

IN THE SUPREME COURT OF THE STATE OF MISSOURI

In the Matter of

HONORABLE TIMOTHY J FINNEGAN

No. SC90937

BRIEF

OF

COMMISSION ON RETIREMENT, REMOVAL AND DISCIPLINE

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JURISDICTIONAL STATEMENT

This is a review of the Commission on Retirement, Removal and Discipline's [CRRD's] recommendation for disability retirement of a family court commissioner made pursuant to Article V, § 24 of the Constitution and Supreme Court Rule 12.05

STATEMENT OF FACTS

The CRRD has filed its Findings of Fact, Conclusions of Law and Recommendation concluding that the Honorable Timothy J Finnegan is unable to discharge the duties of his office with efficiency because of permanent physical and mental disability. The CRRD recommended that the Honorable Timothy J Finnegan be retired based upon a permanent physical and mental condition and that he be awarded retirement benefits as provided by law.

Pursuant to this Court's request of June 8, 2010, the Attorney General and the Missouri State Employees' Retirement System has filed its Suggestions as amicus curiae on the issue of whether the CRRD has jurisdiction under Article V, § 24 to recommend that a commissioner of the family court division be retired for disability. Those Suggestions asserted that the CRRD lacks such jurisdiction. By order of July 1, 2010, this Court requested briefing by the CRRD on nine issues regarding the CRRD's jurisdiction.

POINTS RELIED ON

(1) Is a family court commissioner a judge or member of a judicial commission?

Article V, § 1, Article V, § 4(1), Article V, § 4(2), Article V, § 5, Article V, § 23, Article V, § 24, Article § 24(8), Article V, § 27 (now numbered § 24), MISSOURI CONSTITUTION.

Rule 2.03, Canon 5, CODE OF JUDICIAL CONDUCT

Rule 2.04, MISSOURI RULES OF COURT 1999

Rule 4 – 8.2(b), RULES OF PROFESSIONAL CONDUCT

Rule 12.27, MISSOURI RULES OF COURT 1974 (with amendments November 1, 1973; deleted September 21, 1979)

VAMS § 477.081, VAMS §477.152, VAMS 478.003, VAMS 478.466

VAMS § 477.083 (repealed January 1, 1972)

In Re Fullwood, 518 SW2d 22, 23 (Mo 1975)

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State ex rel Kaino v Commission on Judicial Fitness, 355 Or 633, 741 3d 1080 (Or 2003)

State ex rel Galton v Oregon Commission on Judicial Fitness, 337 Or 670, 103 P3d 637 (Or 2004)

(2) To what extent has the CRRD previously exercised jurisdiction over commissioners by way of formal proceedings such as by issuing

admonitions, by issuing formal opinions, or by filing disciplinary or disability actions with this Court?

(3) Does the fact that the position of family court commissioner is created by statute affect whether Mo. Const. art. V, sec 24.8 prohibits the CRRD from seeking discipline against such a commissioner? If discipline over family court commissioners is permissible, does the CRRD also have jurisdiction over administrative law judges or members of the administrative hearing commission, which are also statutory entities?

Article IV, § 4, Article V, § 3, Article § 24(8), Article V, § 24, MISSOURI CONSTITUTION

Rule 12.07, MISSOURI RULES OF COURT 1999

(4) Is the determination whether discipline can be imposed determinative of whether disability benefits can be paid or vice versa? Or are these two separate issues that may have different answers?

Article V, § 24, Article V, § 24(2), Article V, § 24(3) MISSOURI CONSTITUTION

Rule 12.07, MISSOURI RULES OF COURT 1999

(5) Section 487.050.4, RSMo 2000, uses the same language for removal as contained in Mo. Const. art. V, sec. 24.3. What does this statutory language indicate with respect to whether the CRRD has jurisdiction over family court commissioners? What effect did the General Assembly intend by the duplication?

Article V, § 24(3), MISSOURI CONSTITUTION

VAMS § 478.003, VAMS § 478.265, VAMS § 478.266, VAMS §478.466,
VAMS § 487.050.4

(6) If the CRRD has jurisdiction to remove a family court commissioner, is section 487.050 invalid or otherwise ineffective? Are judges who fail to act as provided in section 487.050, RSMo 2000, subject to discipline under Canon 3C of Rule 2?

