

Annual
Report

2010

Judicial Qualifications Commission
State of Georgia

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 2009-2010 (“FY10”). In reviewing the statistics contained in this report, it is important to remember that each complaint 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 exists 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 1972 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 any court of record in the State. 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 Georgia lawyers.

A. MEMBERS OF THE COMMISSION

The FY10 members of the Commission were:

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

The Honorable John D. Allen – Vice-Chairman and Judge, Superior Court of Chattahoochee Judicial Circuit.

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

Mr. Robert P. Herriott, Sr. – a retired pilot for Delta Air Lines residing in Carrollton, Georgia. Mr. Herriott tendered his resignation from the Commission on May 9, 2010.¹

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

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

The Honorable Constance C. Russell, Judge, Superior Court of Atlanta Judicial Circuit.

¹ Ms. Linda Evans – a community volunteer in Atlanta, Georgia was appointed by Governor Sonny Perdue on August 4, 2010 to fill the unexpired term of Commissioner Herriott.

B. THE COMMISSION STAFF

Ms. Cheryl Fisher Custer served as the Director of the Commission until August 31, 2010. On September 1, 2010, Mr. Jeffrey R. Davis became the new Director. The Commission's staff consists of an executive assistant, Ms. Tara Moon. The Commission uses the services of an investigator, Mr. Richard Hyde, in the investigation of complaints of judicial misconduct. 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 at www.gajqc.com. 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. Pursuant to Rule 4 of the Commission, the Commission is also authorized to initiate an investigation upon receipt of information that a judge has engaged in misconduct in office. Complaints filed by the public must state facts that substantiate the alleged misconduct. Upon receipt of a complaint, the 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:

- Dismiss 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 invite the judge who is the subject of the complaint to appear before the Commission and offer a statement or explanation concerning 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:

- Dismiss the complaint if the allegations are found to be without merit or if the Commission does not have jurisdiction over them.

- Conclude the complaint with a letter of instruction regarding appropriate ethical responsibilities.
- Admonish or reprimand the judge for any misconduct by use of an admonition or 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, censure, suspension, 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 examples of matters 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 finder 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 compulsory resignation or retirement of the judge.

II. REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION FOR FISCAL YEAR 2009-2010

The fiscal year of the Commission runs from July 1, 2009 through June 30, 2010. 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 noteworthy events during FY10.

A consent order was entered into between the Commission and Judge Murry Bowman, Chief Judge of the Magistrate Court of Jefferson County on September 29, 2009, which provided for the indefinite suspension, with pay, pending an investigation and resolution of a criminal matter wherein Judge Bowman was arrested and charged on September 27, 2009 with one count of Aggravated Assault (a felony).

Pursuant to the terms of an agreed upon disposition of the investigation by the Commission into complaints filed against Judge Harry Oliver Doss, Jr. Judge of the Superior Court of the Appalachian Judicial Circuit the

Commission accepted the resignation from office from Judge Doss effective December 5, 2009.

The trial for Judge Kenneth Fowler, Judge of the Probate Court of Twiggs County took place in February 2010. The Commission's Findings and Recommendations were filed with the Supreme Court of Georgia on March 31, 2010 pursuant to the JQC Rule 14 and Article VI, Section VII, Par. VII of the Constitution of the State of Georgia. On April 13, 2010, the Commission filed an Emergency Motion pursuant to JQC Rule 25 to temporarily suspend Judge Fowler from his office without pay pending final resolution by this Court of the disciplinary charges contained in the Commission's Finding and Recommendations of March 29, 2010. A hearing on the Emergency Motion was held on April 23, 2010 and completed on April 28, 2010. On May 14, 2010 the Supreme Court issued an order suspending Judge Fowler pending the outcome of the Findings and Recommendations of the Commission. On June 28, 2010 an order was issued by this Court to immediately remove Judge Fowler as Judge of the Probate Court of Twiggs County.

Pursuant to Rule 4 of the Rules of the JQC and the terms of an agreed upon disposition of the investigation by the Commission into a complaint filed against Judge Kristina Cook Connelly Graham, Judge of the Superior Court of the Lookout Mountain Circuit, a public reprimand was administered to Judge

Graham in the Superior Court of the Lookout Mountain Circuit on May 11, 2010.

