

**ANNUAL REPORT OF  
THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF GEORGIA**

**FISCAL YEAR 2005**

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THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF GEORGIA**

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**Introduction**

This report provides a summary of the activities of the Judicial Qualifications Commission for the State of Georgia (the "Commission") during the fiscal year 2004-2005 ("FY05"). In reviewing the statistics contained in this report, it is important to remember that each matter represents a matter of considerable significance to a judge and to the public. Each complaint or inquiry that is received by the Commission is worthy and deserving of independent consideration whether its source is a judge, lawyer or member of the general public. The Commission is determined that there exist a free and independent judiciary, with accountability. At the same time, the Commission is sensitive to the right of each judge to fundamental fairness and due process. In all its actions, the Commission remains ever mindful of the fact that "upon the integrity, wisdom and independence of the judiciary depend the sacred rights of free men and women."

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## **I. OVERVIEW OF THE COMMISSION**

The Judicial Qualifications Commission was created by amendment to the Georgia Constitution in 1973 and is an independent commission that accepts and investigates complaints of judicial misconduct, incapacity or impairment of judicial officers. The Commission has jurisdiction over all classes of judges in the State of Georgia including those on the bench of administrative law courts, city courts, juvenile courts, magistrate courts, state courts, superior courts, the Georgia Court of Appeals and the Georgia Supreme Court. Currently, there are over 1800 judges within the State of Georgia whose conduct falls within the jurisdiction of the Commission.

The Commission consists of seven members appointed to four-year terms. The Georgia Supreme Court appoints two members from the ranks of judicial officers. Three attorney members are appointed by the State Bar of Georgia and two lay members are appointed by the Governor. The lay members can be neither judges nor lawyers.

**A. MEMBERS OF THE COMMISSION**

The current members of the Commission are:

The Hon. Steve C. Jones Chairman and Judge,  
Superior Court of Western Judicial Circuit.

Gary C. Christy – Vice Chairman, and an attorney  
practicing in Atlanta, Georgia.

The Hon. Bonnie Chessher Oliver – Judge,  
Superior Court of Northeastern Judicial Circuit.

James B. Durham – an attorney practicing in  
Brunswick, Georgia.

Ben F. Easterlin – an attorney practicing in Atlanta,  
Georgia.

Robert P. Herriott, Sr. – a retired pilot for Delta Air  
Lines residing in Carrollton, Georgia.

W. Jackson Winter, Jr. – a businessman in Atlanta,  
Georgia.

**B. THE COMMISSION STAFF**

Ms. Cheryl Fisher Custer serves as the Executive Director of the Commission. Her staff consists of an administrative assistant. The Commission occasionally uses the services of an investigator in the investigation of a complaint. In the event of formal proceedings, outside counsel has traditionally been retained to represent the Commission.

### **C. THE COMPLAINT PROCESS**

Any person may file a complaint with the Commission by obtaining a complaint form from the Commission staff. The complaint, which must be in writing with an original signature, must be received by the Commission staff before any action or investigation may begin. The complaint must state facts that substantiate the alleged misconduct. Upon receipt of a complaint, the Executive Director may authorize a preliminary inquiry. After an analysis, the complaint and additional relevant information are sent to each Commission member to review prior to the Commission's monthly meeting. The members will discuss and determine the appropriate action to be taken, which may include the one or more of the following:

- Close the complaint. The Commission may take this action if, upon initial review, the allegations do not fall within its jurisdiction or do not constitute a violation of the standards of judicial conduct.
- Investigate the complaint. Any investigation may entail writing to the judge who is the subject of the complaint and requesting his or her explanation of the matter, reviewing court and non-court documents, interviewing witnesses, monitoring the behavior of the judge in the

courtroom, and other actions necessary to determine the accuracy and credibility of the allegations in the complaint.

- Meet with the Judge. The Commission may require the judge who is the subject of the complaint to appear before the Commission and respond to questioning about the substance of the complaint.