Article V, § 24(3), MISSOURI CONSTITUTION

Rule 2.03, Canon 3C, CODE OF JUDICIAL CONDUCT

VAMS § 478.003, VAMS § 478.265, VAMS § 487.050.4

Matter of Voorhees, 739 SW2d 178, 180 (Mo 1987)

(7) If the CRRD has jurisdiction to determine that a family court commissioner is disabled, are the commissioner's benefits determined under the state statutory long-term disability program or are the benefits those provided in Mo. Const. art. V, sec. 24.2? Is your answer affected by whether the commissioner is deemed to be a judge or a member of a judicial commission?

(8) To what extent, if any, are the funds used to pay disability benefits under the Missouri Constitution different from the funds used to pay such benefits under the statutory long-term disability program? If Commissioner Finnegan qualifies under the statutory disability program,

how would his retirement and disability benefits differ from the same type of benefits he would receive under Mo. Const. art. V, sec. 24.2?

Assuming he receives benefits under the constitution and his term expires, are statutory benefits then available or do any disability benefits or retirement benefits change?

(9) If a family court commissioner is a judge for the purposes of Mo. Const. art. V, sec. 24, is the Court required to revisit its decisions in *Slay v. Slay*, 965 S.W.2d 845 (Mo. banc 1998), and in *Fowler v. Fowler*, 984 S.W.2d 508 (Mo. banc 1999)? Would these cases have to be revisited if the commissioner is deemed to be a member of a judicial commission?

Article V, § 1, MISSOURI CONSTITUTION

VAMS § 487.030

Slay v Slay, 965 SW2d 845 (Mo banc 1998)

Fowler v Fowler, 984 SW2d 508,511 (Mo banc 1999)

ARGUMENT

(1) Is a family court commissioner a judge or member of a judicial commission?

Article V, § 1 of the Constitution of the State of Missouri provides as follows:

“The judicial power of the state shall be vested in a supreme court, a court of appeals consisting of districts as prescribed by law, and circuit courts.” The Article does not specifically list commissioners nor does it list municipal judges. In a case of first impression, this Court in *In Re Fullwood*, 518 SW2d 22, 23 (Mo 1975), reviewed the issue of whether municipal judges were within the jurisdiction of the CRRD. The Court noted the language of Article V, § 27 of the Constitution (now numbered § 24), which confers upon the CRRD power to “...receive and investigate all requests and suggestions for retirement for disability and all complaints concerning misconduct of **all judges...**” {Emphasis added}.

In subparagraph 2 of Article V, § 27 (now numbered § 24), the CRRD is empowered to recommend retirement of “any judge” who is disabled. In subparagraph 3 thereof, the CRRD is empowered to recommend discipline for “any judge of any court” for misconduct. In determining that municipal judges were within the jurisdiction of the CRRD, the Court relied in part upon the language of Article V, § 5 of the Constitution which provides: “The supreme court may establish rules relating to practice, procedure and pleading for **all courts...**” {Emphasis added}. The Court in *Fullwood* reviewed its rules adopting procedures for the CRRD and concluded:

“This court, again, reached the same conclusion while adopting Rule 12 to implement the activities of the Commission, as authorized by the Constitution (Art. V, § 27), when it defined ‘judge’ as a ‘judge or commissioner of **any court** of this state.’ {Emphasis added}.”

This language referred to Supreme Court Rule 12.27 which provided:

“In these rules, unless the context or subject matter otherwise requires:
(a) ‘judge’ means a judge or commissioner of any court of this state;”
(Missouri Rules of Court 1974 with amendments November 1, 1973; deleted September 21, 1979)

The “commissioners” referred to in old Rule 12.27 probably referred to supreme and appellate court commissioners (VAMS § 477.083 repealed effective January 1, 1972).

VAMS § 477.081 prohibited the appointment of new commissioners after January 1, 1972, and § 477.152 created new Article V judge positions whenever an appellate court commissioner vacancy occurred. In addition, the new judicial article included Article V, § 23, which made municipal judges part of the circuit court. With appellate commissioners phasing out per the statutes and municipal judges specifically mention in Article V, § 23, the need for Supreme Court Rule 12.27 no existed and it was deleted.

However, the fact that Rule 12.27 was deleted does not change the court’s decision in *Fullwood* that under Article V, § 5 of the Constitution it had the power to define “judge”. Nor does it change the fact that in the early years of the CRRD, this court demonstrated an intent to include “commissioners” under the jurisdiction of the CRRD.