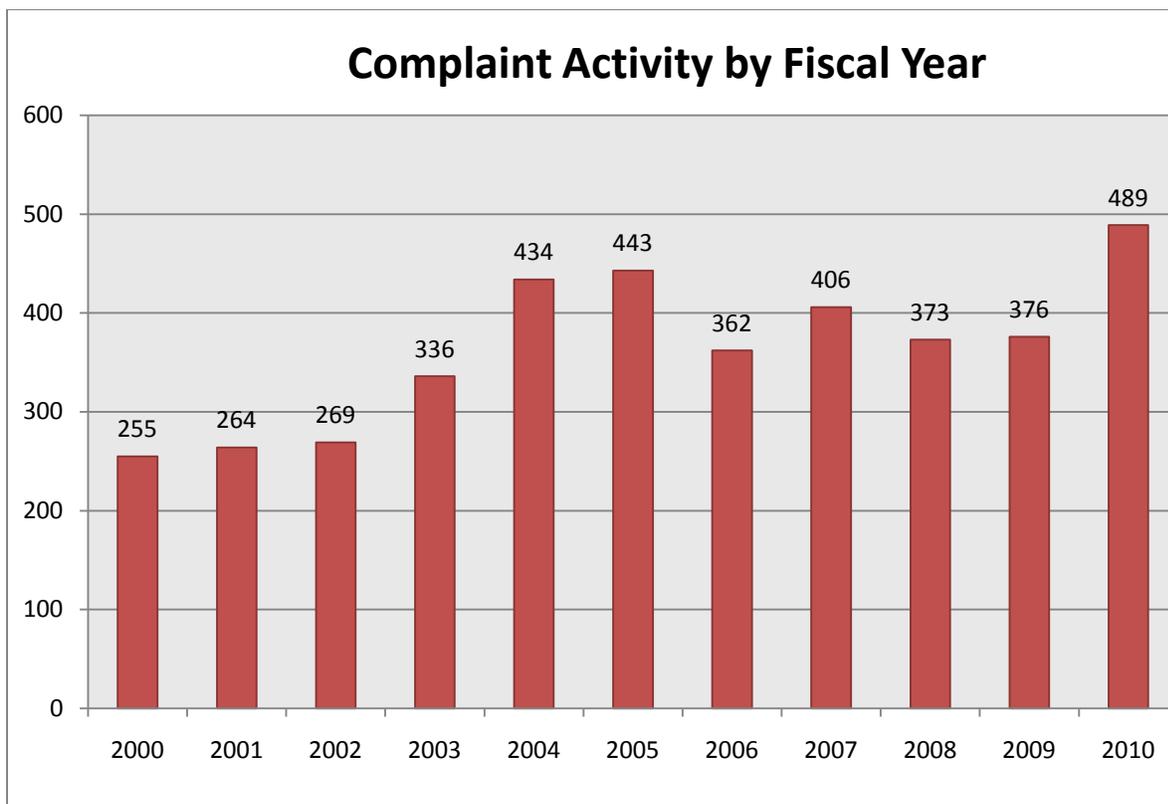
B. COMPLAINT INFORMATION

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 for FY10:

Number of Complaint Forms Received	489
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	452
Number of Complaints Docketed	33
Number of Complaints Investigated but not Docketed	4

