]"

14. Respondent testified that, at the time he wrote the Note, he understood that Mr. Bowman had the authority to fire Mrs. Pomrenke and he knew that Mrs. Pomrenke had worked with Mr. Bowman to answer subpoenas in the BVU Investigation.
15. On or about February 5, 2016, Respondent left a message in the voice mailbox of the cell phone of Connie Moffatt (the "Voicemail Message"), a BVU employee and a potential witness in the Criminal Case involving Mrs. Pomrenke. The Voicemail Message stated:

Hey Connie, this is Kurt, um, when you're testifying in that trial there might be a couple of things that you could do that would really help Stacey. If you could kinda slip in when you have a chance just little remarks like, how Stacey did a great job, or Stacey was the one that took care of the employees, or Stacey is just an honest . . . just any, any kind of little comments you can make to support her or, Stacey was the one that always looked out for the employees, or, just something like that even though it's not directly in response to the questions, if you could figure out a way to, to do that I really think that would help and make a huge difference. I'm sorry you're caught up in this, but we feel real good about the outcome and sure appreciate your help. Thank you, bye.
16. On or about February 16, 2016, Mrs. Pomrenke's trial in the Criminal Case began in Federal Court. Neither Mr. Bowman nor Ms. Moffatt testified during the trial, although Ms. Moffatt testified at the sentencing hearing.
17. On or about February 26, 2016, a jury found Mrs. Pomrenke guilty of 14 of the 15 charges in the Criminal Case.
18. In or about 2016, the Judicial Inquiry and Review Commission (the "Commission") investigated allegations that Respondent had inappropriately contacted potential witnesses prior to Mrs. Pomrenke's trial in the Criminal Case.
19. By Notice dated January 17, 2017 (the "Notice"), the Commission charged Respondent with violating Canons 1, 2A, and 2B of the Canons of Judicial Conduct for sending the Note to Mr. Bowman and leaving the Voicemail Message for Ms. Moffatt.
20. At a June 13, 2017 hearing before the Commission (the "Commission Hearing"), Respondent testified that he had come to realize that his actions in sending the Note to Mr. Bowman and leaving the Voicemail Message for Ms. Moffatt did violate the Canons of Judicial Conduct.
21. After the Commission Hearing and by Rule 15A(2) Order entered June 15, 2017, the Commission found that the violations of Canons 1, 2A, and 2B set forth in the Notice

were well-founded and were of “sufficient gravity to constitute the basis for retirement, censure, or removal[.]” The Commission directed its counsel to file a formal complaint against Respondent with the Supreme Court of Virginia.

22. In his response brief filed with the Supreme Court of Virginia on September 29, 2017, Respondent, citing his testimony at the Commission Hearing, conceded that his conduct violated the Canons:

Judge Pomrenke now understands and appreciates, and he acknowledges to this Court as he acknowledged at the June 2017 Commission hearing, that in such a setting he was consumed by his fear and concern for his wife and was not operating with the necessary level of awareness with regard to his judicial responsibilities off the bench. This lack of awareness and deep stress resulted in lapses of judgment in sending the November 2015 note to Donald Bowman and in leaving the voicemail message for Connie Moffatt in February 2016. In the course of the proceedings below, Judge Pomrenke came to recognize first that those actions had been unwise and that he would not repeat them. This was communicated to the Commission in December 2016. [citation omitted]

Over time, and with the cataclysmic events in his wife’s and their children’s lives of her trial, conviction, sentencing and incarceration, came a period of sad and difficult reflection and growth. With that opportunity of additional reflection and consideration, he concluded that, more than just being unwise, his actions indeed had been in violation of the Canons. And he acknowledged this in his testimony to the Commission. [citation omitted]

23. By written opinion dated November 27, 2017 (the “Opinion”), the Supreme Court of Virginia found that the Commission had proven by clear and convincing evidence that Respondent violated Canons 1, 2A, and 2B and ordered that Respondent “be removed immediately from the office of Judge of the Twenty-Eighth Juvenile and Domestic Relations Judicial District[.]” A copy of the Opinion is attached hereto as **Exhibit A**.