The Honorable Don E Burrell, 6 SW3rd 869 (Mo 1999), determined that the CRRD’s jurisdiction is limited to actions against sitting judges and that the CRRD has “no authority to prosecute claims against respondent who was a lawyer, but not a judge, at the time of the alleged misconduct.” This Court pointed out that the Rules of Professional Conduct (Rule 4 – 8.2(b)) provide that a candidate for judicial office even though not a judge at the time of such candidacy must still comply with Canon 5 of the Code of Judicial Conduct. Thus, the Court concluded that the Office of Chief Disciplinary Counsel had jurisdiction to discipline a non-judge judicial candidate for violations of Canon 5. (*Burrell* at 870). Note, however, that the current Rule 2.04 “Compliance with the Code of Judicial Conduct” does not list non-judge judicial candidates. Rule 2.04 defines who is a judge for purpose of Rule 2:

“Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as special master, **court commissioner, or magistrate is a judge for the purpose of this Rule 2.**” {Emphasis added}.

The omission of non-judge judicial candidates from Rule 2.04 suggests the Court’s intent to make the discipline of non-judge judicial candidates part of the lawyer’s disciplinary process and not part of the judicial disciplinary process. While Rule 2.04 includes “court commissioner” there is no specific provision for a “court commissioner” in the Rules of Professional Conduct. This suggests the Court’s intent to group “commissioners” with judges and non-judge judicial candidates with lawyers for the discipline process.

Comparison with other state's decisions is not very helpful, since the language of each state's constitution is not uniform. In addition, many states create their judicial disciplinary committees by statute or rule rather than constitution. The state of Oregon is somewhat analogous. Oregon's constitution granted their Commission on Judicial Fitness jurisdiction over a "judge of any court." In *State ex rel Kaino v Commission on Judicial Fitness*, 355 Or 633, 741 3d 1080 (Or 2003), the court reviewed whether a "judge of any court" included municipal judges. In *State ex rel Galton v Oregon Commission on Judicial Fitness*, 337 Or 670, 103 P3d 637, the court considered whether a circuit judge was included as a "judge of any court." After determining that the voter's intent was not clear from the text and context of the constitution, the court considered the history of the provision. The court concluded in *Kaino* that while the term "judge of any court" might be so extremely broad as to include municipal judges, at the time the voters cast their ballots, the court had held that municipal judges were not created by the constitution [see *In re Application of Boalt*, 12, 3 Or 1, 260 P 1004 (1927)]. Thus, as clarified in *Galton*, the voters of Oregon when they approved their Commission on Judicial Fitness understood that "judge of any court" did not include municipal judges.

The *Galton* case also determined that no such prior ruling disqualified circuit judges from inclusion in the extremely broad language of "judge of any court" and so circuit judges are within the jurisdiction of the Oregon Commission on Judicial Fitness.

In Missouri there is similar extremely broad constitutional language but at the time § 27 (now numbered § 24) was passed into law there was no prior court decision holding that commissioners are not within the meaning of Missouri's Article V, § 1. In fact,

family, probate and drug commissioners did not exist until after the passage of Article V, § 27 Constitution of Missouri 1945 as amended 1970. Family court commissioners (created by VAMS § 478.003 in 1998) probate commissioners (created by VAMS § 478.266 in 1979) and drug court commissioners (created by VAMS § 478.466 in 1996) could not have been part of the voter's decision in adopting Article V, § 27 in 1970. It can be inferred, therefore, that the people voted for an extremely broad definition of "judges" to determine the jurisdiction of the CRRD.

The CRRD recognizes that the Court could take the position that a family court commissioner is not a judge because a commissioner is not "a person selected for office in accordance with and authorized to exercise judicial power by Article V of the state constitution." *Fowler v. Fowler*, 984 S.W.2d 508, 511 (Mo. banc 1999) quoting *Slay v. Slay*, 965 S.W.2d 845 (Mo. banc 1998). Nevertheless, the CRRD is of the opinion that its exercise of jurisdiction or authority over family court commissioners and others similarly situated who are required to comply with the Code of Judicial Conduct by Rule 2.04 because they are "officers of the judicial system performing judicial functions" is desirable. *Rule 2.04*. Indeed, exercise of jurisdiction or authority by the CRRD significantly lends itself to consistency in enforcement and judicial efficiency. Accordingly, the CRRD offers the following as an alternative approach in the event the Court finds that the CRRD is without jurisdiction over court commissioners because they are not Article V judges.

