

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

FISCAL YEAR 2007

ANNUAL REPORT OF 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 2006-2007 ("FY07"). 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."

Table Of Contents

Introduction	1
I. OVERVIEW OF THE COMMISSION	3
A. MEMBERS OF THE COMMISSION	4
B. THE COMMISSION STAFF	4
C. THE COMPLAINT PROCESS	5
D. WHAT IS JUDICIAL MISCONDUCT?	6
E. IMPAIRMENT OF JUDGES	8
F. INCAPACITY OF JUDGES	8
II. REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION FOR FISCAL YEAR 2006-2007	9
A. SIGNIFICANT EVENTS	9
B. COMPLAINT INFORMATION	10
1. Total Complaint Forms Received	11
2. Total Complaints Docketed	12
C. SOURCES OF COMPLAINTS	14
D. CLASSES OF JUDGES.	15
E. CATEGORIES OF COMPLAINTS	16
F. DISPOSITION OF COMPLAINTS	17
G. EDUCATIONAL FUNCTION OF THE COMMISSION	18
H. THE COMMISSION BUDGET	19
III. CONCLUSION	21

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 FY07 members of the Commission are:

Benjamin F. Easterlin III – Chairman, and an attorney practicing in Atlanta, Georgia.

The Hon. Bonnie Chessher Oliver – Vice-Chairman, and Judge, Superior Court of Northeastern Judicial Circuit.

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

Robert D. Ingram – an attorney practicing in Marietta, Georgia.

The Hon. John D. Allen – Judge, Superior Court of Chattahoochee Judicial Circuit.

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 or from the Commission web site. 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 2006-2007**

The fiscal year of the Commission runs from July 1, 2006 through June 30, 2007. 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 FY07.

During this fiscal year the membership of the Commission changed with the conclusion in December of 2007 of Judge Steve Jones' ten year service on the Commission and with an appointment by the State Bar of Georgia to replace Mr. Gary Christy following his untimely death. The Supreme Court appointed the Honorable John D. Allen, Judge of the Superior Court of Chattahoochee Judicial Circuit to the Commission in December to serve as a judicial member and the State Bar of Georgia appointed attorney member Mr. Robert Ingram in September.

There were also a number of significant disciplinary matters considered by the Commission during FY07. Principal among the complaints reviewed by the Commission was the matter of Misty L. May, Chief Magistrate, Glascock County Magistrate Court. Judge May consented to a

public reprimand as a negotiated resolution of the complaint filed against her by the Glascock County Commissioners. A copy of the reprimand, which was administered in open court by Chief Superior Court Judge Roger Dunaway of the Toombs Judicial Circuit on Monday, May 21, 2007, is attached to this report as *Exhibit A*.

The Commission also rendered two formal Opinions during FY07, Opinion 235 and Opinion 236. A copy of Opinion 235 is attached as *Exhibit B* and a copy of Opinion 236 is attached as *Exhibit C*.

B. COMPLAINT INFORMATION

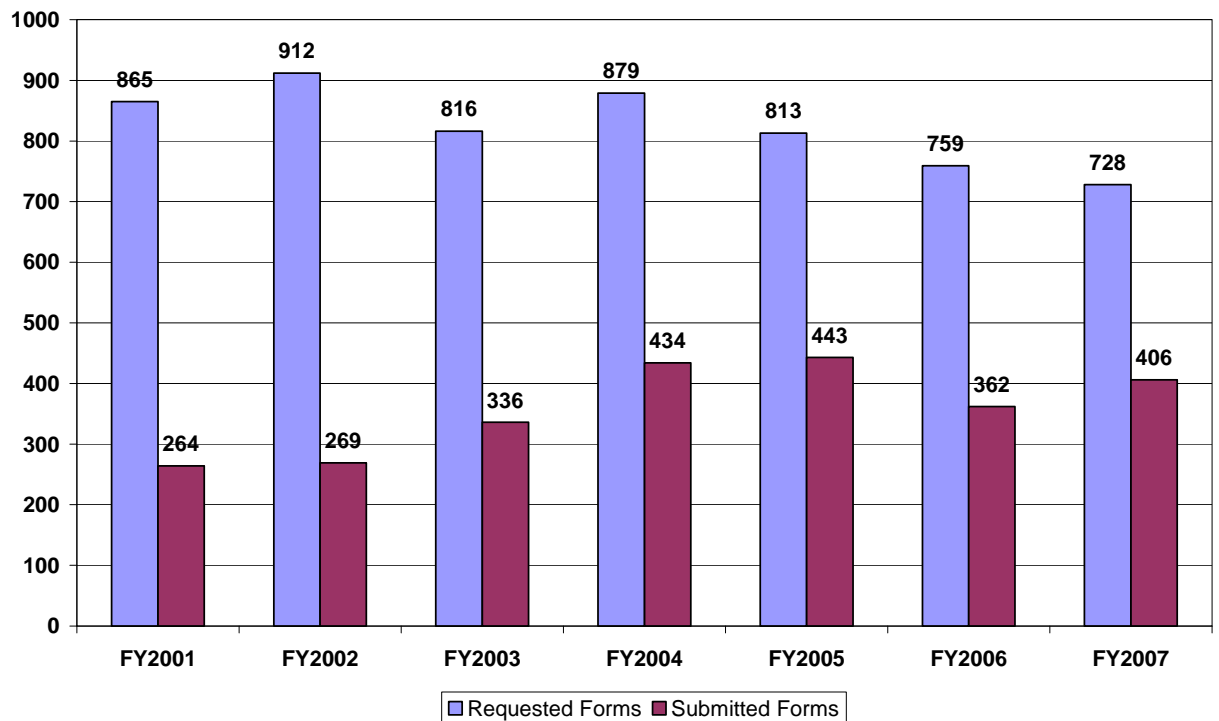
The Commission receives a large number of complaints each year from individuals that complain about a number of judges alleging various types of misconduct. Set out below are some key statistics about those complaints:

- Number of Complaints Forms Requested 728
- Number of Complaint Forms Received 406
- Number of Complaints Rejected 335
- Number of Complaints Docketed 63
- Number of Complaints Investigated but not Docketed 8

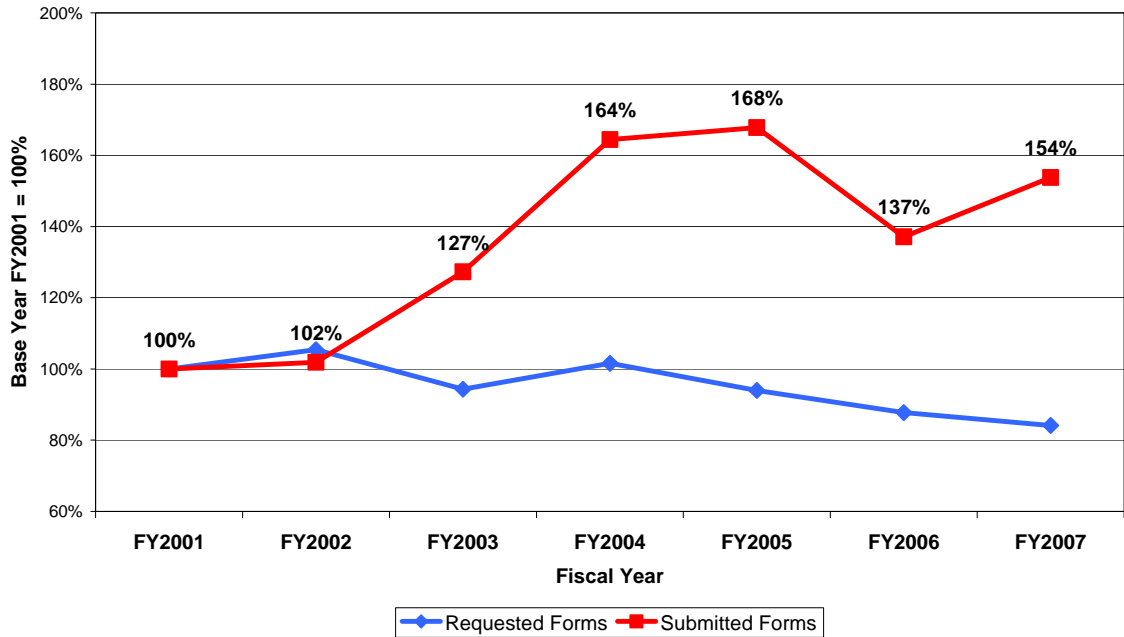
1. Total Complaint Forms Received

The data compiled by the Commission for the past year reflects a return to the level of filed submitted complaints that had been experienced in prior years. In FY01, the Commission received 264 complaints while in FY07, the Commission received 406 complaints, a 154% increase. The complaints filed during fiscal years 2001 through 2007 are graphically set forth in Figures 1 and 2 below:

Complaint Activity



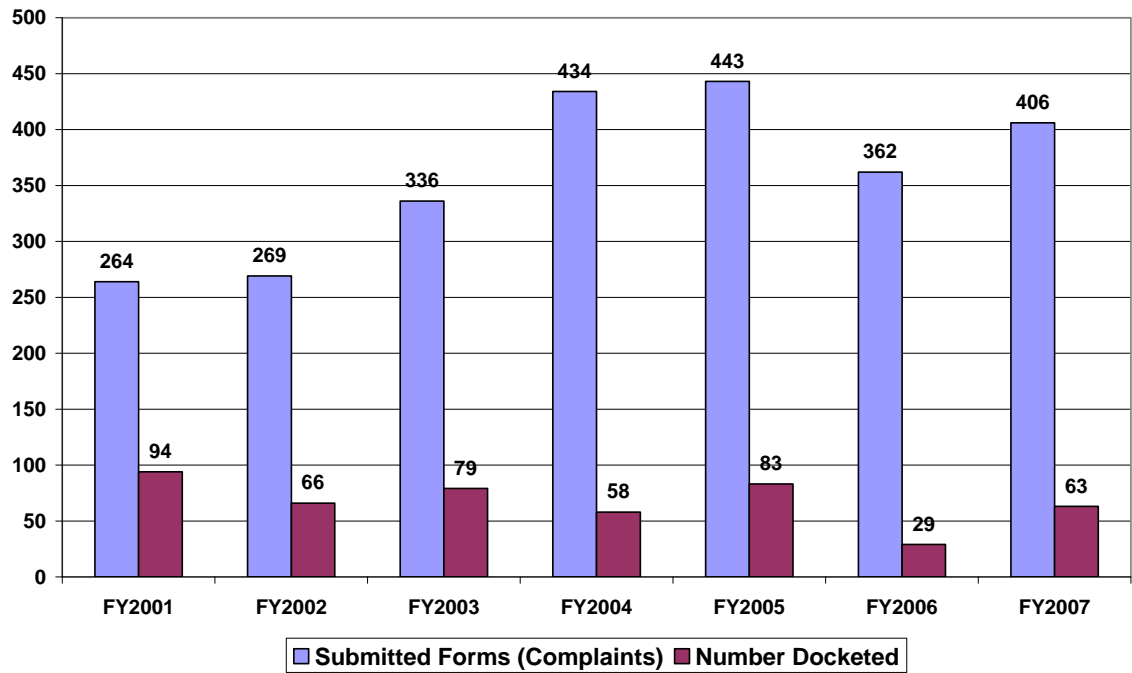
Increase In Complaint Activity (FY2001 = Base Year = 100%)



