Summary of SC100875, *In re: The Honorable Joe Don McGaugh*
Original disciplinary proceeding
Case decided on its filings; opinion issued February 28, 2025

Attorneys: The commission was represented by its counsel, James M. Smith, of the commission's office in St. Louis, (314) 966-1007. McGaugh represented himself.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The commission on retirement, removal and discipline recommends an associate circuit judge be suspended for six months without pay for violating several rules of the judicial code of conduct. In a decision written by Judge Ginger K. Gooch and joined by three other judges, the Supreme Court of Missouri suspends the associate circuit judge without pay for one year beginning March 1, 2025, and orders continued monitoring by the commission. Despite the judge's request, this Court lacks authority to convert these disciplinary proceedings for misconduct into retirement proceedings for disability. The egregious nature of the judge's failure to timely perform his judicial duties requires this Court to impose discipline in excess of what the commission recommended. Because the state constitution's plain language gives this Court the ultimate responsibility for determining judicial discipline, the Court has the authority to deviate from the commission's recommended discipline.

In a separate opinion joined by one judge, Judge W. Brent Powell dissents. He would find this Court does not have the authority to deviate from the discipline the commission recommends and, therefore, would suspend the judge for only six months.

Judge Zel. M. Fischer writes separately. He concurs with the dissenting opinion that this Court cannot deviate from the commission's recommended discipline, but he would vote to remove the judge from office if deviation were permitted given the egregious nature of the judge's misconduct.

Facts: Since 2017, Joe Don McGaugh has been an associate circuit court judge in Carroll County. In August 2024, the commission on retirement, removal and discipline issued notice to Judge McGaugh alleging 12 violations of the code of judicial conduct that constituted misconduct and incompetence for which Judge McGaugh should be disciplined under article V, section 24.3 of the Missouri Constitution. Those allegations included multiple instances, beginning in 2018, in which Judge McGaugh took cases under advisement and failed to timely dispose of them, including multiple cases in which it took him a year or more to enter a decision despite inquiries from the attorneys, parties, and court staff as to the status of the cases. These cases included dissolution and guardianship proceedings, modification of child support or custody orders, and orders of protection. One attorney even informed Judge McGaugh that a client's home might be foreclosed upon due to his failure to enter a final judgment in a dissolution action. When asked about the status of these cases, Judge McGaugh often replied he was close to having a decision ready. In one instance, he even falsely claimed to have given a

judgment to a clerk for entry and blamed her for losing or misplacing it. Judge McGaugh also failed to timely and accurately respond to the commission's inquires and request that he submit reports listing his cases under submission for 90 days or more. Judge McGaugh stipulated to and admitted all allegations of misconduct the commission alleged and waived his right to a hearing and appeal. The commission then filed its findings of fact, conclusions of law, and recommendation in this Court. The commission found Judge McGaugh had committed the misconduct specified in the notice and, although it recognized his mental disability disorder as a mitigating factor, recommended he be suspended without pay for six months. The commission further recommended it monitor Judge McGaugh's mental health treatment during his suspension and that Judge McGaugh be subject to an independent mental health examination and a fitness review by the commission before his suspension ends. Although Judge McGaugh signed a stipulation and waiver, he subsequently moved this Court to allow oral argument on the issue of the discipline to be imposed. He requested he not be suspended or, if he was, that he be allowed to serve it under disability retirement. This Court overruled his request for oral argument.

SUSPENDED.

Court en banc holds: (1) Judge McGaugh is suspended without pay for one year beginning March 1, 2025, with the continued monitoring the commission recommends. Under the facts and circumstances of this case, discipline in excess of the recommended six-month suspension is warranted to maintain the standards of judicial fitness. Judge McGaugh has exhibited a pattern and practice of grossly untimely performance of his judicial duties. In some instances, cases have remained under advisement for years. When questioned regarding the status of cases, Judge McGaugh was untruthful with attorneys, parties, and the commission, and he repeatedly failed to respond to court staff or, even worse, blamed court staff when he failed to perform his judicial duties. His misconduct directly harmed multiple parties, including some of Missouri's most vulnerable citizens. Judge McGaugh knew his misconduct was causing harm yet he continued to delay entering judgments despite repeated inquiries from parties, attorneys, and court staff about the status of cases. This is an egregious case of multiple instances of misconduct compounded by Judge McGaugh's dishonesty and his continued failure to resolve outstanding cases, some of which remain unresolved as of the issuance of this opinion.

(2) Judge McGaugh's request to serve his suspension under disability is denied. This Court cannot convert a proceeding for judicial misconduct into one for disability retirement. The proceedings are governed by separate and distinct constitutional provisions. The commission charged, proved, and found multiple instances of misconduct and incompetency but has brought no disability retirement proceedings regarding Judge McGaugh before this Court. Accordingly, this Court lacks the authority to convert this disciplinary proceeding to a disability retirement proceeding.

(3) Judge McGaugh waived oral argument. Although this Court's rule requires oral argument if requested by a respondent judge, the stipulation and waiver Judge McGaugh signed waived his right to appeal under the rule, including any right to oral argument. Even if this Court were to permit oral argument, it could not consider any new information regarding Judge McGaugh's mental health, which Judge McGaugh indicates is the basis for his request.

(4) This Court has the authority to deviate from the commission's recommended discipline. The plain language of article V, section 24.3 does not limit this Court's authority to impose such discipline as it sees fit after the commission recommends discipline be imposed. The constitutional provision has remained unchanged since its adoption and never has been interpreted to limit this Court to imposing only the recommended discipline. Furthermore, this Court's rule regarding the imposition of discipline as well as its precedent is consistent with the interpretation that this Court has the ultimate responsibility for determining judicial discipline.

Dissenting opinion of Judge Powell: The author would find this Court does not have the authority to deviate from the discipline the commission recommends. He emphasizes the Missouri Constitution commits the disciplining of judges to the commission, and the recommendation is made to this Court only because this Court alone has the authority to impose the discipline. He believes the plain language of article V, section 24.3 permits this Court only to concur in the commission's recommendation and would overrule any case law to the contrary. Accordingly, he would suspend Judge McGaugh for the recommended six-months without pay.

Separate opinion of Judge Fischer: The author concurs with the dissenting opinion that this Court lacks that authority to deviate from the discipline the commission recommends. He writes separately to emphasize the egregious nature of Judge McGaugh's misconduct in failing to discharge his core judicial responsibilities. If deviation were permitted, the author would vote to remove Judge McGaugh from office.