1. Total Complaints Filed

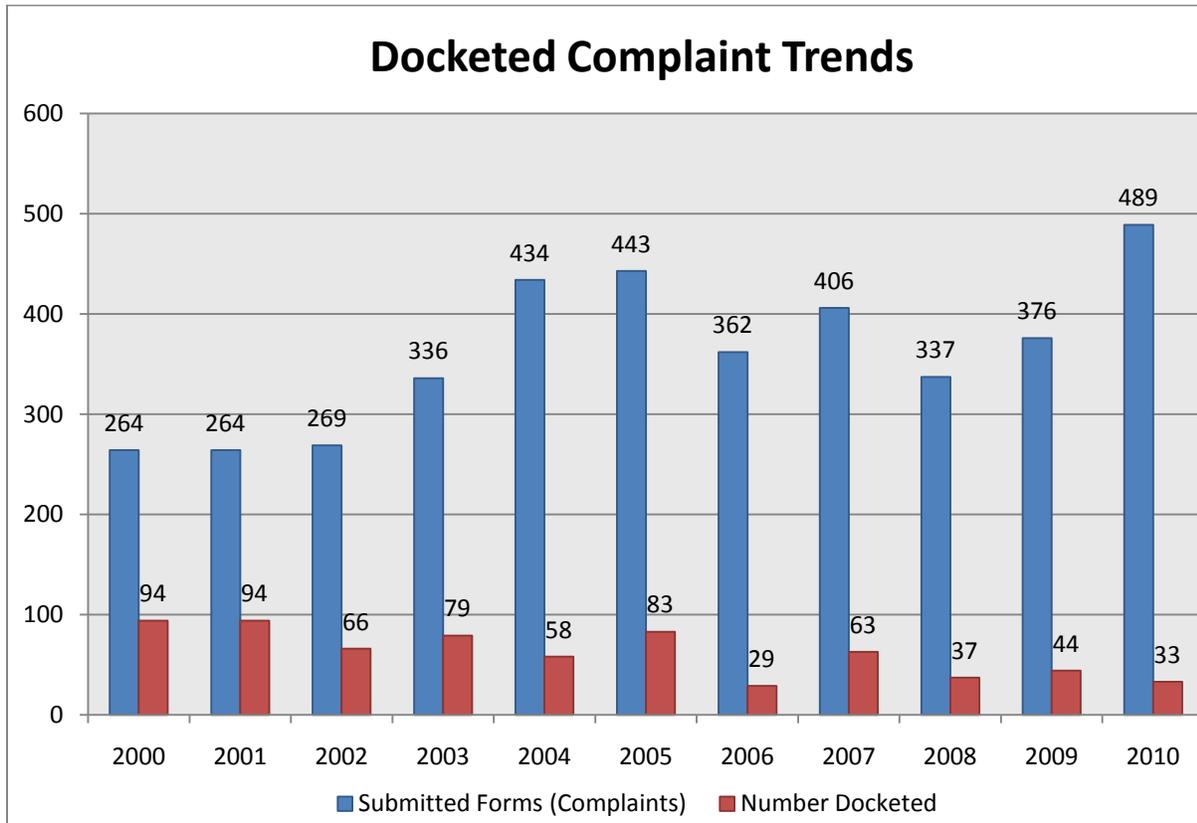
The data compiled by the Commission for FY10 reflects a renewed upward trend of complaints filed with the Commission alleging judicial misconduct. The complaints filed during fiscal years 2000 through 2010 are graphically set forth in Figure 1 below:



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

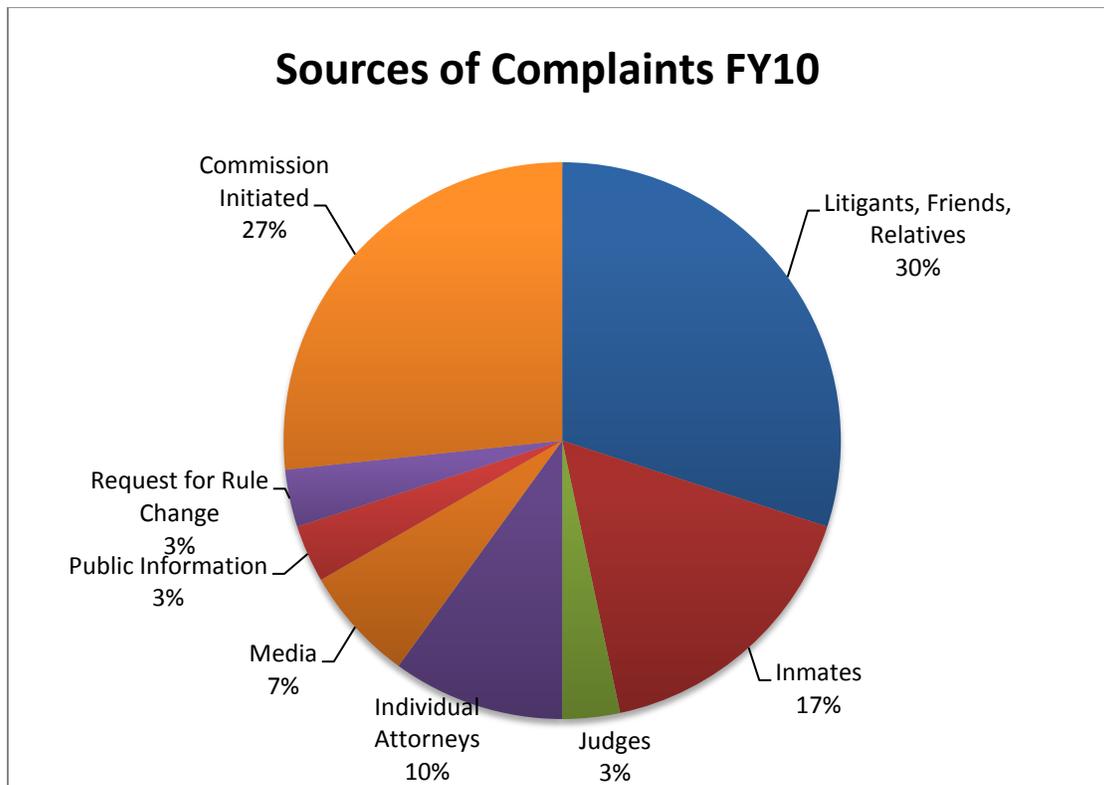
regularly scheduled meeting. Figure 2 graphically sets forth the level of complaints docketed over the past ten years:



C. SOURCES OF COMPLAINTS

The complaints docketed in FY10 came from the following sources:

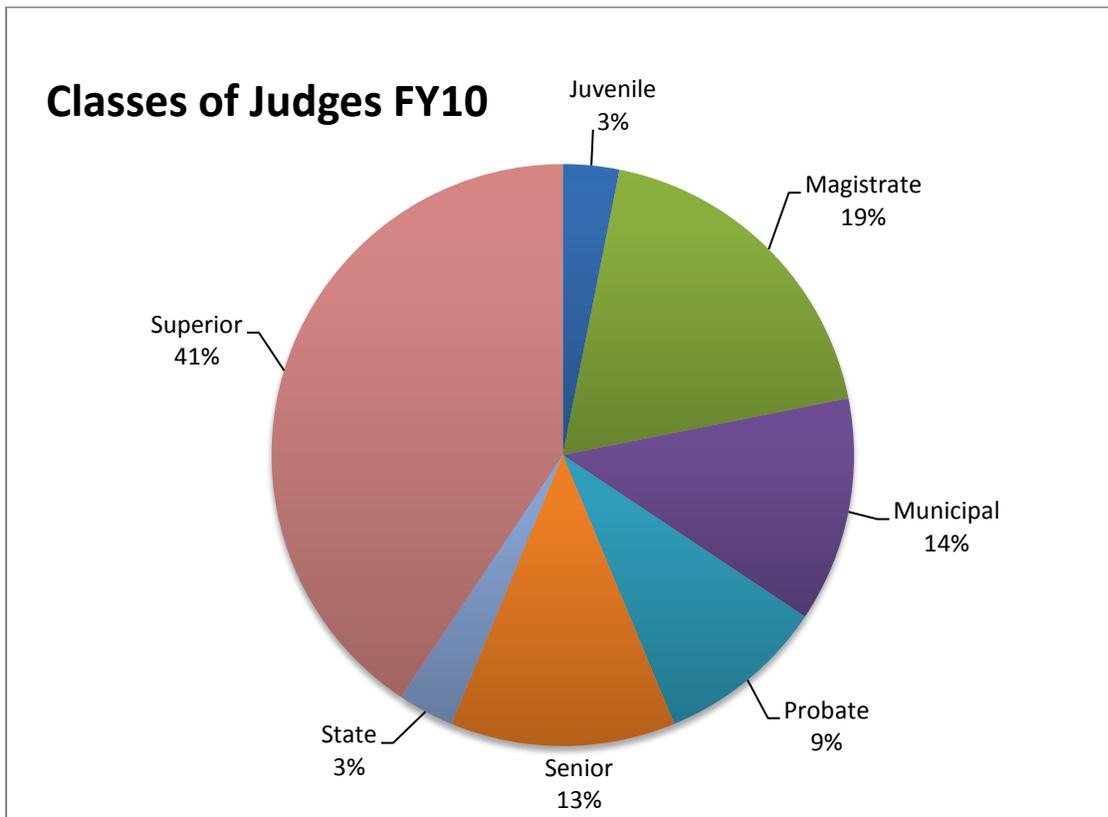
Litigants, Friends, Relatives	9
Inmates	5
Judges	1
Individual Attorneys	3
Non-Litigants/Others	0
Media	2
Public Officials	0
Public Information	1
Request for Opinion	0
Request for Rule Change	1
Training Council/ <i>Failure to Train</i>	0
Commission Initiated	8