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 seven years:

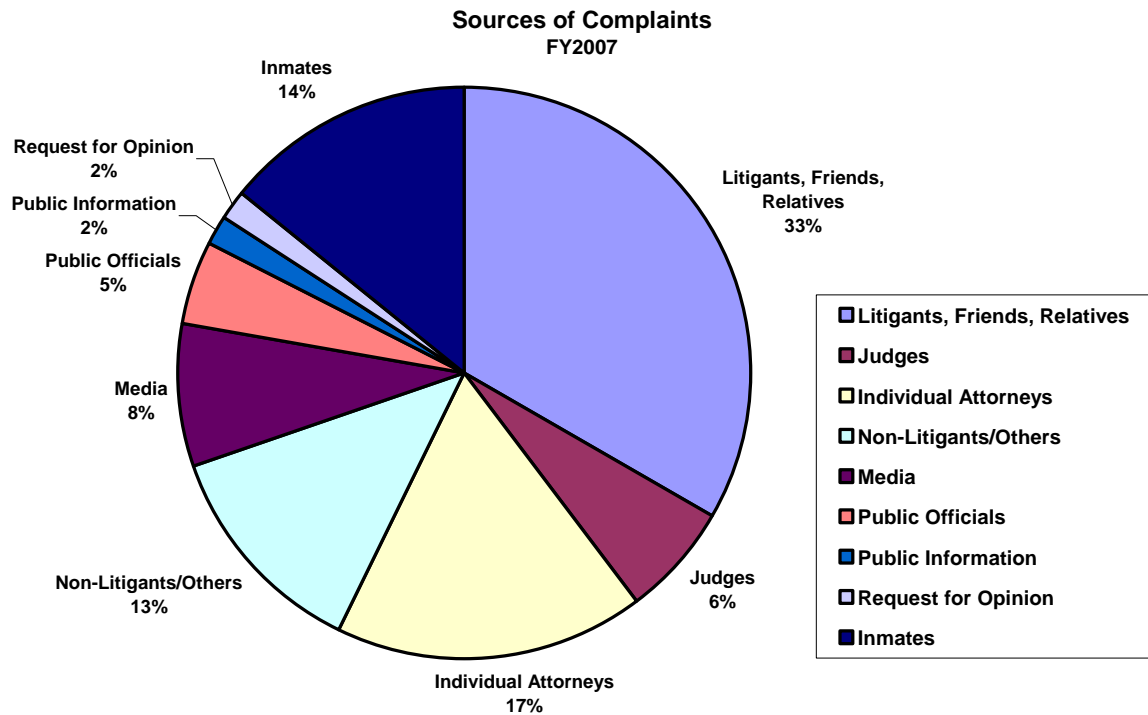
Docketed Complaint Trends



C. SOURCES OF COMPLAINTS

The complaints docketed in FY07 came from the following sources:

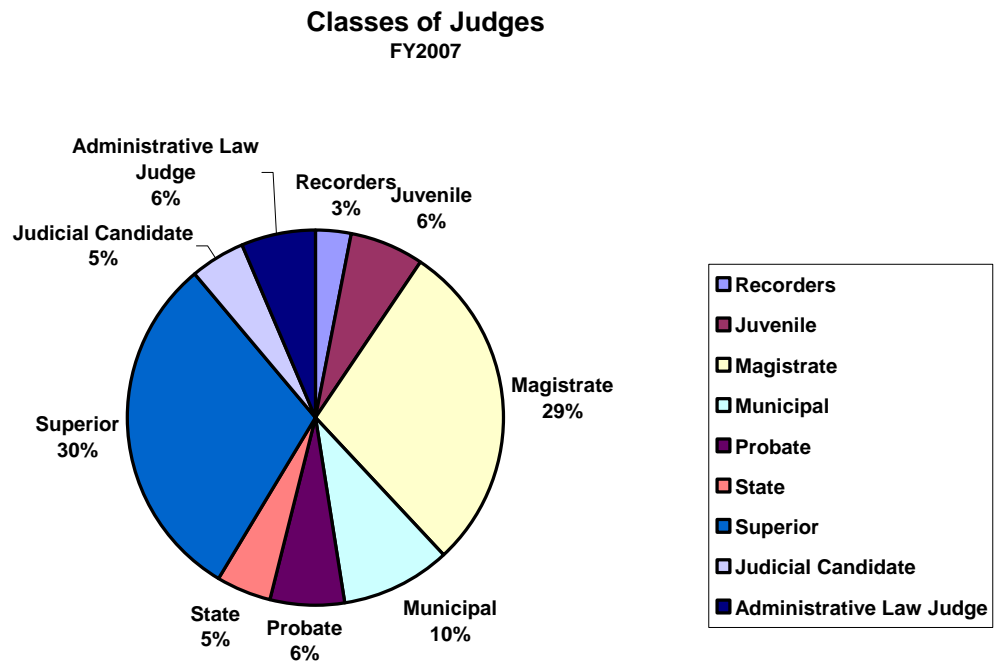
Litigants, Friends, Relatives	21
Inmates	9
Judges	4
Individual Attorneys	11
Non-Litigants/Others	8
Media	5
Public Officials	3
Public Information	1
Request for Opinion	1
Request for Rule Change	0



