

GEORGIA JUDICIAL QUALIFICATIONS COMMISSION

2017 ANNUAL REPORT

INTRODUCTION

Calendar Year 2017 saw substantial changes and updates to the Georgia Judicial Qualifications Commission (the “Commission”). This report summarizes the most important changes and updates to the Commission in four broad areas in 2017.

- First, this report gives an overview of the Commission’s structural changes. The Commission was reorganized by Constitutional Amendment, the State Legislature, and by its own rules.
- Second, this report details several internal, administrative changes to the Commission. Significantly, the Commission began using an online portal to distribute documents to its members, and the Commission moved into new offices.
- Third, this report discusses the Commission’s continuing commitment to judicial education and assistance. Commission members and staff have presented at various conferences to help educate Georgia judges about the Code of Judicial Conduct. Additionally, Commission members have attended educational conferences to stay abreast of judicial ethics in other jurisdictions. Finally, the report discusses new procedures for rendering Director’s Opinions and Formal Advisory Opinions when judges or others face ethical dilemmas.
- Fourth, this Report provides numbers and other data detailing the Commission’s case load in 2017.

PART ONE: STRUCTURAL CHANGES

I. Changes to the Commission’s Framework

a. Constitutional Amendment

On November 8, 2016, Georgia voters approved Amendment 3, a legislatively referred constitutional amendment on the ballot. That amendment abolished the old Commission and provided for the Georgia General Assembly to create a new Commission pursuant to Article VI, Section VII, Paragraphs VI–VIII of the Georgia Constitution. Notably, the amendment specified that the new Commission would have procedures to ensure due process, review by the Supreme Court of Georgia, and other procedures for public transparency.

b. Legislative Changes

Acting pursuant this constitutional authority, the Georgia General Assembly passed OCGA § 15-1-21, which was signed by Governor Nathan Deal on May 1, 2017. This statute went into effect on July 1, 2017, as the Commission's new governing statute. It changed the composition, functions, and form of the Commission in many ways. Most significant, the statute divided the prosecutorial and adjudicative functions of the Commission. The Commission now has an Investigative Panel, which is responsible for receiving and investigating complaints against judges. Entirely separate is the Hearing Panel, which is responsible for adjudicating charges of misconduct brought by the Investigative Panel. Previously, the Commission performed both functions. Other significant changes to the Commission include the number and type of Commission members, who has appointment power over those members, and the type of information which may be disclosed by the Commission. Significantly, the statute also provided the Investigative Panel with the authority to promulgate new rules for the Commission's governance after approval by the Supreme Court of Georgia.

c. Commission Rules

i. Interim Rules

On June 28, 2017, the Supreme Court of Georgia adopted Interim Rules for the Commission until Final Rules were adopted pursuant to Article VI, Section VII, Paragraphs VII (a) and VI (b) of the Georgia Constitution and OCGA § 15-1-21 (j). The Interim Rules were published and available on the websites of the Supreme Court, the Commission, the Administrative Office of the Courts, and the State Bar of Georgia. Comments were solicited from judges, lawyers, and the general public to assist the Commission and the Supreme Court in evaluating the Interim Rules and determining whether amendments were appropriate. The Commission's Director collected those comments over the next several months.

In total, the Director received comments from approximately ten people. At a meeting on August 25, 2017, an Investigative Panel sub-committee and Justice David Nahmias discussed the merits of each comment and forwarded recommended amendments from the comments to the full Investigative Panel. On September 22, 2017, the full Investigative Panel agreed with and adopted these recommended amendments. The Investigative Panel then forwarded those amendments to the Supreme Court for final review and adoption of the Commission's Final Rules.

ii. Final Rules

On November 14, 2017, the Supreme Court unanimously adopted the proposed amendments to the Commission's Interim Rules and adopted the Commission's Final Rules. The Final Rules went into effect on January 1, 2018, and they are available on the Commission's website, www.gajqc.com. Taken together, these rules, the relevant portions of Article VI, Section VII, Paragraphs VI–VIII of the Georgia Constitution, and OCGA § 15-1-21 govern the Commission.

II. Commission Membership

On July 14, 2017, Justice David Nahmias of the Supreme Court of Georgia formally swore in the Commission's members at the Court.



Pictured (left to right): Hon. Robert McBurney, William Langdale, III, Hon. Louisa Abbot, Chief Michael Register, Jamala McFadden, Hon. Stacey Hydrick, Edward Tolley, Richard Hyde, James Balli, Warren Selby, Justice David Nahmias.

After the swearing in, Director Ben F. Easterlin, IV (pictured standing below) addresses the newly-formed Commission for the first time.



The Commission members and staff are as follows:

a. Investigative Panel Members

- Edward Tolley (Chairman)
- Richard Hyde (Vice Chairman)
- Hon. Louisa Abbot
- James Balli
- Hon. Stacey Hydrick
- William Langdale, III
- Warren Selby, Jr.

b. Hearing Panel Members

- Hon. Robert McBurney (Presiding Officer)
- Jamala McFadden
- Chief Michael Register

c. Commission staff:

- Ben F. Easterlin, IV (Director)
- Max Jones (Staff Attorney)
- Tara Moon (Case Manager)
- Sandra Rackleff (Investigator)

PART TWO: ADMINISTRATIVE CHANGES

III. Monthly Meetings of the Investigative Panel

This past year, the Investigative Panel of the Commission met approximately once a month. These meetings typically occurred at the State Bar of Georgia Conference Center in Atlanta, Georgia. In October of 2017, the Investigative Panel convened in Macon, Georgia.