D. CLASSES OF JUDGES²

The complaints docketed in FY10 were made against the following classes of judges:

Juvenile	1
Recorders	0
Magistrate	6
Municipal	4
Probate	3
Senior	4
State	1
Superior	13
Judicial Candidate	0
Administrative Law Judge	0



² Numbers in table do not correspond with the number of docketed complaints since some dockets are filed by multiple complainants.

E. CATEGORIES OF COMPLAINTS³

The complaints docketed in FY10 involved the following categories of complaints:

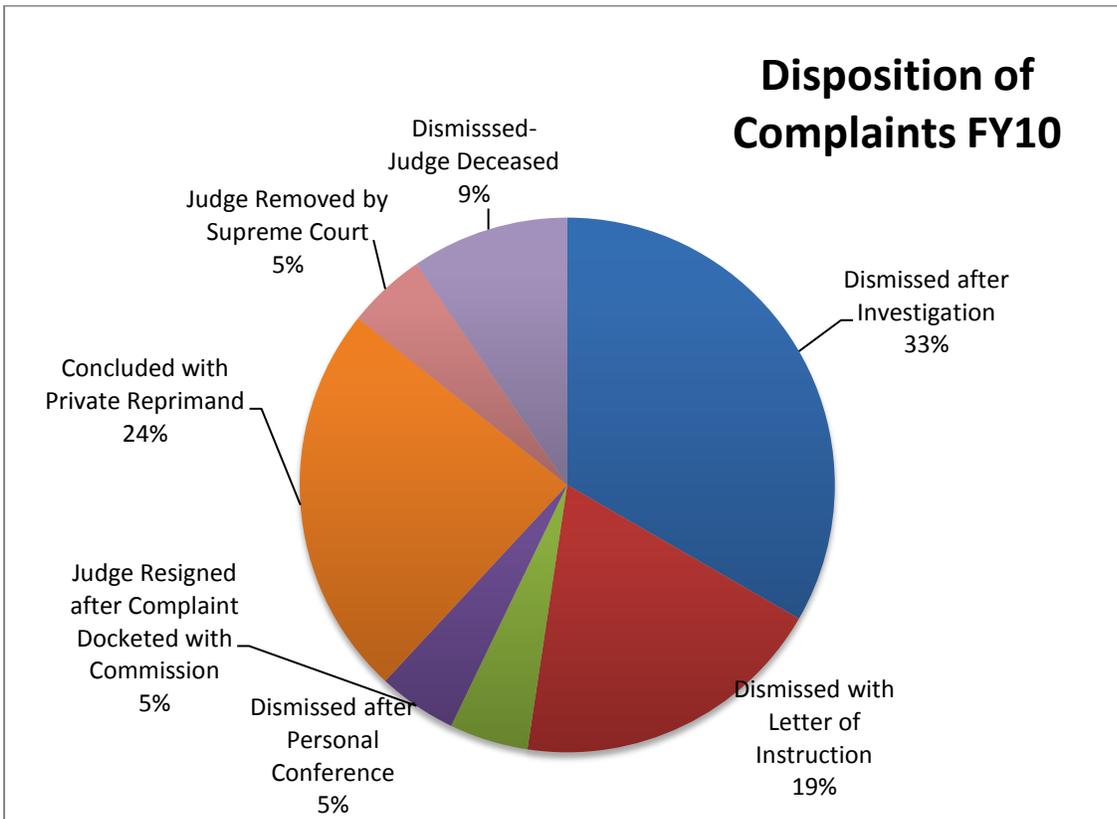
Judicial Decision/Discretion	0
Impairment	0
Bias/Prejudice/Partiality	2
Age/Racial/Sexual/Religious Discrimination	0
Failure to Timely Dispose	6
Ex-Parte Communications	3
Conflict of Interest	2
Denial of Fair Hearing	1
Demeanor / Injudicious Temperament	7
Mistreats Lawyers/Litigants	1
Probate/Estate Matter	0
Decision Matter	1
Personal Activity	0
Campaign Activity	0
Administrative Duties other than Delay	0
Failure to Follow Law/Incompetence	2
Judge charged with criminal activity	0
Request for Formal Opinion	0
Use of Judicial Position for Personal Gain	3
Failure to attend Mandatory Training	0
Misconduct off the Bench	5
Improper Public Comment	0

