

Annual
Report

2012

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 fiscal year 2012, covering the period from July 1, 2011 through June 30, 2012 (“FY2012”). 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 public.

The Commission’s constitutional mandate is to enforce high standards of conduct for judges, who must be free to act independently, as stewards of the public trust, but must also be held accountable should they commit judicial misconduct.

The Commission is determined that there exists a free and independent judiciary, with accountability. At the same time, the Commission is sensitive that any judge be provided fundamental fairness and due process during the

Commission’s investigation and hearing. 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.”¹

¹ Motto of the Georgia Court of Appeals conceived by Chief Judge Jule Wimberly Felton

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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 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 cannot be members of the State Bar of Georgia.

A. MEMBERS OF THE COMMISSION

The members of the Commission are:

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

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

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

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

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

Ms. Linda Evans – a community volunteer in Atlanta,
Georgia

Mr. S. Lester Tate, III – an attorney practicing in
Cartersville, Georgia.

B. THE COMMISSION STAFF

Mr. Jeffrey Davis is the Director and has served in this capacity since September 1, 2010. The Commission's staff consists of an executive assistant, Ms. Tara Moon and Mr. Richard Hyde, who investigates complaints of judicial misconduct. In the event of formal proceedings, outside counsel has traditionally been retained to prosecute the matter before 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. In most instances, a complaint must be received by the Commission before any action or investigation may begin. Complaints filed by the public must state facts that substantiate the alleged misconduct. Pursuant to Rule 4 of the Commission, the Commission is also authorized to initiate an investigation on its own motion upon receipt of information that a judge may have engaged in misconduct in office.

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 regularly scheduled meeting. The members will discuss and determine the

appropriate action to be taken, which may include 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. An 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 a private admonition or 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 during all phases of the Commission's investigation and prosecution. 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?

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 minimal standards to govern and guide the conduct of judges at all levels.

Common violations include, but are not limited to, the following:

- failure to perform duties diligently;
- failure to dispose promptly of the business of the court;
- injudicious temperament;
- failure to perform duties impartially and conflicts of interest;

- sexual harassment and other sexual misconduct;
- improper use of the prestige of the judicial position;
- criminal conduct;
- improper campaign activities; and
- other conduct which reflects adversely on the integrity of the judiciary.

The following are examples of matters not within the jurisdiction of the Commission and do not generally constitute a violation of the Code of Judicial Conduct:

- rulings on the law and findings of fact made by the judge;
- 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 trial 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. DUI is a crime. When a judge is charged with this offense, public confidence in the judiciary is eroded. A judge is required by the Code of Judicial Conduct to respect and comply with the law, and to act on and off the bench in a matter that promotes public confidence in the integrity of the judicial system. It is especially disturbing when a judge who is obliged to administer the law breaks it by committing a criminal offense such as DUI. In addition to any penalties imposed by a court for such violations, even if the alcohol-related charge is later reduced, the judge will also be subject to discipline for the conduct, regardless of the ultimate disposition by the court.

Where impairment is found to exist, the Commission will strongly consider medical intervention. If there is evidence of misconduct resulting from alcohol or drug abuse, the Commission will emphasize medical intervention and other sanctions consistent with its responsibility to protect the public.

The Commission believes that calling public attention to the seriousness of alcohol and drug-related offenses will increase judicial sensitivity to the

gravity of such conduct and decrease the number of incidents that will require the imposition of discipline.

F. INCAPACITY OF JUDGES

In the event of a complaint alleging the physical or mental incapacity of a judge, the Commission proceeds with sensitivity into the investigation being fully cognizant of the many years of able service to the public 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 2012

A summary of the activities of the Commission during FY2012 covering the period July 1, 2011 through June 30, 2012 follows.

A. SIGNIFICANT EVENTS

Fiscal year 2012 was an eventful year for the Commission. Though all matters that come before the Commission are treated with care and given consideration, there were numerous noteworthy events involving judicial misconduct.

Judge Douglas Pullen, Superior Court, Chattahoochee Judicial Circuit entered into a consent order with the Commission wherein he retired effective September 1, 2011 agreeing never to seek or accept judicial office.

Judge Anthony Peters, Magistrate Court, Catoosa County was removed from office and permanently barred from seeking judicial office on September 6, 2011 by order of the Georgia Supreme Court.