D. CLASSES OF JUDGES.

The complaints docketed in FY07 were made against the following classes of judges:

Juvenile	4
Recorders	2
Magistrate	18
Municipal	6
Probate	4
Senior	0
State	3
Superior	19
Judicial Candidate	3
Administrative Law Judge	4



E. CATEGORIES OF COMPLAINTS²

The complaints docketed in FY07 involved the following categories of complaints:

Judicial Decision/Discretion	1
Impairment	1
Bias/Prejudice	2
Racial/Sexual/Religious Discrimination	1
Failure to Timely Dispose	13
Ex-Parte Communications	13
Conflict of Interest	8
Denial of Fair Hearing	3
Demeanor / Injudicious Temperament Mistreats Lawyers or Litigants	5
Probate/Estate Matter	0
Decision Matter	2
Personal Activity	3
Campaign Activity	5
Administrative Duties	7
Failure to Follow Law	6
Judge charged with criminal activity	3
Request for Formal Opinion	1
Use of Judicial Position for Personal Gain	4
Failure to attend Mandatory Training	1

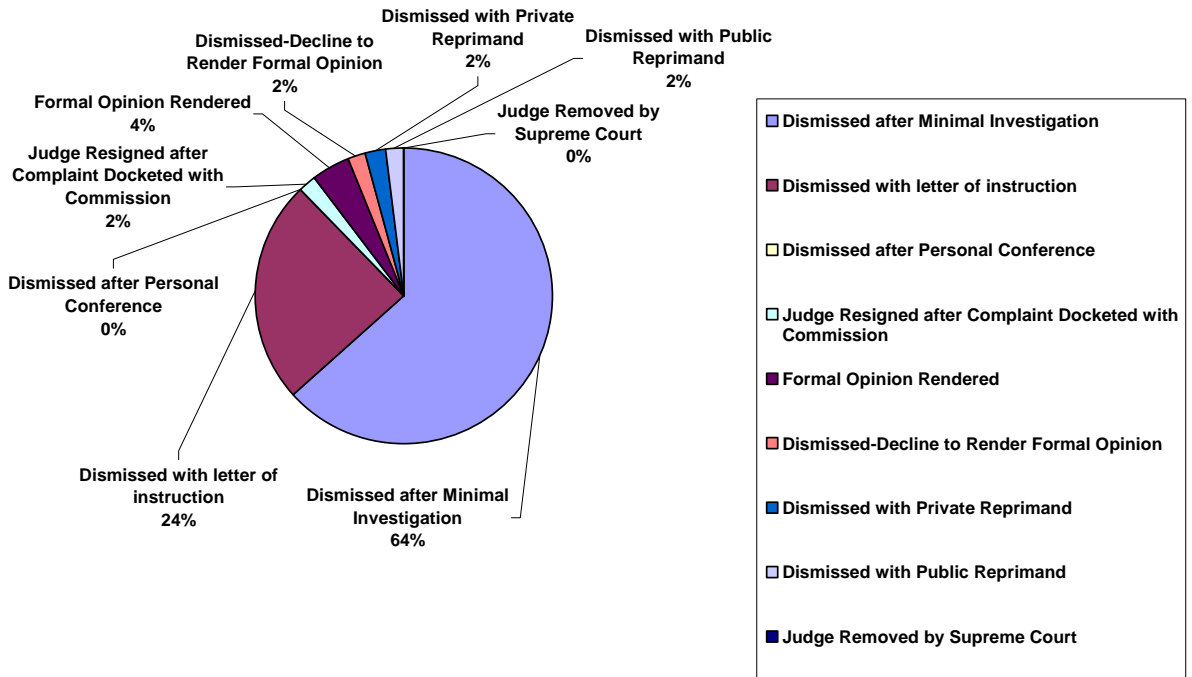
F. DISPOSITION OF COMPLAINTS³

Of the complaints considered by the Commission and resolved in

FY07, they were resolved in the following manners:

Dismissed after Minimal Investigation	31
Dismissed with letter of instruction	12
Dismissed after Personal Conference	0
Judge Resigned after Complaint Docketed with Commission	1
Dismissed-Decline to Render Formal Opinion	1
Dismissed with Private Reprimand	1
Dismissed with Public Reprimand	1
Judge Removed by Supreme Court	0
Formal Opinion Rendered	2

**Disposition of Complaints
FY2007**



G. EDUCATIONAL FUNCTION OF THE COMMISSION

² 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.

³ 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.