³ 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.

F. DISPOSITION OF COMPLAINTS⁴

Of the complaints considered by the Commission and resolved in FY10, they were resolved in the following manners:

Dismissed after Investigation	7
Dismissed with Letter of Instruction	4
Dismissed after Personal Conference	1
Judge Resigned after Complaint Docketed with Commission	4
Decline to Render Formal Opinion	0
Concluded with Private Reprimand	5
Concluded with Public Reprimand	0
Judge Removed by Supreme Court	1
Formal Opinion Rendered	0
Dismissed-Judge Deceased	2
Dismissed-Complaint Withdrawn	0



⁴ 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.

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 actively participates in providing seminars to judges on the subject of judicial professionalism and ethics. During FY10 the Commission participated in educational conferences for various classes of judges, including judges from outside the United States who are attending classes at the Dean Rusk Center at The University of Georgia School of Law.

In addition to judicial conferences during FY10, the Commission Director, Ms. Custer, attended the annual national seminar of the Association of Judicial Disciplinary Counsel (AJDC) where she again moderated a seminar for her fellow judicial disciplinary counsel. Ms. Custer also served on the Board of Directors of AJDC. 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.

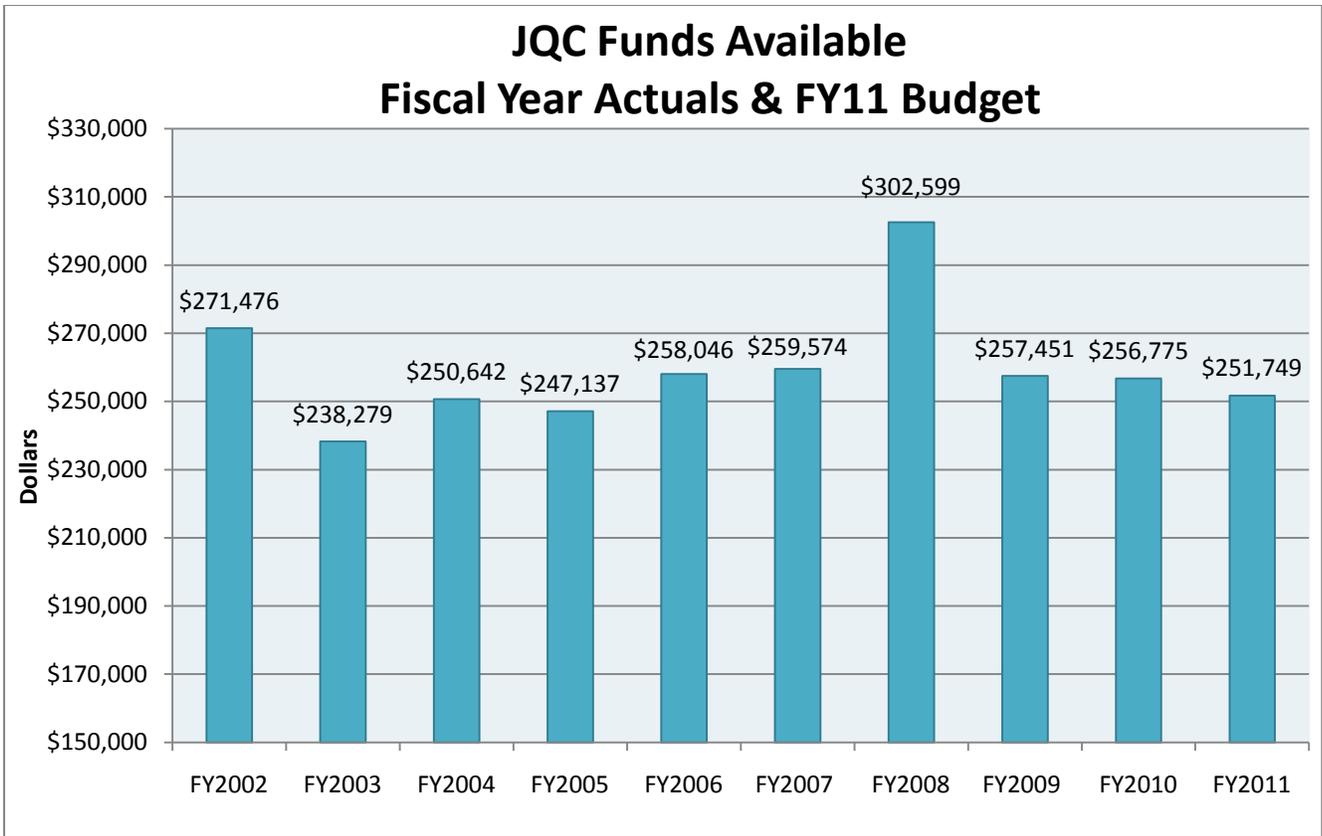
Continuing to fulfill the educational component of the Commission's work, the Director served on the State Bar of Georgia's subcommittee on the judiciary.