Depending upon the outcome of the investigation, the Commission may take one of the following actions with respect to the complaint:

- Close the complaint if the allegations are found to be without merit or if the Commission does not have jurisdiction over them.
- Admonish or reprimand the judge for any misconduct by use of any of the informal sanctions such as a private reprimand.
- File formal charges against the judge. In such proceedings, the judge has a right to defend against the charges and to be represented by an attorney. If a violation is found, the Commission may recommend to the Supreme Court either public reprimand, suspension, censure, retirement or removal from office.

**D. WHAT IS JUDICIAL MISCONDUCT?**

Not all misconduct by a judge falls within the jurisdiction of the Commission. Only that misconduct which constitutes a violation of the Judicial Code of Conduct falls within the Commission's jurisdiction. The

Code of Judicial Conduct sets forth a number of ethical canons and rules intended to set basic standards to govern the conduct of, and provide guidance to, judges at all levels. Common violations include, but are not limited to, the following:

- failure to perform duties impartially and diligently;
- failure to dispose promptly of the business of the court;
- conflicts of interest; and
- other conduct which reflects adversely on the integrity of the judiciary.

The following matters are not within the jurisdiction of the Commission and thus do not, without more, constitute a violation of the Code of Judicial Conduct:

- rulings on the law and findings of fact made by the judge when sitting as a finding of fact;
- matters within the discretion of the trial court;
- rulings on the admissibility of evidence;
- rulings involving alimony, child support, custody or visitation rights; and
- sentences imposed by the Court.



**E. IMPAIRMENT OF JUDGES**

Allegations of alcohol or drug abuse by a judge are taken seriously by the Commission as they may suggest a possible impairment in the performance of judicial duties. Where such impairment is found to exist, the Commission will strongly consider medical intervention even in the absence of a violation of the Code of Judicial Conduct. If there is evidence of misconduct resulting from alcohol or drug abuse, the Commission will emphasize medical intervention and other sanctions consistent with its public responsibility to charge and prosecute violations of the Code of Judicial Conduct.

**F. INCAPACITY OF JUDGES**

In the event of a complaint alleging the physical or mental incapacity of a judge, the Commission will proceed with sensitivity into the investigation being fully cognizant of the many years of able service to the State of Georgia the judge may have given. Most judges who have become disabled choose to retire without any formal action on the part of the Commission. In the absence of voluntary action by the judge, however, the Commission may file formal charges alleging incapacity and seeking the forced resignation or retirement of the judge.

## **II. REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION FOR FISCAL YEAR 2004-2005**

The fiscal year of the Commission runs from July 1, 2004 through June 30, 2005. Below is a brief summary of the activities of the Commission during the past fiscal year.

### **A. SIGNIFICANT EVENTS**

Though all matters that come before the Commission are treated with care and given consideration, there were a number of significant events during FY05.

During this fiscal year three new members joined the Commission replacing members whose terms had expired. Governor Sonny Perdue appointed Mr. Robert P. "Bob" Herriott, Sr. on June 4, 2004 to replace Mr. William "Dink" NeSmith and Mr. W. Jackson Winter, Jr. on June 6, 2005 to replace Ms. Marianne Thomasson. Members of the Board of Governors of the State Bar of Georgia appointed Mr. James E. Durham to replace Mr. Walter Hartridge.

Mr. Hartridge, of Savannah, GA, served two full terms, or eight years, on the Commission providing his leadership and expertise to the mission of the Commission.

The Commission republished updated versions of the Code of Judicial Conduct and the Rules of the Judicial Qualifications Commission to reflect changes to both the Code and the Rules that had accumulated over the years including those attributable to the decision of the Eleventh Circuit Court of Appeals in *Weaver v. Bonner* and the U.S. Supreme Court in *Republican Party v. White*, 536 U.S. 765, 122 S. Ct. 2528 (2002).