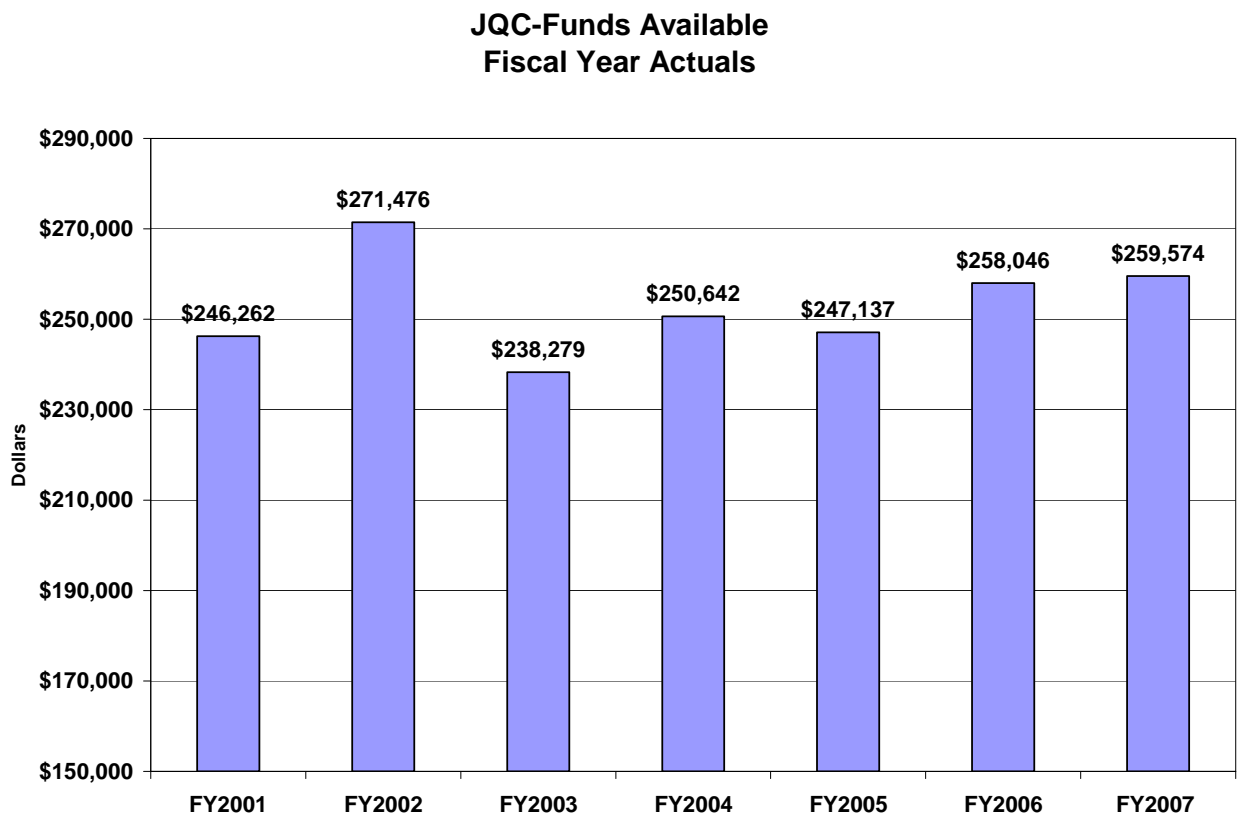
One of the primary functions of the Commission is to provide education and counseling to judges on the interpretation and application of the Code of Judicial Conduct. Through such education and counseling, the Commission hopes to reduce the complaints filed against judges and otherwise encourage ethical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

The Commission staff actively participates in providing seminars to judges on the subject of judicial professionalism and ethics. During FY07 the Commission participated in educational conferences for various classes of judges. In addition to judicial conferences, the Commission Executive Director also attended a national seminar of the Association of Judicial Disciplinary Counsel. The AJDC is a voluntary association of attorneys from each state in the union who serve their various states by investigating and prosecuting judicial misconduct. In continuing to fulfill the educational component of the Commission's work, the Executive Director served on the State Bar of Georgia's subcommittee on the judiciary. This subcommittee of the State Bar of Georgia is co-chaired by Commission member Judge Bonnie Chessher Oliver.

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.

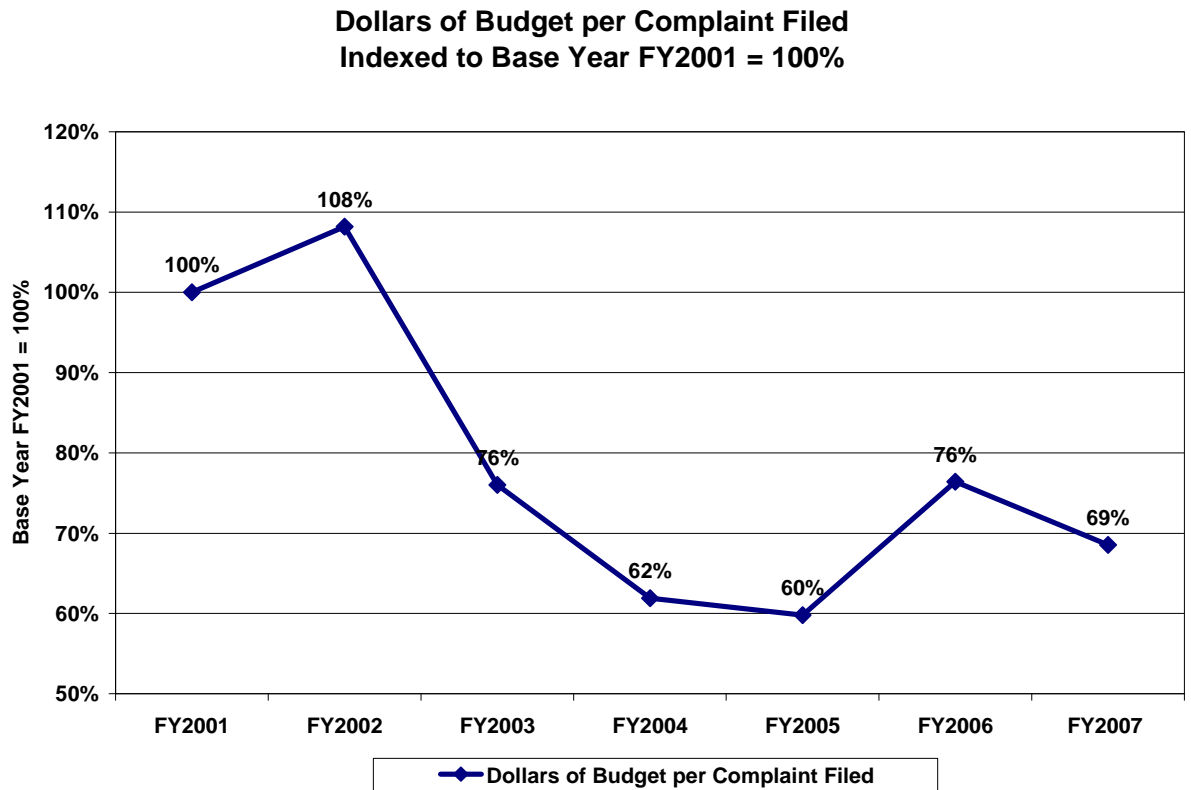
H. THE COMMISSION BUDGET

The total amount spent by the Commission for FY07 including salaries and benefits was \$259,574. Over the past seven years, the amounts spent by the Commission in fulfilling its role have been relatively static (in nominal dollars).