During any given week, the Commission staff responds to numerous requests for information and advice from both members of the judiciary, members of the bar, and members of the public about the Code of Judicial Conduct and the Rules of the Commission.

H. THE COMMISSION BUDGET

The total amount spent by the Commission for FY10 including salaries and benefits was \$256,775. Among the costs associated with the handling of these cases was the hiring of an investigator, the hiring of legal counsel to represent the Commission, and funds to cover the expenses required to prosecute these disciplinary matters.

Over the past eight years, the amounts allotted to the Commission to fulfill its mandated constitutional role have been relatively static (in nominal dollars). However, the Commission, due to ongoing limitations in funding, is facing challenges to continue to investigate and prosecute ethical misconduct by judges with a mandatory reduction in budget amounts for FY2011.



The Commission continues to be extraordinarily thrifty in the stewardship of its budget and efficient in the management of complaints. The Commission reviews, investigates and resolves hundreds of complaints a year with a staff of only two persons, a small budget compared to similar organizations around the country, and with a completely volunteer Commission. A Budget Comparison analysis of other judicial oversight agencies from around the country published by the American Judicature Society reveals the wide margin of disparity between the Commission’s funding and the budgets of similar states.

	Budget	# of judges (approximate)	# of complaints (approximate average)	Population ¹
Arizona	514,000 ²	700 ³	325	6,595,778
Arkansas	603,723	400	330	2,889,450
California	4,100,000	2166 ⁴	1314 ⁵	36,961,664
Florida	926,195	1133	630	18,537,969
Georgia	251,749	1800+	489	9,829,211
Hawaii	76,190	122 ⁶	45	1,295,178
Indiana	⁷	400	444	6,423,113
Kansas	⁸	526	193	2,818,747
Maine	45,000	65	40-45	1,318,301
Massachusetts	512,657	411	450/<200 ⁹	6,593,587
Michigan	969,700	1200	600	9,969,727
Minnesota	456,000 ¹⁰	500	125 ¹¹	5,266,214
Mississippi	580,000	600	337	2,951,996
Missouri	220,000	750	247	5,987,580
Nevada	691,286	765 ¹²	136	2,643,085
Oklahoma	230,000	632	250-300	3,687,050
Pennsylvania ¹³	1,182,000	1056	681	12,604,767
Tennessee	275,000	750	360	6,296,254
Texas	996,626 ¹⁴	3809	1280	24,782,302
Utah	225,000	320	100	2,784,572
Virginia	568,368	790	809	7,882,590

¹ From http://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_population.