Violation of Federal Court Order

24. By Order entered December 1, 2015 (the “December 2015 Order”) in the Criminal Case, the Federal Court ordered that Mrs. Pomrenke’s attorneys could provide copies of confidential discovery material to Mrs. Pomrenke and Respondent so that they could review the materials at their residence. The Federal Court also ordered that Mrs. Pomrenke and Respondent “not disclose or disseminate the materials to any

other person, nor reveal or discuss them with any other person, other than defense counsel.”

25. Despite the December 2015 Order, Respondent disclosed discovery material from the Criminal Case to the Commission. Specifically, in his March 16, 2016 written response to a complaint filed against him with the Commission (the “March 2016 Response”), Respondent stated:

In November 2015, when I wrote the note to Bowman, I did not know nor did I suspect Bowman was “cooperating with the government”, as [Assistant United States Attorney Zachary] Lee asserted. At that time, we had no idea of Bowman’s close continuing relationship with the prosecutors (which we learned of in January when we received discovery that included dozens and dozens of emails between Bowman and Zachary Lee, including the January 25 email from Bowman to Lee which I assumed started all of this, a copy of which is attached.)

26. On July 20, 2017, the United States filed a Motion For Order To Show Cause Why Kurt Pomrenke Should Not Be Held In Contempt Of Court (the “Show Cause Motion”). Federal prosecutors alleged in the Show Cause Motion that Respondent violated the December 2015 Order by disclosing material received in discovery in the Criminal Case to the Commission in his March 2016 Response.
27. Respondent later admitted that he attached a January 2016 e-mail received in discovery in the Criminal Case to his March 2016 Response.
28. By Order entered August 8, 2017, the Federal Court granted the Show Cause Motion and set a bench trial in the United States v. Kurt Pomrenke, Case No. 1:17CR00023, on a charge of criminal contempt.
29. Following bench trial on or about September 13, 2017, Respondent was convicted of one count of criminal contempt in violation of 18 U.S.C. Section 401.
30. On November 30, 2017, the Federal Court entered a Judgment in a Criminal Case sentencing Respondent to a two-month term of imprisonment for criminal contempt.
31. Respondent served his criminal sentence from January 17, 2018 until March 15, 2018, at which point he was released from federal prison.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to practice law;

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel, Respondent, and Respondent's counsel tender to the Disciplinary Board for its approval the Agreed Disposition of Suspension of Respondent's license to practice law for a period of nine (9) months as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

THE VIRGINIA STATE BAR

By: 
Edward J. Dillon, Senior Assistant Bar
Counsel


Kurt Joseph Pomrenke, Respondent


Frank Kenneth Friedman, Respondent's Counsel

PRESENT: Lemons, C.J., Goodwyn, Mims, Powell, Kelsey, and McCullough, JJ., and Millette, S.J.

JUDICIAL INQUIRY AND REVIEW COMMISSION OF VIRGINIA

v. Record No. 170889

OPINION BY
CHIEF JUSTICE DONALD W. LEMONS
November 27, 2017

KURT J. POMRENKE, JUDGE OF THE TWENTY-EIGHTH
JUVENILE AND DOMESTIC RELATIONS JUDICIAL DISTRICT

The Judicial Inquiry and Review Commission of Virginia (the "Commission") filed the present complaint against Kurt J. Pomrenke ("Judge Pomrenke"), pursuant to the original jurisdiction of this Court set forth in Article VI, Section 10 of the Constitution of Virginia and Code § 17.1-902. The Commission asserted that its charges against Judge Pomrenke for allegedly violating the Canons of Judicial Conduct for the Commonwealth of Virginia (the "Canons"), as set out in Part 6, Section III of the Rules of the Supreme Court of Virginia, are well founded in fact, and that the violations are of sufficient gravity to require that this Court censure or remove him from office.

I. Facts and Proceedings

A. The Notice

On January 17, 2017, the Commission issued a Notice establishing formal charges ("Notice") against Judge Pomrenke, alleging that he had engaged in misconduct and conduct prejudicial to the proper administration of justice while serving as a juvenile and domestic relations district court judge. He was charged with violations of Canons 1, 2A, and 2B.