There were also a number of significant disciplinary matters considered by the Commission during FY05. Principal among the complaints reviewed by the Commission was the matter of Scott N. G. Childress, Judge of the Municipal Court of Alpharetta. Judge Childress consented to a public reprimand as the agreed upon sanction in the matter of Docket Number 04-43. A copy of the reprimand, which was administered in open court by Chief Superior Court Judge Doris Downs of the Atlanta Judicial Circuit on Wednesday, February 16, 2005, is attached to this report as *Exhibit A*.

## **B. COMPLAINT INFORMATION**

The Commission receives a large number of complaints each year from individuals that complain about a number of judges alleging various

types of misconduct. Set out below are some key statistics about those complaints:

- Number of Complaints Forms Requested 813
- Number of Complaint Forms Received 443
- Number of Complaints Rejected<sup>1</sup> 362
- Number of Complaints/Matters Docketed<sup>2</sup> 83

### 1. Total Complaint Forms Received

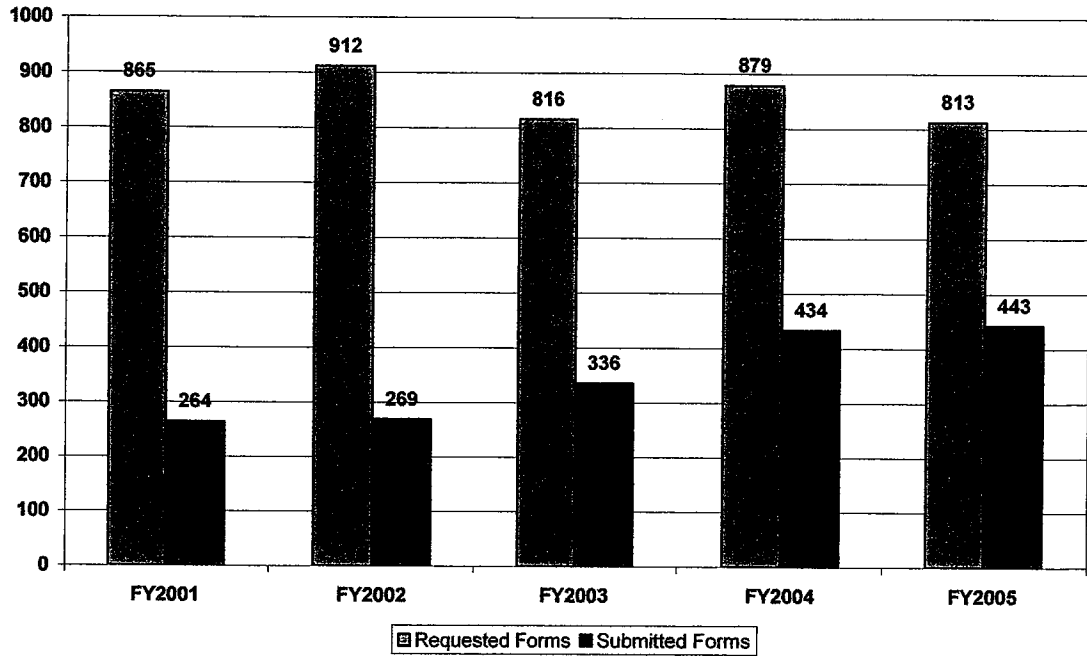
The data compiled by the Commission for the past year reflects a continuing trend of steadily increasing levels of complaints. In FY01, the Commission received 264 complaints while in FY05, the Commission received 443 complaints, a 168% increase. When one examines the trends in the filings of complaints over the past five years, a pattern of increases clearly emerges. The complaints filed during fiscal years 2001 through 2005 are graphically set forth in Figures 1 and 2 below:

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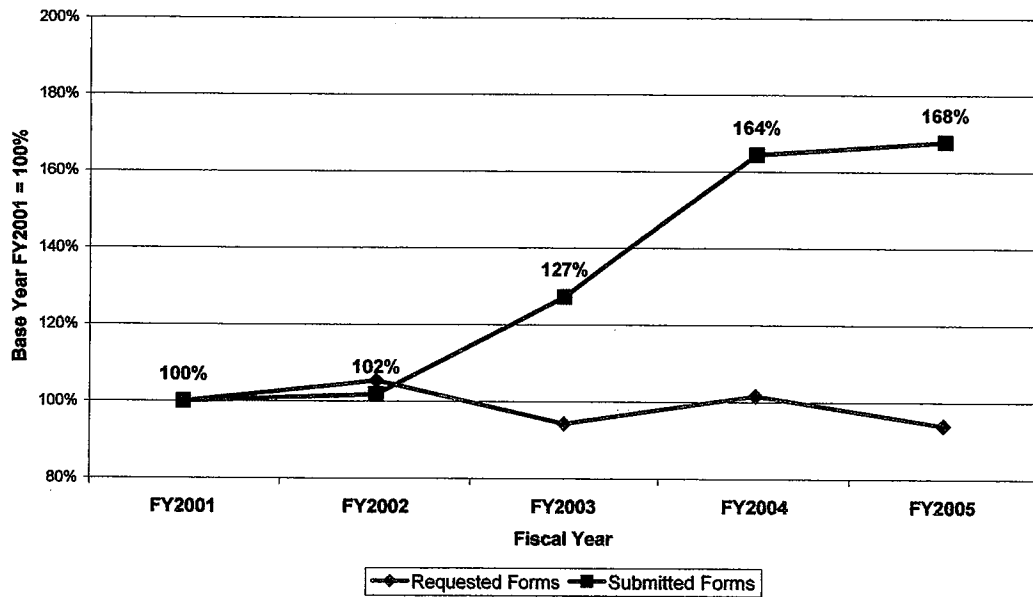
<sup>1</sup> Numbers reflect only rejected complaints and not complaints or matters that are still pending and are carried forward into the next fiscal year.

<sup>2</sup> Docketed matters include complaints, investigations initiated by the Commission on its own motion and requests for opinions. See *infra* Section 1, C. page 14.

## Complaint Activity



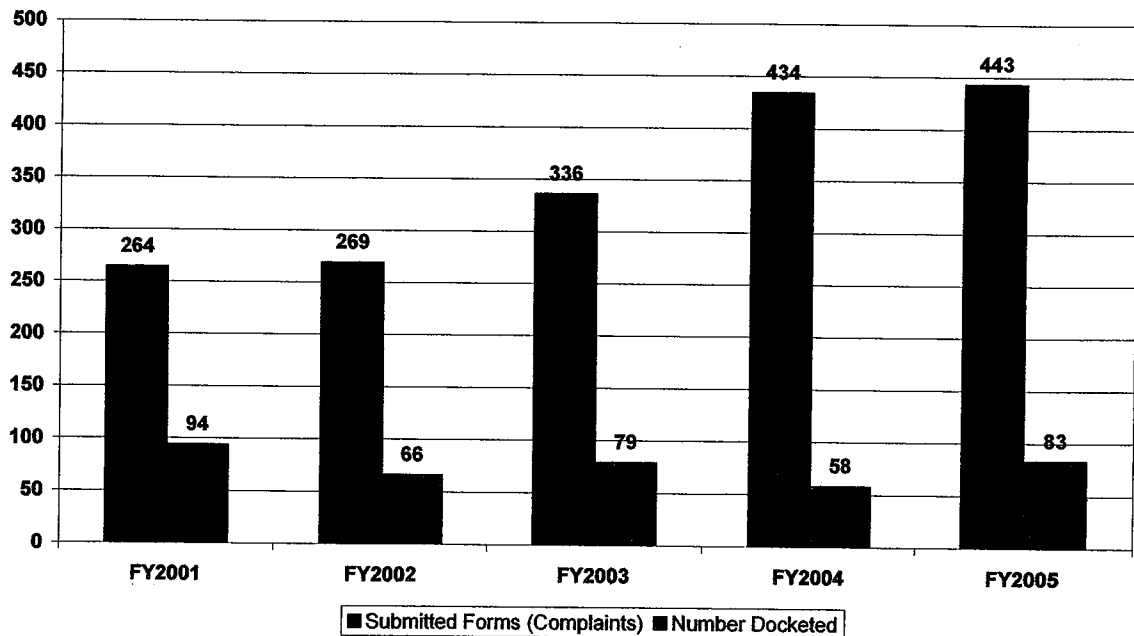
### Increase In Complaint Activity (FY2001 = Base Year = 100%)