Chief Judge Rucker Smith, Superior Court, Southwestern Judicial Circuit was arrested and charged with speeding, open container, and driving under the influence on May 28, 2012. In resolution of this criminal matter, the Judge pleaded guilty to a reduced charge of reckless driving in the Municipal

Court for the City of Leslie. After self reporting and complying with every request made of him by the Commission, the matter was concluded with a private reprimand, with the contents of the reprimand remaining confidential but the fact of the composition of the reprimand made public.

Chief Judge Lynn Alderman, Superior Court, Enotah Judicial Circuit entered into a consent order with the Commission wherein she resigned her judicial position effective March 30, 2012 agreeing to never seek or accept judicial office.

Chief Judge Amanda Williams, Superior Court, Brunswick Judicial Circuit entered into a consent order with the Commission wherein she resigned her judicial position effective January 2, 2012 agreeing to never seek or accept judicial office.

Chief Judge Jeffery M. Davis, Magistrate Court, Monroe County was arrested June 3, 2012 for driving under the influence. Judge Davis self-reported and immediately resigned as a municipal court judge. In resolution of this matter the Commission issued a private reprimand to the judge, with the contents of the reprimand remaining confidential but the fact of the reprimand made public.

Chief Judge William F. Lee, Jr., Superior Court, Coweta Circuit entered into a consent order with the Commission wherein he resigned his judicial position effective May 1, 2012.

Chief Judge Lawrence “Rocky” Ford, Magistrate Court, Rabun County entered into a consent order with the Commission wherein he resigned May 15, 2012.

Judge John Lee Parrott, Superior Court, Ocmulgee Judicial Circuit entered into a consent order with the Commission wherein he retired his judicial position effective May 19, 2012.

In addition to disciplinary matters, 2012 saw changes to the Code of Judicial Conduct. Following a study by the Code of Judicial Conduct Rules Revision Committee, which included members of the Commission, the Commission’s director, other public officers and members of the judiciary in all classes of court, the Supreme Court of Georgia amended Canon 3 of the Code of Judicial Conduct to comport with the U.S. Supreme Court’s decision in *Caperton v. A.T. Massey Coal Co.* The revised Canon more explicitly defines the ethical obligations of judges when considering recusal and/or disqualification related to campaign contributions and other publicly stated support, including non-monetary support, received by a judicial candidate.

B. COMPLAINT INFORMATION

The Commission receives a significant number of complaints each year from individuals alleging various types of judicial misconduct. Set out below are some key statistics about those complaints.