The Commission based its charges on certain alleged facts related to the criminal corruption trial of his wife. Judge Pomrenke's wife, Stacey Pomrenke, was an executive vice



president and the chief financial officer of the Bristol Virginia Utilities Authority (“BVU”) and was indicted by a federal grand jury on 15 corruption charges on October 26, 2015. According to the Notice, Judge Pomrenke attempted to influence two potential witnesses in his wife’s criminal trial.

Note to Donald L. Bowman

Judge Pomrenke sent a handwritten note to his wife’s boss, BVU president and chief executive officer Donald L. Bowman (“Bowman”), on November 18, 2015, that stated as follows:

Hi Don,
I just wanted to sincerely thank you for your kindness and understanding support for Stacey during these horrible times. By now I am sure you would agree she is absolutely honest, truthful, ethical, and innocent! It is horrible what our government is doing to her. She will be proven innocent. Thank you for believing in her.
Kurt Pomrenke

Judge Pomrenke included one of his business cards identifying himself as a judge with this note.

Voicemail for Connie Moffatt

The second allegation involved a voicemail message Judge Pomrenke left on February 13, 2016, for Connie Moffatt (“Moffatt”), a BVU employee who was expected to testify during his wife’s trial on February 16, 2016. The message stated:

Hey Connie, this is Kurt, um, when you’re testifying in that trial there might be a couple of things that you could do that would really help Stacey. If you could kinda slip in when you have a chance just little remarks like, how Stacey did a great job, or Stacey was the one that took care of the employees, or Stacey is just an honest . . . just any, any kind of little comments you can make to support her or, Stacey was the one that always looked out for the employees or, just . . . just something like that even though it’s not directly in response to the questions, if you could figure out a way to, to do that I really think that would help and make a huge difference. I’m sorry you’re caught up in this, but we feel really

good about the outcome and sure appreciate your help. Thank you,
bye.

On February 26, 2016, Mrs. Pomrenke was found guilty of 14 of the 15 corruption charges. Three days later, the federal district court judge directed the government to bring a contempt prosecution against Mrs. Pomrenke, based in part on the note to Bowman. The charge was later supplemented to include the message left for Moffatt as well. While her contempt prosecution was pending, a federal magistrate judge presided over a search warrant hearing during which the prosecutor presented evidence of the Bowman note and Moffatt voicemail. The magistrate judge stated that, if the evidence were true, it would establish probable cause that Judge Pomrenke had engaged in witness tampering and/or obstruction of justice. Mrs. Pomrenke was later found guilty of contempt. Upon finding her guilty, the federal district court judge noted in open court that Judge Pomrenke's actions were not proper, but they were not before him for adjudication.

B. Judge Pomrenke's Answer

Judge Pomrenke filed an answer to the Commission's charges on February 8, 2017. Judge Pomrenke argued that the alleged actions did not amount to judicial misconduct or conduct prejudicial to the proper administration of justice, and he asserted that his actions did not violate any Canons of Judicial Conduct. He admitted sending the note to Bowman and leaving the voicemail for Moffatt. However, he stated that when he sent the note to Bowman he did not know that Bowman was a potential witness for the government. He asserted that he made both of these communications in his personal capacity and was not intending to intimidate or pressure anyone. He nonetheless agreed that in hindsight he would not again make such a call or write such a note.

C. The Commission Hearing

The Commission conducted an evidentiary hearing on June 13, 2017, at which time Judge Pomrenke was present and represented by counsel. Bowman testified that he is an attorney licensed in Virginia, and he was hired as the president and chief executive officer of BVU in November 2014. Mrs. Pomrenke was the chief financial officer when he came to work there. When Bowman began his employment at BVU, he was aware that federal authorities were investigating allegations of corruption at BVU. Bowman began assisting the authorities in their investigation in February of 2015. Bowman testified in trials against at least two other former BVU employees in the period after he was hired and before Mrs. Pomrenke was indicted.

Bowman testified that Mrs. Pomrenke was indicted on October 26, 2016, and that shortly thereafter he received the note from Judge Pomrenke. Bowman stated that after he read the note, he was shocked. He immediately got in his car and drove to Abingdon to meet with the U.S. Attorney and show him the note. Bowman testified that at the time he received the note from Judge Pomrenke, the U.S. Attorney had already indicated that Bowman would be a witness in Mrs. Pomrenke's trial. Bowman did not know if Mrs. Pomrenke was aware of that at the time of her indictment.