## 2. Total Complaints Docketed

Complaints are docketed when the complaint form alleges conduct that falls within the jurisdiction of the Commission and when a preliminary investigation does not indicate that the complaint is without merit. Once docketed, the complaint will be considered by the Commission as a whole at a regularly scheduled meeting. Figure 3 graphically sets forth the level of complaints docketed over the past five years:

**Docketed Complaint Trends**  
**Figure 3**



### **C. SOURCES OF COMPLAINTS**

The complaints docketed in FY2005 came from the following sources:

Litigants, Friends, Relatives	41
Judges	5
Individual Attorneys	21
Non-Litigants/Others	4
Media	6
Public Officials	0
Public Information	3
Request for Opinion	2
Request for Rule Change	1

### **D. CLASSES OF JUDGES.**

The complaints docketed in FY2005 were made against the following classes of judges:

Juvenile	2
Magistrate	21
Municipal	3
Probate	5
Senior	7
State	10
Superior	30
Judicial Candidate	2
Administrative Law Judge	1

## **E. CATEGORIES OF COMPLAINTS<sup>2</sup>**

The complaints docketed in FY2005 involved the following categories of complaints:

Judicial Decision/Discretion	1
Impairment	3
Racial/Sexual Bias/Prejudice	6
Failure to Timely Dispose	15
Ex-Parte Communications	7
Conflict of Interest	9
Denial of Fair Hearing	1
Demeanor / Injudicious Temperament Mistreats Lawyers or Litigants	18
Probate/Estate Matter	0
Decision Matter	3
Personal Activity	2
Campaign Activity	4
Administrative Duties	4
Failure to Follow Law	17
Judge charged with criminal activity	6
Request for Formal Opinion	2

## **F. DISPOSITION OF COMPLAINTS<sup>3</sup>**

Of the complaints considered by the Commission and resolved in FY05, they were resolved in the following manners:

Dismissed after Minimal Investigation	47
Dismissed with letter of instruction	9

<sup>2</sup> Numbers in table do not correspond with the number of docketed complaints or the number of judges because many resolutions involve communications about more than one subject or type of conduct.

<sup>3</sup> Numbers in table do not correspond with the number of docketed cases as dockets from previous fiscal years are resolved in the present year and other dockets continue forward.



Dismissed after Personal Conference	14
Judge Resigned after Complaint Docketed with Commission	4
Dismissed-Decline to Render Formal Opinion	1
Dismissed with Private Reprimand	2
Dismissed with Public Reprimand	1
Judge Removed by Supreme Court	0

**G. EDUCATIONAL FUNCTION OF THE COMMISSION**

One of the primary functions of the Commission is to provide education and counseling to judges on the interpretation and application of the Code of Judicial Conduct. Through such education and counseling, the Commission hopes to reduce the complaints filed against judges and otherwise encourage ethical behavior by all members of the judiciary.

The Commission staff and Commission members actively participate in providing seminars to judges on the subject of judicial professionalism and ethics. During FY05 the Commission participated in educational conferences for various classes of judges. In addition to judicial conferences, the Commission Executive Director was asked to participate in a symposium held at the Mercer Law School entitled *Judicial Professionalism in a New Era of Judicial Selection*. The symposium was

sponsored by the Mercer Law Review and the presentations of all participants were subsequently published in the Mercer Law Review. In continuing to fulfill the educational component of the Commission's work the Executive Director addressed both a local Rotary Club and was a panel speaker to the Lamar Inn of Court on the topic of ethics and professionalism.