In advance of these meetings, Investigative Panel members received materials related to various ongoing investigations of judicial misconduct. Members reviewed these materials in preparation for the meeting itself. During these meetings, members discussed the status of the various cases, voted on dispositions of cases, met with judges, and dealt with other administrative matters.

This practice of monthly meetings at the State Bar was the historical practice of the Commission under the old rules and continues to work well. The Investigative Panel plans to continue these meetings in the future at the State Bar with occasional meetings at locations around the State.

IV. Online Portal for Commission Documents

At the Investigative Panel's first meeting in July of 2017, members discussed using an online portal to distribute meeting materials—like investigative files, research memoranda, and administrative documents—that members needed to review in advance of each meeting. Previously, this material was compiled into binders for each Commissioner and physically distributed.

Commission staff explored several options to distribute these materials electronically in a secure, cost-efficient, and organized manner. The Investigative Panel eventually chose to use “Box.com,” the same service utilized by the U.S Department of Justice among others. This service allows Commission staff to upload documents remotely to Box's secure website. Investigative Panel members can then view and comment on those documents instantaneously by logging onto the portal.

This service has greatly improved the speed, efficiency, and organization of the Investigative Panel in distributing materials. Additionally, this service will make it easier for

future Investigative Panel members to search through past investigative materials, which will hopefully help build the institutional knowledge of the Commission. The Investigative Panel plans to continue using this service to distribute materials in the new year.

V. Case Tracking Metrics

Over the years, the Commission has transitioned from keeping case files and information in physical files and on notecards to using computer software to track information and metrics about its cases. The Commission now uses Microsoft Excel to track information about each complaint: the judge against whom the complaint is made, the person making the complaint, and the eventual disposition of the case. The Commission has recently added several additional metrics: the alleged factual misconduct, the type of person making the complaint (i.e. a fellow judge, an attorney, or a litigant), and the alleged Code violation(s).

The Commission is currently looking into more advanced software solutions to track cases. This software is capable of actively managing case files during the pendency of the case by tracking phone calls, e-mails, other correspondence, as well as all documents associated with the case in a single program. Although the Commission tracks this information now, this software would centralize case management and give the Commission additional metrics that it cannot easily track now, like average time spent to dispose a certain type of case. In 2018, the Commission plans to determine whether the cost and functionality of this software merit its adoption.

VI. New Offices

Until 2017, the Commission has never had dedicated office space. The Commission previously moved locations based on the city where the Director was located. In 2017, the Commission acquired and established formal offices for its staff. The Commission's offices are now located at 254 Washington Street, Suite 300 in Atlanta, Georgia. With the acquisition of this office space, the Commission also receives access to various support services, including support of Information Technology, accounting, and public relations professionals. Additionally, the Commission has ancillary benefits of building security, a shared reception area, and other office amenities like copy and print services. These benefits free up the Commission staff's time to investigate cases, assist the Commission, and otherwise fulfill their role in ensuring the public's confidence in the integrity of the judiciary. The Commission still retains a P.O. Box as its official mailing address to receive complaints and other correspondence:

Judicial Qualifications Commission

P.O. Box 2179

Covington, GA 30015-2179

PART THREE: JUDICIAL EDUCATION AND ASSISTANCE

VII. 25th National College on Judicial Conduct and Ethics

To stay abreast of continuing developments in legal ethics, several Commission members and the Director attended the 25th National College on Judicial Conduct and Ethics in Austin, Texas between October 4 and October 6, 2017. This conference provided an opportunity for members and the Director to meet with colleagues from around the country who work in judicial ethics. Interacting with these colleagues provided important insights about how similar commissions or ethics agencies handle judicial misconduct, advise judges, and function generally. Additionally, this Conference provided smaller educational sessions on emerging ethical issues like the use of technology to manage cases, judges' role on social media and the internet, and dealing with *pro se* litigants. These sessions were moderated by judges, law professors, and others in judicial ethics. The Commission hopes to continue its attendance and participation in similar educational events this year.

VIII. Continuing Judicial Education

One of the most important functions of the Commission, in addition to enforcing the Code, is to help educate judges. Accordingly, Commission members and staff have presented at numerous conferences hosted by the Institute of Continuing Judicial Education ("ICJE") in 2017.¹ As a part of these ICJE conferences, Commission members and staff present an overview of the Commission's role, structure, and functions. Furthermore, members and staff provide examples of judicial misconduct, common pitfalls for judges, and answer questions. These conferences have included, among others, presentations to Superior Court, State Court, Magistrate Court, Municipal Court, and Juvenile Court judges. The Commission recognizes the importance of judicial education in preventing ethical issues in the first place. The Commission hopes that its continued role in these conferences provides a useful educational component for the judiciary.