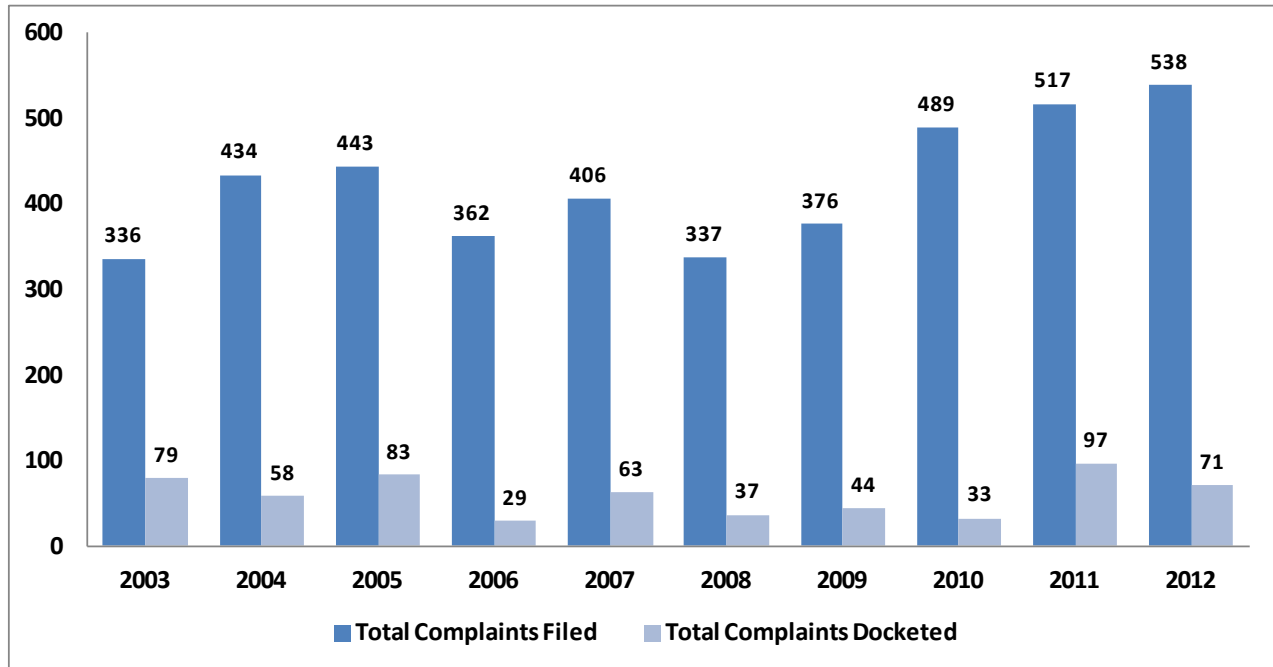
Judicial Complaints FY2012

Number of Complaint Forms Received	538
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	414
Number of Complaints Docketed	71
Number of Complaints Investigated but not Docketed	72

- The numbers above reflect complaints received and processed in FY2012.

The data compiled by the Commission for FY2012 reflects a continued upward trend of complaints alleging judicial misconduct. Complaints are docketed after allegations of misconduct are made which come within the jurisdiction of the Commission and when a preliminary inquiry that the complaint may have merit. Once docketed, the complaint will be considered by the Commission. The number of complaints docketed during the past ten years is provided in the chart following.

Docketed Complaint Trends



Since FY2008 there has been a steady increase in the number of complaints filed. Moreover, the number of cases which resulted in public discipline significantly increased over FY2011. The Commission believes these increases are attributed to: (a) increased awareness by the legal community and the public of the role and actions of the Commission; (b) greater media coverage of judges engaged in misconduct and criminal activities; and (c) the ease of downloading complaint forms from the Commission's website. The Commission projects these factors to continue and will result in increased Commission activity.

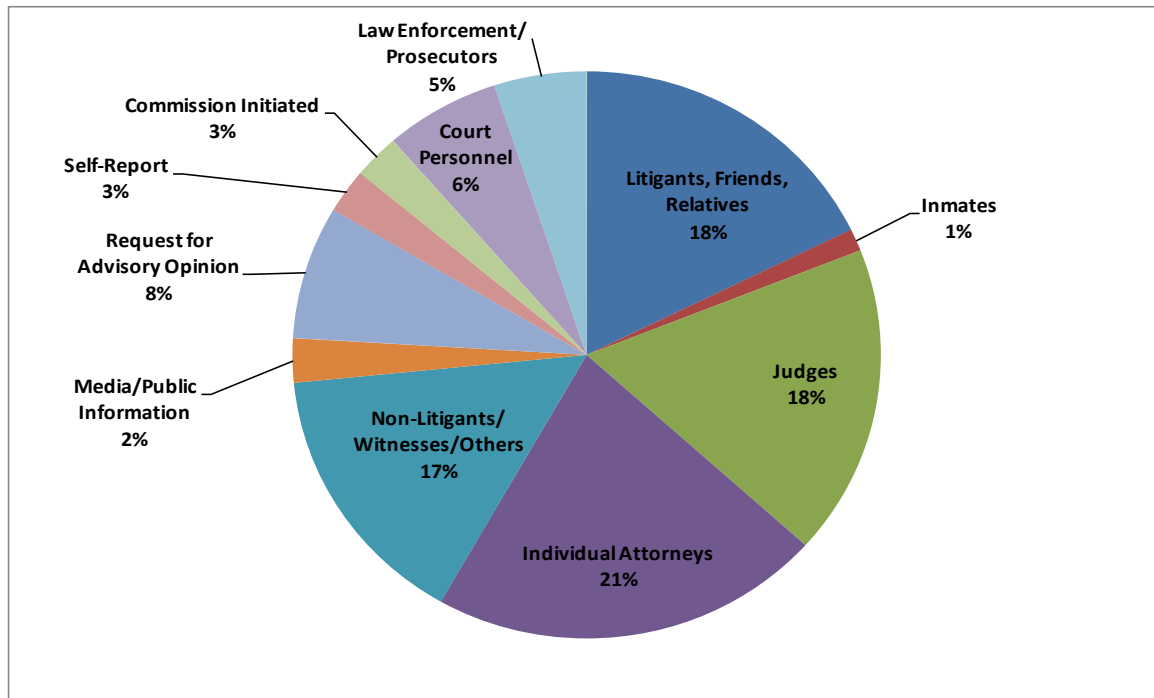
C. CLASSIFICATION OF COMPLAINTS

The complaints docketed in FY2012 were classified as follows:

Classification of Complaints

Litigants, Friends, Relatives	14
Inmates	1
Judges	14
Individual Attorneys	17
Non-Litigants/Witnesses	12
Media/Public Information	2
Request for Advisory Opinion	6
Request for Rule Change	1
Self Report	2
Commission Initiated	2
Court Personnel	5
Law Enforcement/Prosecutors	4

- Numbers in table do not correspond with the number of docketed complaints because some complaints come from multiple sources.