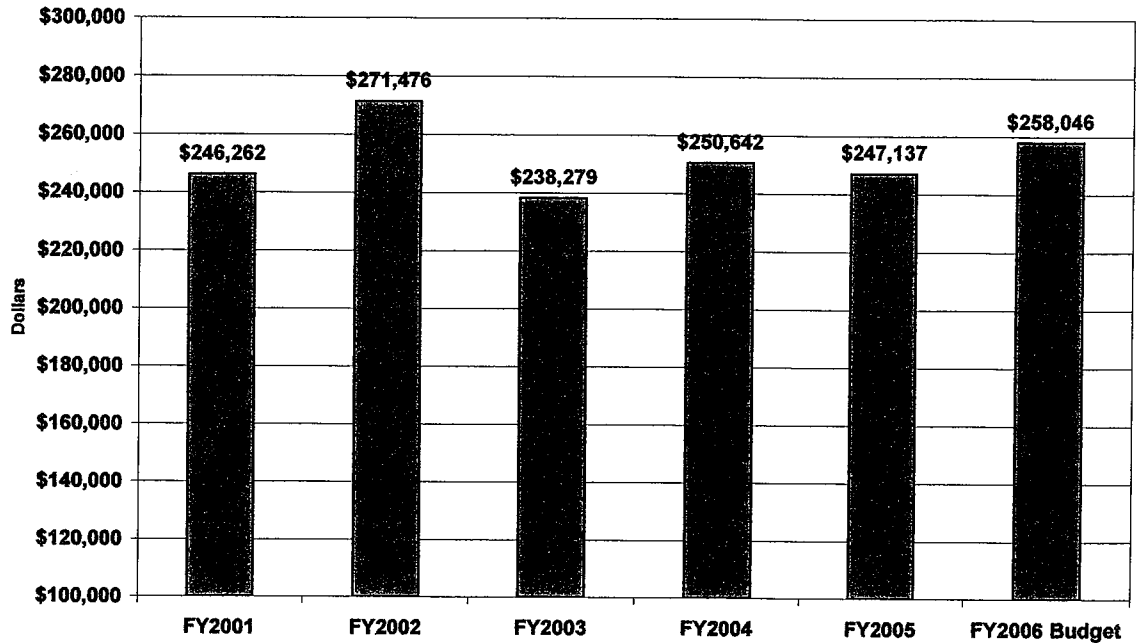
In addition, during any given week, the Commission staff responds to numerous requests for information and advice about the Code of Judicial Conduct and the Rules of the Commission.

Although the Commission may also render formal opinions on ethical questions under its rules, no such opinions were rendered in FY05.

#### **H. THE COMMISSION BUDGET**

The total amount spent by the Commission for FY05 including salaries and benefits was \$247,137. This represented a decrease of 1.4% from the previous year. Over the past five years, the amounts spent by the Commission in fulfilling its role have been relatively static (in nominal dollars) and they will remain so throughout the coming fiscal year:

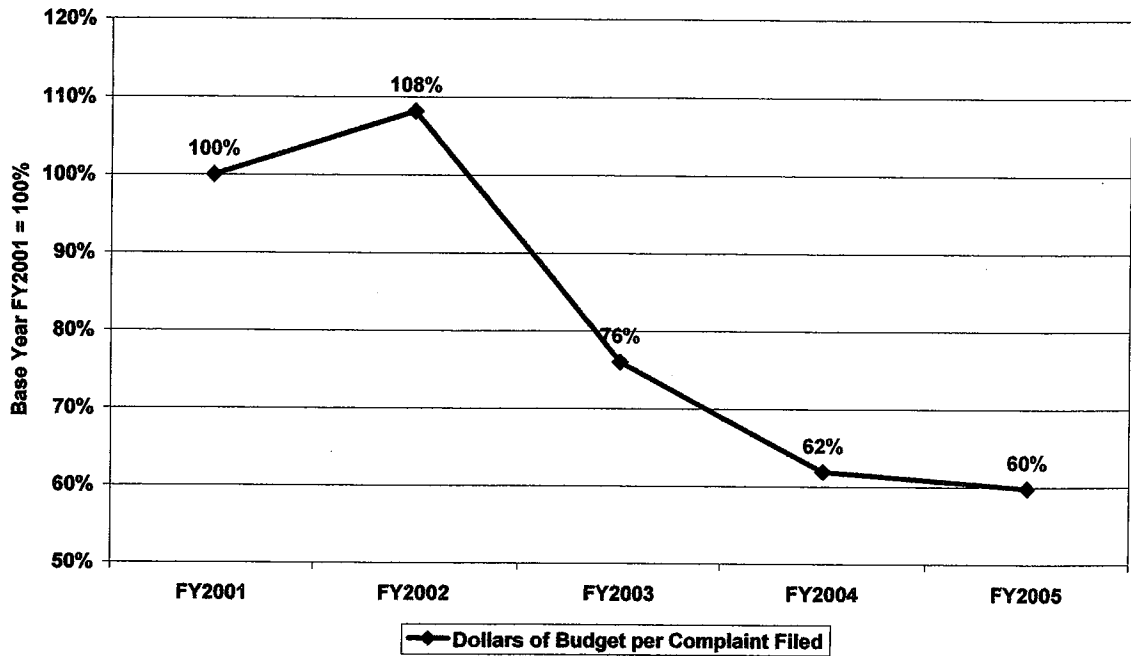
**JQC-Funds Available  
Fiscal Year Actuals & FY2006 Budget**



Currently, a total of \$258,046 is budgeted for the work of the Commission for FY06.

When one compares the budgeted amounts against the numbers of complaints received, reviewed and investigated by the Commission, the results demonstrate that the Commission has been extraordinarily thrifty in the stewardship of its budget and efficient in the management of complaints. As Figure 5 below demonstrates, when the total amount spent by the Commission is allocated across the total number of complaints received, the Commission spent 40% less per complaint received in FY05 than it spent in FY01 when adjusted for inflation.

**Dollars of Budget per Complaint Filed  
Indexed to Base Year FY2001 = 100%**



Indeed, when comparing the Commission's budget to that of comparable judicial disciplinary organizations in other states, the Commission is one of the most efficient organizations in the country<sup>4</sup>:

<u>State</u>	<u>Judges</u>	<u>Complaints</u>	<u>Budget</u>
Georgia (FY2005)	1800±	83	\$247,137
Alabama	700±	143	\$341,000
Arizona	500±	340±	\$343,000
Florida	876	500±	\$805,557
Massachusetts	404	133-600	\$348,748

<sup>4</sup> Data supplied by survey conducted by the American Judicature Society in 2004.

<u>State</u>	<u>Judges</u>	<u>Complaints</u>	<u>Budget</u>
Michigan	1100	600±	\$950,000
Mississippi	800±	360±	\$411,000
Nevada	297±	150±	\$450,000±
New Mexico	300±	1100±	\$350,000
Pennsylvania	1200	550±	\$1.2 million
Virginia	778	1000±	\$480,000
Washington	500±	300±	\$920,000

### **III. CONCLUSION**

The Commission continues to face new challenges and threats to the maintenance of an independent judiciary in the State of Georgia. The Commission must face these challenges in an environment where governmental resources are increasing scarce and must continue to serve the citizens of Georgia with greater efficiency than ever before. The Commission is more than prepared to meet these challenges and to ensure that the judiciary remains free and independent.

Respectfully submitted this 3rd day of February, 2006.

Steve C. Jones *by cjc*

Hon. Steve C. Jones

Chair

Judicial Qualifications Commission

Gary C. Christy, Esq.

Ben F. Easterlin, Esq.