Ultimately, Bowman did not testify at Mrs. Pomrenke's trial. His name, however, was filed on the witness list on February 5, 2016, several months after he received the note from Judge Pomrenke. Bowman was also aware of the federal court's instructions to Mrs. Pomrenke not to contact potential witnesses. Bowman explained that he was shocked for several reasons when he received Judge Pomrenke's note. He thought it was unusual to get a card from an employee's spouse in general, but he was very disturbed by the contents of the card and the fact

that Judge Pomrenke's judicial business card was attached. Bowman also testified before the Commission that he did not think Mrs. Pomrenke was honest or particularly hard-working, and he didn't think she would be found innocent. Bowman further stated that, as a military veteran, he "was most offended by the statement it is horrible what the government is doing to them." Bowman testified that although the note would not have changed his testimony if he had testified in Mrs. Pomrenke's trial, he was still troubled by the note. He explained that Judge Pomrenke was a former member of the BVU Board, he had a lot of powerful political influence in the community, and he "certainly wouldn't want to make Judge Pomrenke mad."

Edward Stout testified as a character witness for Judge Pomrenke, and stated that Judge Pomrenke was honest, hard-working, optimistic, and very active in the community. He also stated that Judge Pomrenke was "the most prodigious note writer I have ever known." Ray Ferris, another character witness, testified that Judge Pomrenke was a very loyal, honest, caring, and loving individual. Ferris stated that Judge Pomrenke always thought the best of people. Ferris testified that Judge Pomrenke was truly remorseful about his actions, and he believed that Judge Pomrenke's judgment was simply clouded by his emotions and his desire to help his wife.

Judge Pomrenke admitted before the Commission that he never thought about the Canons when he sent the note to Bowman or left the message for Moffatt; rather, he was acting as a husband who felt helpless. He stated that he has come to "realize and appreciate that what I did was just dead wrong, absolutely wrong," and he understood how it conveyed the wrong message to Bowman and to other people in the community. He stated that, even though Moffatt was a close friend, she was a potential witness and he should not have done what he did. He then apologized to the Commission for his actions.

Judge Pomrenke explained that his wife's trial was a huge financial hardship, and they were grateful that Bowman allowed her to continue working after her indictment. He also stated that Bowman was supportive, pleasant, and professional to his wife during this time, and Judge Pomrenke was thankful for that, which is why he sent the card. He testified that he has always been a note writer. When he was a lawyer he always included his business card with any notes he sent, and when he became a judge he continued that practice. He testified that he now understood the problem with that practice and has stopped doing so. Judge Pomrenke testified that he sent the note as a husband, that he never thought Bowman would be a witness, he was not trying to affect him, and he never considered that Bowman might "take it wrong as coming from a judge."

Regarding the voicemail he left for Moffatt, Judge Pomrenke testified that he now understood he never should have left her such a message or suggest how she should testify. He explained that Moffatt was a close personal friend, and when he called her, he was just thinking as a husband about ways to help his wife. Judge Pomrenke testified that he thought Moffatt believed and agreed with everything he said in the message.

Judge Pomrenke testified that he recognized the errors he made. He stated that he was truly sorry, his actions were wrong, and he promised the Commission it would never happen again. He admitted that in his first communications with the Commission, he had argued that his actions did not violate the Canons, but he had come to realize they did. He agreed that his actions violated Canons 1, 2A and 2B. Judge Pomrenke also admitted that he attended his wife's bond hearing and heard the instruction to his wife from the judge that she was not to communicate with any potential witnesses. He further admitted that, as a judge, he is very familiar with that "normal condition of bond."

At the conclusion of the hearing, the Commission unanimously found the charges that Judge Pomrenke had violated Canons 1, 2A and 2B were “well-founded and of sufficient gravity to constitute the basis for retirement, censure, or removal.” The Commission concluded that a formal complaint should be filed in the Supreme Court of Virginia. A formal complaint was filed with this Court on July 10, 2017.