² AZ: Includes \$87,100 added for a building lease (commission share of the supreme court's building) and \$21,270 that has been set aside for a reserve in case the state budget continues to have a shortfall.

³ AZ: Includes full-time judges, volunteer pro tem judges, commissioners, and others.

⁴ CA: The commission has jurisdiction over 1755 judges and over former judges for conduct while they were judges. The commission also has shared jurisdiction with local courts over the state's 411 subordinate judicial officers.

⁵ CA: 1161 complaints about judges and 153 complaints about subordinate judicial officers.

⁶ HI; 77 full time; 45 part time.

⁷ IN: The commission is funded through the Indiana Supreme Court general account. The commission staffs one full-time counsel at a salary of roughly \$75,000 plus benefits and one full-time administrative assistant at a salary of about \$32,500 plus benefits. On occasion, the commission also receives support from a part-time attorney that has other functions within State Court Administration. The commission's costs are somewhere around \$240,000 - \$250,000 if you include salaries and benefits.

⁸ KS: The commission is financed, in part, by the Appellate Clerk's budget so there is no meaningful separate commission budget.

⁹ MA: The commission averages about 450 complaints a year, usually docketed less than 200.

¹⁰ MN: \$331,000 a year, plus \$125,000 for litigation.

¹¹ MN: 1500 - 1700 contacts a year, 125 become cases.

¹² NV: 177 full-time; 38 senior judges; 359 part-time judges; 191 foreclosure mediators.

¹³ PA: Figures are for the Judicial Conduct Board, the investigative and prosecutorial tier, and does not include the budget for the Court of Judicial Discipline.

¹⁴ TX: The budget appropriated for FY 2010 was \$1,001,626 and for FY 2011 was \$996,626. These figures do not take into account funds returned, and to be returned, to the State during the current biennium due to recent budget cuts requested by the legislature.

Washington	1,064,000	567	359	6,664,195
Wisconsin	245,800 ¹⁵	850	482	5,654,774
Wyoming	162,388	254 ¹⁶	92/25 ¹⁷	544,270
Washington D.C.	295,000 ¹⁸	111	49	599,657

¹⁵ WI: \$18,000 is earmarked for outside counsel or investigators.

¹⁶ WY: 150 judges, 104 other judicial officers.

¹⁷ WY: 92 complaints; 25 verified (commission can only act on verified complaint).

¹⁸ D.C.: The commission also conducts reappointment evaluations and performance and fitness reviews for retired judges who wish to continue their judicial service as senior judges.

As the budget analysis chart reveals, Michigan, with a population similar to Georgia, regulates fewer judges and receives a similar number of complaints, but has an annual budget of \$969,000 compared to the Commission's budget of \$251,749. Mississippi has oversight over 1/3 of the judges that Georgia regulates and receives almost half of the complaints the Commission receives, but has an annual budget of \$580,000, which is more than double the Commission's current budget. By comparison, Georgia allocates \$139.00 per judge for its judicial oversight agency. Other states allocate the following per judge over whom they have oversight: Florida, \$817.00; Mississippi, \$967; Tennessee, \$366.00; Michigan, \$808.00, and Texas, the second lowest to Georgia, allocates \$261.00 per judge.

Comparatively speaking, the Commission's funding is substantially lower than any other state judicial disciplinary agency surveyed by the American Judicature Society. Although the Commission continues to strive to fulfill its constitutional mandate, the limited resources of the Commission are beginning to have an impact on the ability of the Commission to properly investigate and prosecute allegations of judicial misconduct. The upward trend of complaints received continues for FY 2011. Complaints are currently up 25% over FY10 (based upon complaints received as of December 15, 2010).

Current docketed complaints in FY11 have increased by 300% over the same period in FY10.

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 has met these challenges over the last year. However, given the significant increase in complaints and docketed cases, adequate funding for the Commission's continued work must be a priority in FY11 if the Commission is to continue to fulfill its constitutional mandate.

Respectfully submitted this ___th day of December, 2010.

/s/
Benjamin F. Easterlin IV
Chair, Judicial Qualifications Commission

Members:
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Honorable John D. Allen, Vice-Chair
James B. Durham
W. Jackson Winter, Jr.
Robert D. Ingram
Honorable Constance C. Russell
Linda Evans