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 24% less per complaint received in FY07 than it spent in FY01 when adjusted for inflation.



III. CONCLUSION

The Commission continues to face new challenges and threats to the maintenance of an independent judiciary in the State of Georgia. The

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 increasingly 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 18th day of October, 2007.

Ben J. Easterlin by cjc

Benjamin F. Easterlin III, Esq.

Chair

Judicial Qualifications Commission

Hon. Bonnie Chessher Oliver, Vice-Chair

Hon. John D. Allen

James B. Durham, Esq.

Robert D. Ingram, Esq.

Robert P. Herriott, Sr.

W. Jackson Winter, Jr.

Exhibit A

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF GEORGIA

In re: An Inquiry Concerning
A Judge **Misty L. May**

JQC Docket Numbers:

07-01

507Z1759
FILED IN OFFICE

AUG 2 2007

Thomas H. Hines
SUPREME COURT OF GEORGIA

Report to the Supreme Court Pursuant to Rule 4(d)

Pursuant to Rule 4(b) of the Rules of the Judicial Qualifications Commission (herein after the "Commission") the Commission hereby files the following report of disposition of the above dockets of the Commission:

I.

On or about April of 2006 a complaint was filed with the Commission against Judge Misty L. May, Chief Magistrate of Glascock County, by the Board of Commissioners of Glascock County. This complaint, which was filed by each Commissioner, alleged that Judge May had 1) failed to properly account for magistrate funds and to remit these funds to the

proper parties and that she failed to remit monies due to the county; 2) failed to properly deposit and account for funds of the Magistrate Court; 3) repeatedly failed to follow practices recommended by the county auditor for the proper management of the Magistrate Court; 4) handled matters that were beyond the scope and jurisdiction of the Magistrate Court; and 5) had improper ex-parte communications and discussions with individuals who had appeared before her in court.

Based on these allegations the Commission requested that Judge May respond to these accusations, and after a thorough investigation, the Commission concluded that she have in fact violated Canon 2A and Canon 3C of the Code of Judicial Conduct.

II.

Final Disposition: As part of a negotiated resolution of the complaint, on May 21, 2007 Judge May received a public reprimand administered in open court by Chief Judge Roger Dunaway. A copy of the transcript of the public reprimand is attached as Exhibit A.

This 30th day of July, 2007.

JUDICIAL QUALIFICATIONS COMMISSION

By: Ben F. Easterlin by cjc

Ben F. Easterlin

Chair

Georgia Bar Number: 237650

By: Cheryl F. Custer

Cheryl F. Custer

Executive Director

Georgia Bar Number: 261695

8206 Hazelbrand Road
Suite C
Covington, GA 30014

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF GEORGIA

)	
)	
In re: An Inquiry Concerning)	JQC Docket No. 07-01
Judge Misty L. May,)	
Chief Magistrate)	
Glascocock County)	
)	
)	

PUBLIC REPRIMAND OF JUDGE MISTY L. MAY

By the Honorable Roger W. Dunaway, Jr.

Chief Superior Court Judge, Toombs Judicial Circuit

In the Glascocock County Courthouse

62 E. Main Street, Gibson, Georgia

On Monday, May 21, 2007

Commencing at 9:32 a.m.

CATHY T. PIRTLE
Official Court Reporter, Toombs Judicial Circuit
 P.O. Box 1836
 Evans, Georgia 30809
 (706) 364-3977 or (706) 373-2009

INDEX TO PROCEEDINGS

	<u>Page</u>
PUBLIC REPRIMAND	5
CERTIFICATE OF COURT REPORTER	9

1 THE COURT: Now, ladies and gentlemen, before we
2 proceed with the regular business of the May Term of
3 Glascock County Superior Court, we have a matter of great
4 importance that we must attend to.. As Chief Judge of this
5 court, I have been instructed to administer a public
6 reprimand on behalf of the Judicial Qualifications
7 Commission. So that you have a better understanding of
8 what is about to happen, the Constitution of the State of
9 Georgia, Article 6, Section 7, Paragraph 6, provides in
10 part that the power to discipline, remove, and cause
11 involuntary retirement of judges shall be vested in the
12 Judicial Qualifications Commission. The members of this
13 commission are appointed by the Supreme Court of the State
14 of Georgia, the State Bar of Georgia, and the Governor of
15 the State of Georgia. The Judicial Qualifications
16 Commission is an independent state commission responsible
17 for investigating complaints of judicial misconduct and/or
18 judicial incapacity and for disciplining judges in the
19 state of Georgia.

20 At this time I would like to recognize Ms. Cheryl
21 Custer, who is the Executive Director of the Judicial
22 Qualifications Commission, who is in attendance today.
23 Ms. Custer, I welcome you.