II. Analysis

The filing of a formal complaint by the Commission triggered this Court’s duty to conduct a hearing to determine whether Judge Pomrenke “engaged in misconduct while in office, or . . . has engaged in conduct prejudicial to the proper administration of justice.” Va. Const. art. VI, § 10. We have explained that:

In conducting the hearing on the formal complaint filed by the Commission, this Court considers the evidence and makes factual determinations de novo. The Commission must prove its charges in this Court by clear and convincing evidence. The term “clear and convincing evidence” has been defined as “that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt in criminal cases. It does not mean clear and unequivocal.”

Judicial Inquiry & Review Comm'n v. Waymack, 284 Va. 527, 534-35, 745 S.E.2d 410, 414 (2012) (citation omitted). Further, this Court does not accord any particular weight or deference to factual determinations, findings and opinions of the Commission. *Id.* If after conducting an independent review of the record and hearing argument of counsel, we find clear and convincing evidence that a judge’s actions or conduct violated the Canons, and that the judge’s actions were of sufficient gravity to constitute misconduct while in office, persistent failure to perform the duties of the office, or conduct prejudicial to the proper administration of justice, we shall

censure or remove the judge from office. *Id.* at 535, 745 S.E.2d at 414; *see also Judicial Inquiry & Review Comm'n v. Peatross*, 269 Va. 428, 450, 611 S.E.2d 392, 404 (2005).

A. Canons 1 and 2

Judge Pomrenke was charged with violating Canons 1, 2A and 2B. Canon 1 states:

A. Judge Should Uphold the Integrity and Independence of the Judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of these Canons are to be construed and applied to further that objective.

Canon 2 states in relevant part:

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 and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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 permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify as a character witness.

The Commission's complaint states that it found the charges based on violations of Canons 1, 2A, and 2B to be well-founded. Judge Pomrenke conceded at the Commission hearing that his actions were wrong and violated these Canons, and he makes the same concession before this Court. Based upon the record before us, including the admissions of

Judge Pomrenke, we conclude the Commission has met its burden of proving by clear and convincing evidence that Judge Pomrenke committed the violations of the Canons charged in the Notice.

B. Disposition

Judge Pomrenke violated the Canons by his conduct because his actions failed to uphold the integrity and independence of the judiciary, and tended to impair public confidence in the integrity and impartiality of the judiciary. *See* Canons 1 and 2. The Commission did not make a recommendation to this Court regarding the appropriate sanction for Judge Pomrenke based upon these violations.

The preamble and commentary to the Canons of Judicial Conduct provide as follows:

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of the Canons are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

, Va. Sup. Ct. R., Part 6, § III, Preamble,

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. . . . Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Canon diminishes public confidence in the judiciary and thereby does injury to the system of government under the law.

Va. Sup. Ct. R., Part 6, § III, Canon I, cmt.

We conclude that Judge Pomrenke's violations of the Canons were grave and substantial. Judge Pomrenke made a deliberate decision to contact two potential witnesses prior to his wife's trial. We agree with the observations made by the Commission in its brief,

At the time he sent his note and judicial card, Judge Pomrenke knew:

- his wife had received a "target letter" four months earlier;
- his wife had been indicted three weeks earlier;
- in the interim between the "target letter" and indictment, other employees of BVU had been indicted, pleaded guilty, and were being sentenced based on evidence gathered from BVU through Bowman's assistance to the government;
- Bowman was the [chief executive officer] and [p]resident of BVU and alone held the authority to fire his wife;
- Bowman had been working closely with the federal investigators;
- Bowman publicly had been asserting his open cooperation with the investigation in the media;
- Bowman had been working with the Judge's wife at BVU to answer federal subpoenas on behalf of BVU; and
- Bowman had granted the investigators office space, physically flanking his wife's office at BVU.

Judge Pomrenke violated Canon 2B by lending "the prestige of judicial office to advance the private interests of the judge or others." The note was intended to make his wife's employment secure. Bowman was the only person who could fire his wife. The note also reflected an intent to influence a potential witness by suggesting that Bowman "would agree [Mrs. Pomrenke] is absolutely honest, truthful, ethical, and innocent."