The Supreme Court of Missouri has "general superintending control over all courts and tribunals." *Mo. Const. art. V, § 4(1)*. This, of necessity, includes

administrative supervision of the Judicial Department, including among other things, appointment and supervision of staff “to aid in the administration of the courts.” *Mo. Const. art. V, § 4(2)*. The Court likewise has authority to “establish rules relating to . . . procedure . . . for all courts and tribunals.” *Mo. Const. art. V, § 5*. Prescribing procedures or rules for retirement, removal or discipline of personnel other than judges is certainly part of the administrative supervision and “general superintending control” of the Court over “all courts and tribunals.”

While neither the Court nor the Legislature may impose “by law or supreme court rule” additional duties on the CRRD, *Mo. Const. art. V, § 24(8)*, the Court is not prohibited from requesting that the CRRD provide assistance to the Court in handling matters relating to retirement, removal and discipline of commissioners. If the CRRD were to accede to such a request, the Court could then grant the CRRD, by rule or otherwise, such authority as the Court deemed appropriate to, among other things, receive and investigate complaints, conduct hearings, and make recommendations to the Court or other appropriate body, such as an appointing court en banc, regarding the retirement, removal or discipline of commissioners.

In summary, the decision of who is a judge for purposes of Article V, § 24 of the Constitution and who is not is to be determined by this Court through its rulemaking power under Article V, § 5 of the Constitution. This Court has previously indicated an intent to discipline “commissioners” as judges, not as attorneys. In the event the Court concludes that the CRRD lacks jurisdiction over commissioners, the CRRD respectfully

suggests that there are alternative means as outlined herein to grant the CRRD authority over such matters.

(2) To what extent has the CRRD previously exercised jurisdiction over commissioners by way of formal proceedings such as by issuing admonitions, by issuing formal opinions, or by filing disciplinary or disability actions with this Court?

The CRRD receives complaints regarding commissioners on a regular basis and handles them in the same manner as complaints against judges. Statistical records dating back to 1997 indicate 146 complaints reviewed and dismissed by the CRRD against family, probate or drug commissioners. Additionally, there have been two informal disciplinary actions involving commissioners that were handled internally by the CRRD. Two commissioners resigned prior to formal hearings during this period. Other than this matter involving the Honorable Timothy J Finnegan, there are two other pending complaints involving court commissioners.

The CRRD's counsel has been unable to find any case where a formal recommendation of discipline or disability retirement has been filed with this Court involving family, probate or drug court commissioners.

(3) Does the fact that the position of family court commissioner is created by statute affect whether Mo. Const. art. V, sec 24.8 prohibits the CRRD from seeking discipline against such a commissioner? If discipline over

family court commissioners is permissible, does the CRRD also have jurisdiction over administrative law judges or members of the administrative hearing commission, which are also statutory entities?

Article V, § 24.8 provides that: “Additional duties shall not be imposed by law or Supreme Court Rule upon the Commission on Retirement, Removal and Discipline.”

While the legislature or Supreme Court may not impose additional duties on CRRD, pursuant to Article V, § 3 of the Constitution, this Court still has appellate jurisdiction to interpret the provisions of the Constitution. In this instance this Court by case decision or rule may interpret that part of Article V, § 24 providing that the CRRD has jurisdiction over: “any judge or member of any judicial commission” If this Court determines that said language includes family, probate or drug commissioners then the Court is not imposing additional duties but merely defining what jurisdiction and duties were granted to the CRRD by its enabling constitutional provision Article V, § 24.

If CRRD has jurisdiction over administrative law judges it would only be as the result of this Court’s determination that administrative law judges are included in the language of Article V, § 24: “judges, members of judicial commissions”. The language of Supreme Court Rule 2.04 does not indicate an intent to include administrative law judges in the definition of “judges and members of judicial commissions”. Supreme Court Rule 2.04 defines a judge as an “officer of a judicial system performing judicial functions”. Administrative law judges and members of various non-judicial commissions are appointed pursuant to the Executive Department’s power under

Article IV, § 4 of the Constitution rather than Article V “Judicial Department”, and as such are not within the jurisdiction of the CRRD.

(4) Is the determination whether discipline can be imposed determinative of whether disability benefits can be paid or vice versa? Or are these two separate issues that may have different answers?