24 MS. CUSTER: Thank you, Judge Dunaway.

25 THE COURT: I would also like to welcome Mr. Jack

1 Winter, who is a member of the Judicial Qualifications
2 Commission. Mr. Winter, glad to have you with us. And
3 Ms. Tara Moon, who is Ms. Custer's assistant, is also with
4 us today. Thank you, folks. Welcome to Glascock County.

5 On May 16th, 2007, as Chief Judge of the Superior
6 Court of Glascock County, I received a letter of
7 transmittal from Ms. Custer as Executive Director of the
8 Judicial Qualifications Commission with enclosures which
9 reads as follows. It's addressed to me. It says,
10 Pursuant to Rule 4(e) of the Judicial Qualifications
11 Commission, you are hereby notified that a public
12 reprimand of Judge Misty L. May is scheduled to be
13 administered by you as Chief Judge of the Toombs Judicial
14 Circuit on behalf of the Judicial Qualifications
15 Commission. Said reprimand shall be administered on
16 Monday, May 21st, 2007, at 9:30 a.m.

17 Accompanying the letter was a notice of public
18 reprimand, which reads as follows, and it is addressed to
19 Judge May. Pursuant to Rule 4(e) of the Judicial
20 Qualifications Commission, and the terms of an agreed upon
21 disposition of the investigation by the Judicial
22 Qualifications Commission, you are hereby notified and
23 summoned to the courtroom of Chief Superior Court Judge
24 Roger W. Dunaway, Jr. of Glascock County at 9:30 a.m. on
25 Monday, May 21st, 2007, to receive your public reprimand

1 on Docket Number 07-01.

2 Judge May, will you please present yourself before
3 the Bench.

4 [Judge May complies.]

5 THE COURT: I shall now administer the public
6 reprimand issued by the Judicial Qualifications Commission
7 of the State of Georgia.

8 Pursuant to Rule 4(e) of the Judicial Qualifications
9 Commission, and the terms of an agreed upon disposition of
10 the investigation by the Judicial Qualifications
11 Commission, this Court has been called upon to administer
12 a public reprimand to Chief Magistrate Court Judge Misty
13 L. May for acts of misconduct which have been deemed a
14 violation of Canon 2 and Canon 3 of the Code of Judicial
15 Conduct.

16 Specifically, the acts of misconduct are described as
17 follows: That on or about April of 2006 a complaint was
18 filed with the Judicial Qualifications Commission against
19 you by the Board of Commissioners of Glascock County.
20 This complaint, which was filed by each Commissioner,
21 alleged that you, one, failed to properly account for
22 Magistrate funds and to remit them to the proper parties,
23 and that you failed to remit monies due to the county;
24 two, failed to properly deposit and account for funds of
25 the Magistrate Court; three, repeatedly failed to follow

1 practices recommended by the county auditor for the proper
2 management of the Magistrate Court; four, have handled
3 matters that were beyond the scope and jurisdiction of the
4 Magistrate Court; and, five, had improper ex-parte
5 communications and discussions with individuals who had
6 appeared before you in court.

7 Based on these allegations the Commission requested
8 your response to these accusations, and after a thorough
9 investigation the Commission has concluded that you have,
10 in fact, violated Canon 2A and Canon 3C of the Code of
11 Judicial Conduct.

12 Canon 2A of the Code of Judicial Conduct states, in
13 part: Judges shall avoid impropriety and the appearance
14 of impropriety in all their activities.

15 Judges shall respect and comply with the law and
16 shall act at all times in a manner that promotes public
17 confidence in the integrity and impartiality of the
18 judiciary. Public confidence in the judiciary is eroded
19 by irresponsible or improper conduct of judges. Judges
20 must avoid all impropriety and appearance of impropriety.
21 Judges must expect to be the subject of constant public
22 scrutiny. Judges must, therefore, accept restrictions on
23 their conduct that might be viewed as burdensome by the
24 ordinary citizen, and they should do so freely and
25 willingly.

1 Canon 3C further states, in part: Judges shall
2 perform the duties of their office impartially and
3 diligently.

4 The judicial duties of judges take precedence over
5 all other activities. Their judicial duties include all
6 the duties of their office prescribed by law. In the
7 performance of these duties, the following standards
8 apply: Judges shall diligently discharge their
9 administrative responsibilities without bias or prejudice,
10 maintain professional competence in judicial
11 administration, and should cooperate with other judges and
12 court officials in the administration of their official
13 duties.

14 The public expects, and the Code of Judicial Conduct
15 demands, that judges be held to a high standard of ethical
16 conduct. The Code of Judicial Conduct requires you to
17 diligently perform all duties assigned to your position,
18 including the maintaining and handling of monies for the
19 court. Your multi-year failure to implement the standards
20 and procedures recommended by the county auditors shows a
21 lack of understanding of the mandatory requirement that
22 you maintain meticulous records of the monies entrusted to
23 you as Magistrate--Judge of the Magistrate Court. This
24 failure to perform your administrative duties in a careful
25 and precise manner is unacceptable and must not be

1 repeated. Your actions are a reflection of not only
2 yourself, but also the judiciary as a whole. The
3 misconduct of one judge is a reflection to the public of
4 all judges. As a judge, you swore to uphold the
5 Constitution of Georgia and of the United States. With
6 your acceptance of your judicial office you agreed to
7 serve the citizens of Glascock County, and the State of
8 Georgia, with your time and talents, and that you would
9 devote yourself diligently to the task of performing all
10 duties of your office.

11 For your conduct, you are hereby publicly
12 reprimanded. You are furthermore cautioned that any
13 repetition of such conduct can, and will likely, result in
14 punishment of the severest possible nature.