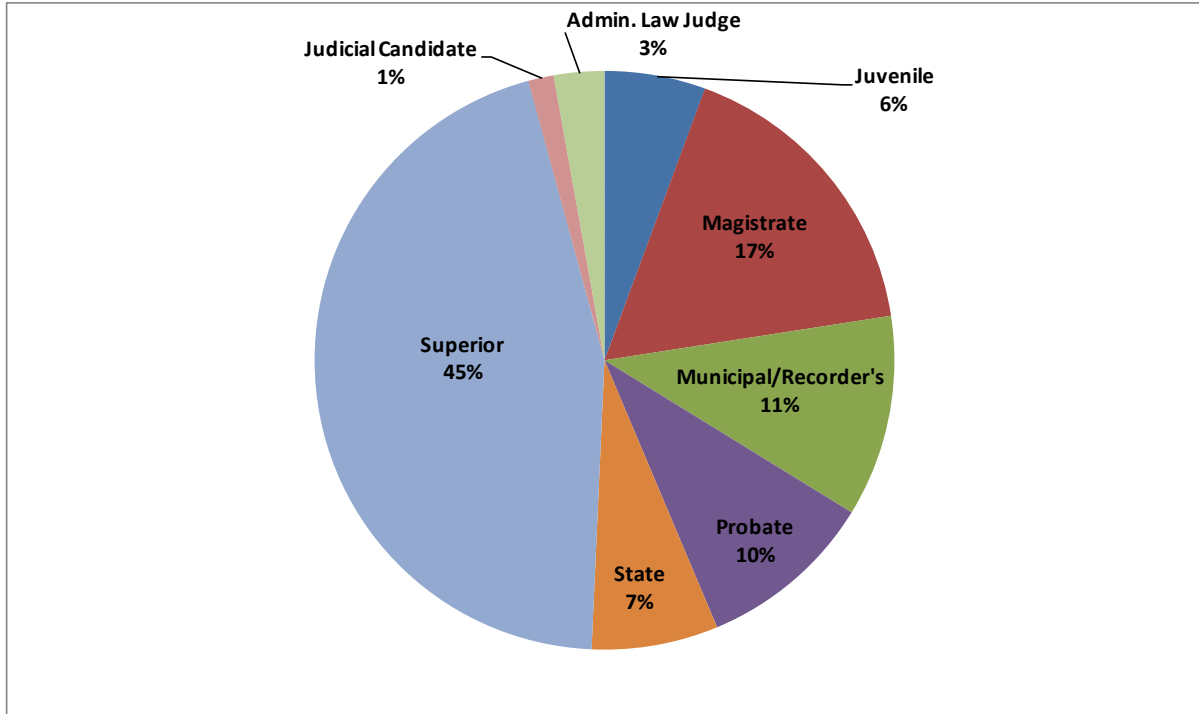


D. CLASSES OF JUDGES

Complaints docketed in FY2012 were made against the following classes of judges:

Classes of Judges

Judicial Candidate	1
Administrative Law	2
Magistrate	12
Municipal/Recorder's	8
Juvenile	4
Probate	7
State	5
Superior	32
Senior	0
Appellate	0



CATEGORIES OF COMPLAINTS

The complaints docketed in FY2012 involved the following categories of complaints:

Categories of Complaints

Judicial Decision/Discretion	3
Mental Impairment/Incapacity	2
DUI/Drug and/or Alcohol Impairment	2
Bias/Prejudice/Partiality	23
Failure to Timely Dispose/Rule	6
Ex-Parte Communications	17
Conflict of Interest/Failure to Recuse	24
Denial of Fair Hearing	11
Demeanor/Injudicious Temperament	6
Mistreats Lawyers/Litigants	7
Personal Activity	8
Campaign Activity	9
Failure to Follow Law/Incompetence	12
Criminal Allegations/Charges	9
Request for Formal Opinion	6
Use of Judicial Position for Personal Gain	9
Failure to Complete Mandatory Training	24
Misconduct off the Bench	7
Improper Public Comment about case	1

- Numbers in table do not correspond with the number of docketed complaints or the number of judges because many resolutions involve more than one subject or category of complaint.