There is very little difference in Article V, § 24 and Supreme Court Rule 12’s grant of jurisdiction to the CRRD regarding disability and discipline. Section 24(2) of the Constitution provides that this Court, upon recommendation of the CRRD shall retire “any judge” who is disabled, while § 24(3) provides for discipline involving “any judge of any court”. Supreme Court Rule 12.07 does not continue the language of “any court”. Nor does there appear to be any substantive difference between “any judge” and “any judge of any court”. Thus, the grant of jurisdiction to the CRRD would seem to be the same for both disability and discipline.

(5) Section 487.050.4, RSMo 2000, uses the same language for removal as contained in Mo. Const. art. V, sec. 24.3. What does this statutory language indicate with respect to whether the CRRD has jurisdiction over family court commissioners? What effect did the General Assembly intend by the duplication?

Section 487.050.4, RSMo 2000, uses some of the same language as Article V, § 24.3. It provides that a commissioner may be removed from office upon the vote of a

majority of the circuit and associate circuit judges en banc after hearing for: “crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency or any offense involving moral turpitude or oppression in office or unsatisfactory performance of duties.” The language of Article V, § 24.3 provides for this Court, upon recommendation of the CRRD to “remove, suspend, discipline or reprimand”:

“any judge of any court or member of any judicial commission or of this commission, for the commission of a crime, or for misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency or any offense involving moral turpitude or oppression in office. No action taken under this section shall be a bar to or prevent any other action authorized by law.”

The most important difference in the grant of jurisdiction language is that the Constitution provides that the CRRD has the power to recommend suspension and/or reprimand in addition to remove while the statute only provides for removal from office. Thus, if the Court determines that the CRRD does not have jurisdiction over family court commissioners, there would be no authority for the circuit court en banc to employ the more frequent but less harsh sanctions of suspension and reprimand. The statute has also added the grounds of “unsatisfactory performance of duties” as a means to justify removal of family court commissioners from office. It is possible that the legislature wanted to make it easier to remove family court commissioners from office since misconduct that might only warrant suspension or reprimand by the CRRD could also be

grounds for removal by the circuit court en banc. The Constitutional provision, Article V, § 24.3 also provides: “No action taken under this section shall be a bar to or prevent any other action authorized by law.” This provision would provide that disciplinary actions against family court commissioners could be undertaken concurrently by both the CRRD and the circuit court en banc.

Also, note that the statutes creating drug court commissioners, §478.466, and probate court commissioners, § 478.266, do not contain the same language for discipline as found in Article V, § 24.3 or in VAMS § 487.050.4. Instead, a drug commissioner may be “removed at any time by a majority of the judges of the circuit court.” (VAMS § 478.003) A probate commissioner serves until “terminated by order of the judge of the probate division.” (VAMS § 478.265) Inclusion of commissioners within the “judges” under Article V, § 24.3 would allow drug, probate and family court commissioners to be within the full range of discipline available to CRRD.

(6) If the CRRD has jurisdiction to remove a family court commissioner, is section 487.050 invalid or otherwise ineffective? Are judges who fail to act as provided in section 487.050, RSMo 2000, subject to discipline under Canon 3C of Rule 2?

The language of Article V, § 24.3 that: “No action taken under this section shall be a bar to or prevent any other action authorized by law” would indicate that VAMS § 487.050 would not be made ineffective by this Court’s determination of the CRRD’s jurisdiction over a “commissioner”.

Canon 3C requires judges with supervisory authority to take “reasonable measures” to assure that the supervised judges or commissioners properly perform their judicial responsibilities. It is possible that the CRRD would determine that a court en banc has refused to take “reasonable measures” by failing to remove a commissioner from office for any of the disciplinary grounds listed in VAMS § 487.050 or pursuant to VAMS § 478.003 or VAMS § 478.265. However, as this Court held in the *Matter of Voorhees*, 739 SW2d 178, 180 (Mo 1987): “Judges should not be held up to public censure on account of good faith exercise of judgment.” Accordingly, so long as the court en banc’s decision regarding disciplining or not disciplining a “commissioner” is made in good faith they should not be subject to discipline under Canon 3C of Rule 2.

(7) If the CRRD has jurisdiction to determine that a family court commissioner is disabled, are the commissioner’s benefits determined under the state statutory long-term disability program or are the benefits those provided in Mo. Const. art. V, sec. 24.2? Is your answer affected by whether the commissioner is deemed to be a judge or a member of a judicial commission?