Hon. Bonnie Chessher Oliver

James B. Durham, Esq.

Robert P. Herriott, Sr.

W. Jackson Winter, Jr.

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF GEORGIA

In re: An Inquiry Concerning	*	
	*	
<b>JUDGE SCOTT N. G. CHILDRESS,</b>	*	Docket No. 04-43
	*	
Municipal Court of the	*	
City of Alpharetta.	*	
	*	
	*	

**PUBLIC REPRIMAND OF JUDGE SCOTT N. G. CHILDRESS**

Pursuant to Rule 4(e) of the Judicial Qualifications Commission and the terms of an agreed upon disposition of the investigation by the Judicial Qualification Commission, this Court has been called upon to administer a public reprimand to Scott N. G. Childress, Judge of the Municipal Court of the City of Alpharetta, for acts of which have been deemed in violation of Canon 3 of the Code of Judicial Conduct.

Specifically, the acts of misconduct are described as follows:

1. You did not cause a case appearing in your Court to be considered and concluded in a timely manner due to the granting of a number of continuances. Considering requests for continuance is the responsibility of the Judge alone and should not be performed by the Solicitor or Clerk of Court. The Commission has been made aware of House Bill 945 passed by the 2004 session of the Georgia General Assembly that seems to give the Chief Clerk of Court the duty to establish and manage case calendars and dockets. You are instructed that notwithstanding this provision, it is your duty as Judge to supervise and exercise final authority over the calendaring and

management of all cases filed in your court, and to personally consider each request for continuance.

2. In two instances, you acted beyond the jurisdiction of your Court.

a. In one case, after you had issued a warrant, you kept a case in your court in order to conduct a committal or preliminary hearing (hereinafter referred to as a "committal hearing"). As a municipal court judge, you are authorized to hold committal hearings where a warrant has been issued. O.C.G.A. § 17-7-20. The Commission also understands that committal hearings have been scheduled in the Municipal Court of the City of Alpharetta as a matter of routine during and prior to your term of office. However, a defendant is entitled to such a hearing as a matter of right only in one of two circumstances: (1) if he is incarcerated at the time of the hearing, or (2) even though not incarcerated, if his bond places significant restrictions on his liberty. Neither condition was present in the case whose facts were brought to the attention of the Commission. Therefore, the defendant was not entitled to a committal hearing as a matter of right.

While the law allows for the scheduling of a committal hearing in the absence of the circumstances set forth above (see O.C.G.A. § 17-7-24), notification to higher prosecuting officials should not be delayed thereby. Where a municipal court judge schedules a discretionary committal hearing, the court should nevertheless immediately notify the office of the Solicitor or District Attorney, as appropriate, that a warrant has issued in the case. You



should have notified the proper prosecuting authorities and failed to do so in this matter in a timely manner.

b. In second case, Clerk of the Municipal Court of the City of Alpharetta reported the conviction of a municipal ordinance violation in your court to G.C.I.C. You were correct in understanding that the Clerk erred in reporting the conviction. Under G.C.I.C rules, a municipal ordinance conviction should not be reported. Nonetheless, you exceeded the jurisdiction limitations of a municipal court judge by executing a proposed order from counsel for the defendant which directed G.C.I.C. to expunge the case from its records. Instead, the Clerk's error should have been corrected by following procedures established by G.C.I.C.

These improper actions, which have been acknowledged by you, are in violation of Canon 3 of the Code of Judicial Conduct, which provides in part that judges should perform the duties of judicial office diligently and be faithful to the law.

The public expects and the Code of Judicial Conduct demands that judges be held to a high standard of ethical conduct in discharging the responsibilities and duties of a judge. For your conduct, you are hereby publicly reprimanded.

The Commission understands that you have already taken steps to insure that the conduct reviewed above will not be repeated. Nevertheless, you are instructed and directed to carefully review and fully comply with each and every provision of the Code of Judicial Conduct now and in the future.

This concludes your public reprimand.