Judge Pomrenke's voicemail message for Moffatt was even more overt in its intent to influence a witness. Its first sentence states unequivocally that he was aware that she was to be a witness at his wife's trial. He then specifically asked Moffatt to "slip in" remarks that would be favorable to his wife, "even though it's not directly in response to the questions."

Judge Pomrenke argues that, given the context from which his actions arose, censure is the appropriate sanction. We note that the record before us contains several letters from attorneys who have written in support of Judge Pomrenke's professional reputation and service to his community. We have reviewed those submissions as part of our consideration of the proper disposition of this case.

This case differs in many significant respects from appellate matters before the Court. It comes to us because of a Complaint filed in this Court by the Commission. In this case, we do not sit in an appellate capacity. We sit in a disciplinary role entrusted to the highest court of the Commonwealth by the Constitution of Virginia. Apart from impeachment, only the Supreme Court of Virginia may remove a judge from office during the judge's term.

Having determined that Judge Pomrenke violated the Canons, we must decide the appropriate sanction. In addition to evaluating the nature and severity of violations of the Canons, we must consider the confidence of the public in the administration of justice. We must consider the confidence of coordinate branches of government that we will properly carry out our constitutional responsibilities. And we must consider the confidence of the over 400 judges who serve the Commonwealth. While factors such as stressful family circumstances may enter the decision-making matrix, such factors are of lesser significance than the confidence of the public, the confidence of the executive and legislative branches, and the confidence of all of the judges in the Commonwealth that we are capable of appropriately responding to the gravamen of the offenses involved.

We agree that:

The purpose of sanctions in cases of judicial discipline is to preserve the integrity and independence of the judiciary and to restore and reaffirm public confidence in the administration of justice. The discipline we impose must be designed to announce

publicly our recognition that there has been misconduct; it must be sufficient to deter [the judge] from again engaging in such conduct; and it must discourage others from engaging in similar conduct in the future. Thus, we discipline a judge not for purposes of vengeance or retribution, but to instruct the public and all judges, ourselves included, of the importance of the function performed by judges in a free society. We discipline a judge to reassure the public that judicial misconduct is neither permitted nor condoned. We discipline a judge to reassure the citizens of [this state] that the judiciary of their state is dedicated to the principle that ours is a government of laws and not of men.

In re Dean, 717 A.2d 176, 187 (Conn. 1998) (quoting *In re Zoarski*, 632 A.2d 1114, 1122 (Conn. 1993)) (internal quotation marks omitted).

What Judge Pomrenke did strikes at the heart of the judicial system. It is particularly damaging to the integrity of the judicial process and the confidence of the citizens of the Commonwealth that a sitting judge in the Commonwealth would attempt to improperly influence two potential witnesses in his wife's federal criminal trial. That his transgressions may not have actually affected the criminal trial of his wife does not mitigate the gravity of his conduct. We must focus upon the "offense" to the system of justice and the particular violations of the Canons of Judicial Conduct that apply to all judges. For our decision in this case, whether his conduct actually affected a pending criminal trial is not the issue. The question before us is whether Judge Pomrenke's conduct affects public confidence in the judiciary, the confidence of coordinate branches of government, the reputation of the judiciary, and the expectations of our fellow judges. Our conclusion is that it does.

We cannot escape the conclusion that having a sitting judge who apparently attempted to manipulate trial testimony would tend to impair public confidence in the integrity and impartiality of not only that judge, but also that of all the other members of the judiciary, and our entire system of justice. While the Court takes cognizance of Judge Pomrenke's family

circumstances, such considerations cannot outweigh the extraordinary harm that will be done to the judiciary if he remains on the bench.

The ultimate responsibility (apart from impeachment) for judicial discipline lies squarely with us. As for the coordinate branches of government, we expect the legislative and executive branches to do their duty. When it comes to disciplining judges, they expect the same of us.

We conclude that Judge Pomrenke's actions are of sufficient gravity to warrant removal. We will order that Kurt J. Pomrenke be removed immediately from the office of Judge of the Twenty-Eighth Juvenile and Domestic Relations Judicial District, pursuant to Article VI, § 10, of the Constitution of Virginia.

Removal ordered.