Upon information from Mr. Jake McMahon, Chief Counsel of the Missouri State Employee’s Retirement System [MOSERS], Commissioner Finnegan can apply for benefits under MOSERS’ long-term disability plan regardless of whether or not he is approved for constitutional disability and regardless of whether or not a family court commissioner is deemed to be a judge or member of a judicial commission.

(8) To what extent, if any, are the funds used to pay disability benefits under the Missouri Constitution different from the funds used to pay such benefits under the statutory long-term disability program? If Commissioner Finnegan qualifies under the statutory disability program, how would his retirement and disability benefits differ from the same type of benefits he would receive under Mo. Const. art. V, sec. 24.2? Assuming he receives benefits under the constitution and his term expires, are statutory benefits then available or do any disability benefits or retirement benefits change?

Upon information from Mr. Jake McMahon, Chief Counsel of the Missouri State Employee's Retirement System [MOSERS], benefits provided under MOSERS long term disability plan are paid by Standard Life Insurance Company (the insurer retained by MOSERS to insure the long term disability plan) and are not paid with funds used to pay disability benefits under the Missouri Constitution. If Commissioner Finnegan qualifies under MOSERS long term disability plan, he would be eligible to receive 60% of his current monthly pay which is estimated to be \$5,468.30. His MOSERS long term disability benefits would be reduced by the amount of any social security disability benefits or Constitutional disability that he may receive as a result of his disability. He would receive additional judicial retirement service credit while receiving MOSERS long term disability benefits. He also would receive MOSERS long term disability benefits until he reaches age 62 and becomes eligible for full judicial retirement benefits at which

time his MOSERS long term disability benefits would terminate. His monthly judicial retirement benefit is estimated to be \$4,556.92 at age 62.

(9) If a family court commissioner is a judge for the purposes of Mo. Const. art. V, sec. 24, is the Court required to revisit its decisions in *Slay v. Slay*, 965 S.W.2d 845 (Mo. banc 1998), and in *Fowler v. Fowler*, 984 S.W.2d 508 (Mo. banc 1999)? Would these cases have to be revisited if the commissioner is deemed to be a member of a judicial commission?

The relevant holding in *Slay v Slay* and *Fowler v Fowler* is as follows:

“Article V, section 1 of the state constitution vests the judicial power of this state in this Court, the court of appeals, and the circuit courts.

These courts are composed of judges. Mo. Const. art. V, sections 2, 13, 15, and 16. Although the documents filed in these cases are denominated ‘judgment,’ they are not signed by a judge. Because the documents are not signed by a person selected for office in accordance with and authorized to exercise judicial power by Article V of the state constitution, no final appealable judgment has been entered, and this Court is without jurisdiction.”

Unless this Court determines that “commissioners” are members of a “judicial commission” as opposed to a “judge”, the decision in *Slay* may need to be revisited by the Court. If this Court determines that commissioners are judges pursuant to Article V, § 1 of the Constitution, the *Slay* decision might be amended to indicate that the

Commissioner's Findings of Fact are not an appealable judgment without a circuit or associate circuit judge's signature because of a failure to comply with VAMS § 487.030 rather than a failure of a commissioner being included in the grant of power under Article V, § 1 of the Constitution.

Slay and Fowler would not have to be revisited if the Court adopted the alternative suggested at pp. 5-7, *supra*.

CONCLUSION

CRRD concludes that commissioners are judges or members of judicial commissions under Article V, § 24 of the Constitution. In the alternative, the CRRD suggests that this Court use its administrative supervision under Article V, § 24(1) of the Constitution to grant the CRRD authority to investigate complaints, conduct hearings and make recommendations of disability retirement and discipline over family, probate and drug court commissioners. Further, that this Court adopt the recommendation of the CRRD and retire the Honorable Timothy J Finnegan based upon a permanent physical and mental condition and award him retirement benefits as provided by law.

Respectfully submitted,
Commission on Retirement, Removal and Discipline

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Certificate of Service

The undersigned certifies that the foregoing was served upon Mr. James R Layton and Commissioner Timothy J Finnegan by placing a copy thereof in the US Mail, postage prepaid, this _____ day of _____ 2010, addressed as follows:

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Certificate of Compliance

The undersigned certifies that the foregoing brief is in compliance with Supreme Court Rule 84.06, that the word count is 4,740, and that the disk copy provided is virus free.