15 You are instructed and directed to carefully review
16 and fully comply with each and every provision of the Code
17 of Judicial Conduct and to hereafter conduct yourself in
18 accordance with such provisions of the Code of Judicial
19 Conduct.

20 This concludes your public reprimand. Would you
21 please approach the Bench for service of a file copy of
22 the public reprimand which has been administered to you.

23 [Judge May complies.]

24 THE COURT: All right. You may be excused.

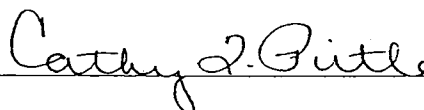
25 [Concludes at 9:40 a.m.]

CERTIFICATE OF COURT REPORTER

I, Cathy T. Pirtle, Certified Court Reporter in and for the State of Georgia, hereby certify that I reported the Public Reprimand of Judge Misty L. May, as stated in the caption, on the 21st day of May, 2007; that the foregoing pages 1 through 8 constitute a true, complete, and accurate transcript of said proceeding; and that said proceeding was reported by the method of Stenomask with backup.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially or otherwise interested in said cause.

In witness thereof, I have set my hand and seal this 28th day of May, 2007.



CATHY T. PIRTLE, CCR

CERTIFIED COURT REPORTER

GEORGIA CERTIFICATE # B-1763

COPY

Exhibit B

OPINION 235

Opinions are requested on the following questions:

1. whether a judge may preside over cases involving the judge's spouse in the spouse's capacity as the duly elected sheriff of the county in which the judge presides;
2. whether a judge may preside over cases involving sheriff's deputies who are employed by the judge's spouse in the spouse's capacity as the duly elected sheriff of the county in which the judge presides;
3. if questions one and two are answered in the negative, whether an associate judge of the same court and county may preside over the cases involving the sheriff's office and in effect, provide a cure for any conflict issues that arise; and
4. whether a judge may preside over cases in which the judge's spouse has direct supervisory authority over probation officers who will testify before the judge and further, may the judge receive recommendations from probation officers supervised by the judge's spouse.

In regard to question one, Canon 3(E)(1) of the Code of Judicial Conduct states: "...judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where...the judge's spouse...is a party to the proceeding...[or] is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding...[or] is to the judge's knowledge likely to be a material witness in the proceeding."

The Commission concludes that the judge should recuse himself/herself for all cases involving the judge's spouse as a material witness in the proceeding.

In regard to question two, the Commission notes that none of the enumerated per se instances of disqualification found in Canon 3E(1) appear to be applicable. Thus, the issue involves a possible appearance of impropriety governed by Canon 2. The established test for appearance of impropriety, as set forth in the Commentary to Canon 2A, is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

In the factual scenario presented here, i.e., a judge presiding over cases involving sheriff's deputies who are employed by the judge's spouse in the spouse's capacity as the duly elected sheriff of the county in which the judge presides, the Commission concludes that a reasonable person would believe that the judge's ability to perform the duties of office will be impaired. Thus, the answer to question number two is No and disqualification is warranted.

In regard to question three, the Commission will look to a prior opinion for guidance — Opinion 168. In Opinion 168, the Commission considered whether a Chief Magistrate may hear civil suits filed by a loan company managed by her husband and having her daughter as secretary. The Commission stated: "there appears to be no reason why Associate Magistrates, although hired by the Chief Magistrate, may not hear the cases outlined in the preceding questions; provided, however, that such Assistant Magistrates entertain no doubt as to their

impartiality.” The Commission will adhere to its prior opinion and conclude that an associate judge may preside in the event that a chief judge is disqualified. In making this conclusion, the Commission must emphasize that the chief judge is not to be involved with any aspect of the substantive decision-making process of the associate judge.

In regard to question four, the Commission answers this question No. In making this decision, the Commission has utilized the previously stated analysis regarding Canon 3(E)(1) and Canon 2 of the Judicial Code of Conduct.

Exhibit C

OPINION 236

The Judicial Qualifications Commission has been asked for an advisory opinion on the question of whether a part-time magistrate judge, who also maintains a private law practice, may represent a litigant in a de novo appeal to superior court of a case that was originally tried in the very magistrated court where the judge sits, albeit before another judge of that court.

After careful consideration of the issue, the Commission has concluded that a part-time magistrate judge, who also practices law, may not represent a litigant in a de novo appeal in superior court of a case that originated in the magistrate's own court.

Even though the part-time magistrate judge did not serve as judge in the proceeding below, the de novo appeal to superior court places the judge in the untenable position of contesting a ruling by his own court. The conduct of the judge in the hypothetical circumstances presented is likely to create, in reasonable minds, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence would be impaired. For instance, litigants and the public might well be concerned that the magistrate judge in our hypothetical might be influenced or conflicted in other cases by his representation of the client with the de novo appeal. After all, the magistrate judge could hardly be in a position to challenge the ruling of one of his fellow judges in a de novo appeal if the magistrate judge himself had previously made the similar rulings. The magistrate judge would be hard pressed to follow the ruling of his fellow judge, even if correct, while maintaining the de novo appeal on behalf of a paying client. These, and other, appearances of impropriety can only be avoided by declining the representation of the client.

The Code of Judicial Conduct demands that the judges avoid impropriety and the appearance of impropriety in all their activities. To represent an individual in superior court on a de novo appeal from magistrate court, when a lawyer also serves as a judge on that court, creates an appearance of impropriety that cannot be condoned by this Commission.

Any lawyer, who accepts the position of part-time judge in our state must place service to his or her judicial office first and therefore must be willing to accept certain restrictions. The present opinion appropriately illuminates one of those restrictions.