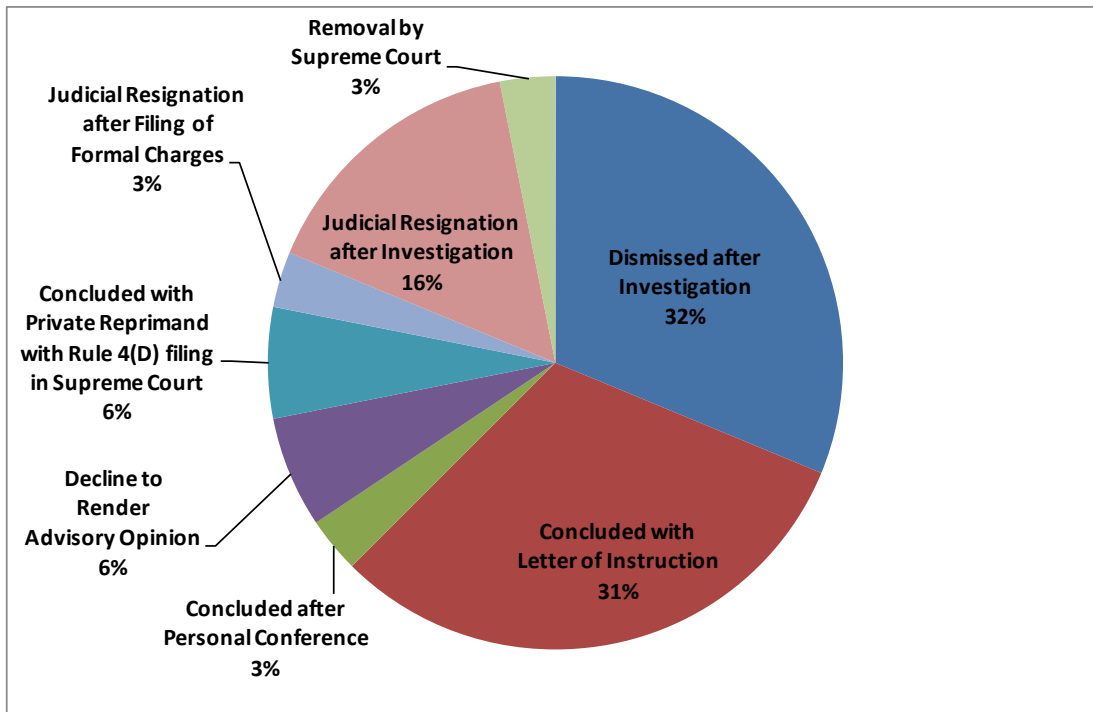
F. DISPOSITION OF COMPLAINTS

The complaints docketed in FY2012 were resolved in the following manner:

Disposition of Complaints

Dismissed after Investigation	10
Concluded with Letter of Instruction	10
Concluded after Personal Conference	1
Decline to Render Advisory Opinion	2
Concluded with Private Reprimand with Rule 4(D) filing in Supreme Court	2
Formal Opinion Rendered	0
Judicial Resignation after filing of Formal Charges	1
Judicial Resignation after Investigation	5
Removal by Supreme Court of Georgia	1
Formal Hearing	0

- 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 carried forward.



G. EDUCATIONAL FUNCTION OF THE COMMISSION

A primary function of the Commission is to provide education and counseling to judges on the interpretation and application of the Code of Judicial Conduct. The Commission hopes to reduce the complaints filed against judges and otherwise encourage ethical behavior by all members of the judiciary.

