

**Summary of SC90937, *In re: The Honorable Timothy J. Finnegan***

Original proceeding filed by the Commission on Retirement, Removal and Discipline involving a St. Louis city commissioner

Argued and submitted Sept. 2, 2010; opinion issued Dec. 21, 2010

**Attorneys:** The commission was represented by its counsel, James M. Smith, of the commission's offices in St. Louis, (314) 966-1007; joining in the commission's brief was Finnegan, of the St. Louis city circuit court, (314) 622-4426. The attorney general, who filed a brief as a friend of the Court, was represented by State Solicitor James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; joining in the attorney general's brief was the Missouri State Employees' Retirement System, represented by Jake McMahan of the system in Jefferson City, (573) 632-6114.

*This summary is not part of the opinion of the Court. It has been prepared by the 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 that this Court retire for disability a commissioner of a circuit court's family division. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri rejects the commission's recommendation. The commission lacks authority over the commissioner, who is not a judge, a member of a judicial commission or a member of the commission itself. He may apply, however, for retirement and for long-term disability benefits under other provisions of Missouri law.

In a concurring opinion, Judge Michael A. Wolff notes there is no constitutional authority for "commissioners" to exercise judicial officers, that commissioner positions were eliminated in the 1976 amendments to the judicial article, and that although the state's current commissioners do important work, they are not judges and should be phased out as they retire, to be replaced – where necessary to meet a circuit court's judicial workload needs – by new judge positions created by the legislature.

**Facts:** In April 2010, Timothy Finnegan, a commissioner for the St. Louis city circuit court's family division, asked the Commission on Retirement, Removal and Discipline, pursuant to Rule 12.05, to recommend to this Court that he be retired due to disability. After considering his request, the commission issued its findings of fact, conclusions of law and recommendation that this Court retire Finnegan for permanent disability and award him retirement benefits as provided by law.

**RECOMMENDATION REJECTED.**

**Court en banc holds:** The commission has no authority over the retirement of court-appointed commissioners of family divisions of the circuit courts. Article V, section 24 of the Missouri Constitution gives the commission authority over three categories of individuals: judges, members of judicial commissions and members of the commission itself. Finnegan clearly is not a member of the commission itself. In accordance with *Slay v. Slay*, 965 S.W.2d 845 (Mo. banc 1998), and its progeny, Finnegan also is not a judge. In *Slay* (holding that a document signed by

a commissioner of a family division of the circuit court was not a “judgment” because it was not signed by a judge), this Court determined that the term “judge” only refers to those judicial officers selected in accordance with and authorized to exercise judicial power pursuant to article V of the Missouri Constitution. In addition, Finnegan is not a member of a judicial commission as that term is used in article V, section 24. The fact that Finnegan’s title is “commission” is of no consequence because he conducts his tasks alone, not as a member of a group or body. Although Finnegan’s request for disability retirement falls outside the scope of the commission’s authority, he still is eligible for retirement under section 487.020.3, RSMo, and may apply for long-term disability benefits under sections 104.518.1 and 476.515.1(4), RSMo.

**Concurring opinion by Judge Wolff:** The author writes separately to note there is no constitutional authority for “commissioners” to exercise judicial powers. Finnegan is one of 37 persons whose commissioner positions have been created by legislation since 1976, when voters amended article V of the Missouri Constitution. In this amendment, voters created a unified court system, eliminated the then-existing commissioner positions in Missouri courts, and created two ways for selecting individuals to exercise judicial authority: the Missouri nonpartisan court plan for judges of designated courts and direct elections for all other judges. The commissioners whose positions have been created through legislation since 1976, however, are not elected directly or selected under the nonpartisan plan. Rather, they are appointed by the judges of the circuit courts where they serve. These commissioners do important work and exercise many functions of judges, but they may not sign judgments and may not preside over cases other than those for which they are appointed to hear. The author proposes phasing out commissioners now the same way the 1976 amendment did: to allow commissioners to retain their current positions until retirement and then not filling the vacancy. He suggests that if a circuit court needs additional judicial officers, pursuant to the courts’ judicial weighted workload study, then the legislature could create a new judge position for that circuit.