IX. Guidance for Judges and Judicial Candidates: Director's Opinions and Formal Advisory Opinions

Pursuant to Commission Rule 28, the Commission's Director may render an Opinion (i.e. a "Director's Opinion") regarding his or her interpretation of the Code of Judicial Conduct as applied to a given state of facts. Judges, judicial candidates, or other interested parties are often faced with time-sensitive ethical dilemmas. Director's Opinions help answer such dilemmas, and judges or judicial candidates are encouraged to reach out via e-mail or phone. In previous years,

¹ The ICJE is a "resource consortium" of the Georgia Judicial Branch, the State Bar, and Georgia's accredited law schools. Significantly, the ICJE bears the main responsibility in providing training and continuing education for the state's judges and other court personnel. More information about the ICJE is available at its website, <http://icje.uga.edu>.

the Director would typically give his opinion by phone. Since the Commission's reorganization, the Director typically gives a written opinion.

These written Director's Opinions identify the question posed, the applicable Code provision(s), relevant Formal Advisory Opinions from the Commission, persuasive authority from other ethics commissions or courts, provide analysis, and conclude with an answer. The Director then forwards a copy of that opinion to the requesting party. The Presiding Officer of the Hearing Panel also receives a copy to consider the merits of the opinion and to determine whether the issue requires a Formal Advisory Opinion. Since instituting this process, the Director has rendered over twenty-five written opinions. The opinions are usually rendered within a week of the inquiry, but usually sooner. These written opinions will keep a record of how the Director has informally interpreted the Code, help develop institutional knowledge over the coming years, and can serve as the basis for new Formal Advisory Opinions.

PART FOUR: CASE NUMBERS AND DATA FROM 2017

X. Commission Investigations

At any given time, the Commission's Investigative Panel is conducting between fifteen to thirty active investigations of judicial misconduct. There are two general stages of investigation: preliminary investigations and full investigations. In a preliminary investigation, the Investigative Panel will often interview the complainant, any witnesses, and/or ask a judge to respond to allegations of misconduct. Oftentimes, a preliminary investigation will show that a complaint is unfounded. Other times, however, a preliminary investigation will show that allegations of judicial misconduct are true or at least deserve further and more in-depth investigation. If that is the case, the Investigative Panel can vote to initiate a full investigation, which gives the Director and staff subpoena power. Typically, half of the Commission's pending investigations are at the preliminary investigative stage and the other half are at a full investigative stage.²

XI. Commission Hearings

The Commission has not yet filed charges and conducted a hearing before the Hearing Panel. However, the Presiding Officer of the Hearing Panel and the Investigative Panel have worked together to develop amendments, now incorporated in the Commission's Rules, to ensure an efficient hearing that also guarantees due process. The Investigative Panel predicts that formal charges and a hearing are likely for 2018.

² Pursuant to Commission Rule 11, Commission investigations are confidential until the filing of Formal Charges with the Hearing Panel.

XII. Complaint Data

The charts and numbers below reflect the complaints received and processed in 2017. This data does not reflect complaints that the Commission has not processed or acted upon.

Number of Complaints Received	403
Number of Complaints Rejected due to no merit or lack of jurisdiction	237
Number of Complaints Investigated then Dismissed	106

a. Classification of Complaints

Litigants, Friends, Relatives	162
Inmates	158
Judges	2
Attorneys	4
Media/Public Information/Comm. Initiated	11
Self-Report	1
Court personnel	6
Law enforcement/Prosecutors	5

b. Classes of Judges/Types of Court

Juvenile	13
Magistrate	45
Municipal/Recorder's	14
Probate	19
State	28
Superior	257
Judicial Candidate	1
Supreme	12

c. Categories of Complaints

Judicial Decision/Discretion	28
Mental Impairment/Incapacity	3
Bias/Prejudice/ Partiality	39
Failure to Timely Dispose/Rule	32
Ex-parte communication	23
Conflict of interest/ Failure to Recuse	21
Denial of fair hearing	18
Demeanor/ Injudicious Temperament	16
Mistreats lawyers/litigants	5
Campaign Activity	1
Failure to follow law	46
Use of judicial position for personal gain	5

d. Disposition of Complaints³

Rejected after initial review	247
Dismissed after preliminary investigation	35
Concluded with Instruction/Caution to Judge	8
Concluded with Admonishment to Judge (now a “Private Admonition” under Commission Rule 6.B)	3
Judge Resigned During Investigation	3
Pending	20

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

CONCLUSION: LOOKING TOWARDS THE FUTURE

The Commission underwent major structural changes in 2017. Moving into 2018, the Commission plans to build on those changes by continuing to modernize its case management systems and internal administration. Additionally, those structural changes and new procedures, especially with regard to formally bringing cases to the Hearing Panel, will likely be utilized to a greater extent. This will not only provide an opportunity to test the Commission's new structure and procedure, but also offers an opportunity to show the Commission's continued commitment to public transparency and integrity.

For more information, please visit the Commission's website, www.gajqc.com.

/s/ Ben F. Easterlin, IV
Ben F. Easterlin, IV
Director
Judicial Qualifications Commission

February 16, 2018