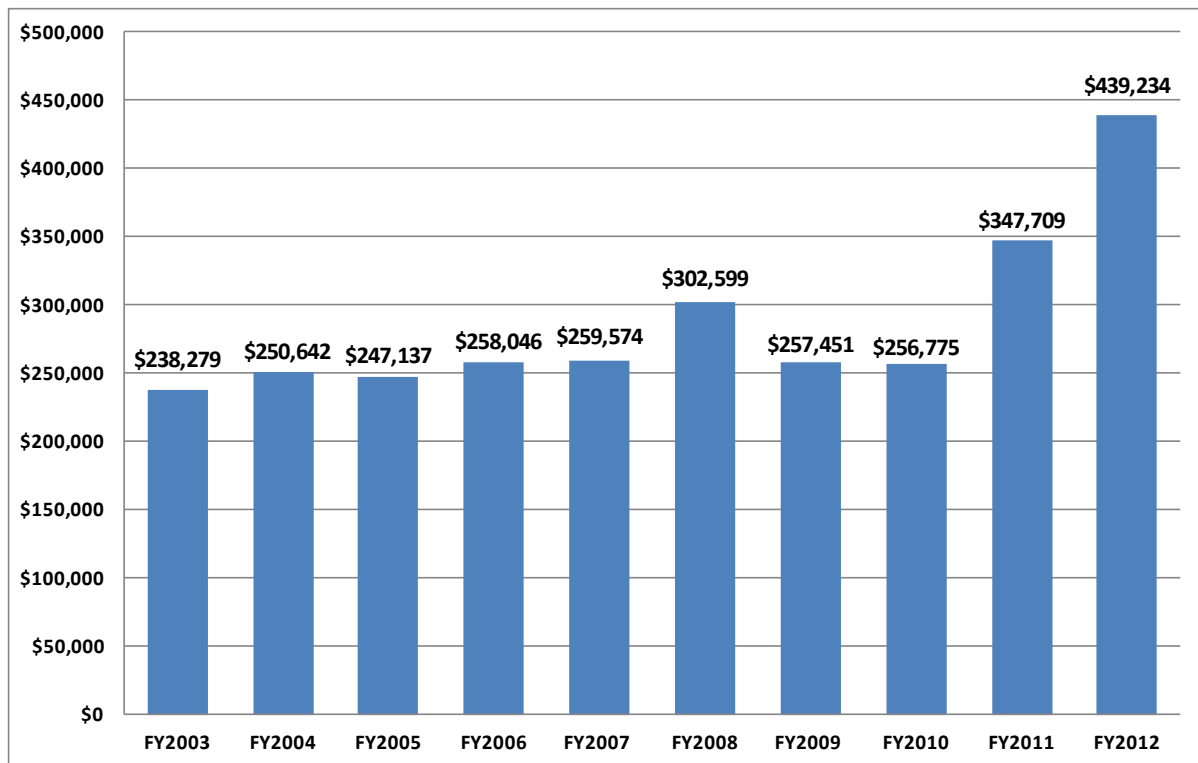
The Commission staff actively participates and meets with judges on the subject of professionalism and ethics. During FY2012, the Commission participated in educational conferences for various classes of judges in conjunction with the Institute for Continuing Judicial Education and the various judicial councils. Education regarding compliance with and application of the Code of Judicial Conduct is one of the most important functions the Commission staff provides to members of the judiciary.

Most days, Commission staff responds to numerous requests for information and advice from members of the judiciary, the bar, and the public about the Code of Judicial Conduct and the Rules of the Commission. In FY2012, the Commission responded to over 300 ethics inquiries from members of the judiciary.

H. THE COMMISSION BUDGET

The Commission's for FY2012 budget was \$439,234.00. In FY2012, the Commission was appropriated an enhancement to the FY2012 budget and an adequate increase to fund the anticipated work of the Commission in FY2013. This funding will enable the Commission to continue to properly investigate and prosecute judicial misconduct.

Commission Funds Over Last Decade



The Commission continues to be efficient in the management of complaints. The Commission reviews, investigates and resolves hundreds of complaints a year with a staff of two persons, an investigator, and a completely volunteer Commission.

Although the Commission continues to strive to fulfill its constitutional mandate, the Commission must be vigilant in its stewardship of its allocated funds to ensure that it can continue to properly investigate and prosecute allegations of judicial misconduct. This will be particularly critical given increased complaint activity and the diligence required by the Commission to properly investigate each complaint which comes before the Commission.

III. CONCLUSION

The Commission continues to face challenges to the maintenance of an independent judiciary in the State of Georgia. We must be prepared to confront these challenges in an environment where governmental resources are increasingly scarce. We are ever mindful of its need to serve the citizens of Georgia with greater efficiency in the years ahead. Given the significant increase in complaints and docketed cases under investigation, continued adequate funding for the Commission's work is critically important in fulfilling our constitutional mandate to protect the public and ensure continued confidence in our judiciary.

Respectfully submitted this 28th day of September, 2012.

/s/

John D. Allen
Chair, Judicial Qualifications Commission

Members:

Honorable John D. Allen, Chair
Robert D. Ingram, Vice-Chair
James B. Durham
W. Jackson Winter, Jr.
Honorable Constance C. Russell
Linda Evans
S. Lester Tate, III