

Annual
Report

2011

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 2011, covering the period from July 1, 2010 through June 30, 2011 (“FY2011”). 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.”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 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 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 became the new Director in September 2010, replacing Ms. Cheryl Custer who resigned in August 2010 after serving eleven years. 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 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. 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 a private 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 are examples of matters not within the jurisdiction of the Commission and thus do not generally 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 2011

A summary of the activities of the Commission during FY2011 covering the period July 1, 2010 through June 30, 2011 follows.

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 FY2011.

After more than a decade of faithful service to the Commission as Director, Ms. Cheryl Custer tendered her resignation effective August 31, 2010. After a thorough and thoughtful search, Mr. Jeffrey Davis was chosen as her successor. Mr. Davis began his tenure as Director on September 1, 2011.

Chairman, Ben F. Easterlin, IV, concluded eight years of faithful service to the Commission in January 2011. The Honorable John D. Allen, Chief Judge of the Superior Court in the Chattahoochee Judicial Circuit was elected to succeed Mr. Easterlin. Mr. Robert Ingram was elected Vice-Chairman.

Governor Sonny Perdue appointed Ms. Linda Evans, a community volunteer in Atlanta and former Member of the Department of Driver Services Board, to fill the unexpired term of former Commissioner Robert Herriott on August 4, 2010. Ms. Evans initial term expired in December 2010 after which she was reappointed for a four (4) year term by Governor Nathan Deal in January 2011. The Board of Governors of the State Bar of Georgia appointed Mr. Lester Tate, immediate past President of the State Bar of Georgia and a practicing lawyer in Cartersville, to replace Chairman Easterlin in January 2011.

On November 30, 2010, a consent order was entered into between the Commission and Judge Kenneth O. Nix, Chief Judge of the Superior Court of the Cobb Judicial Circuit which provided for his resignation from the Cobb Superior Court and the Municipal Court of Austell. Judge Nix further agreed to neither seek nor accept appointment to any judicial office in the future.

On December 7, 2010, Judge Julianne E. James, Associate Magistrate Judge in Webster County, Georgia resigned her judicial office, and agreed to neither seek nor accept appointment to any judicial office in the future.

On December 10, 2010, a consent order was entered into between the Commission and Judge Amy Bagwell, Chief Magistrate Court Judge and Probate Court Judge of Seminole County which provided for her resignation from her judicial positions. Judge Bagwell further agreed to neither seek nor accept appointment to any judicial office in the future.

On February 4, 2011, a consent order was entered into between the Commission and Judge Barbara J. Mobley, State Court of DeKalb County, which provided for her resignation from her judicial position. Judge Mobley further agreed to neither seek nor accept appointment to any judicial office in the future.

After a lengthy investigation, the Commission filed formal charges against Judge Anthony Peters, Associate Magistrate of Catoosa County on February 8, 2011. A trial took place on April 14 - 15, 2011 in the Court of Appeals Courtroom. On May 10, 2011 the Commission filed its Findings of Facts and Recommendations regarding Judge Peters in the Supreme Court of Georgia recommending the removal of Judge Peters from the Magistrate Court and that Peters be barred from holding judicial office in the future.

B. COMPLAINT INFORMATION

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

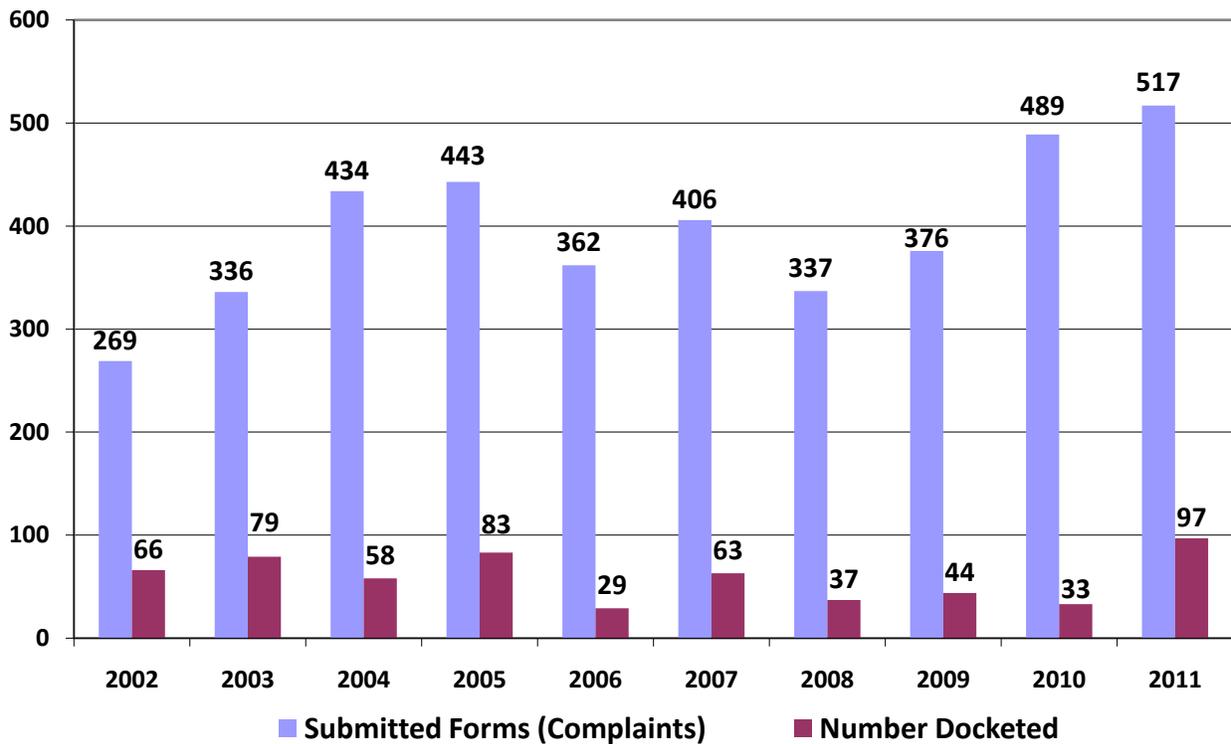
Judicial Complaints FY2011

Number of Complaint Forms Received	517
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	295
Number of Complaints Docketed	97
Number of Complaints Investigated but not Docketed	125

- The numbers above reflect complaints received and processed in FY2011. This data does not reflect complaints which have not been processed or acted upon.

The data compiled by the Commission for FY2011 reflects a continued upward trend of complaints filed with the Commission alleging judicial misconduct. 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 at a regularly scheduled meeting. The number of complaints docketed during the past ten years is provided in the chart below.

Docketed Complaint Trends



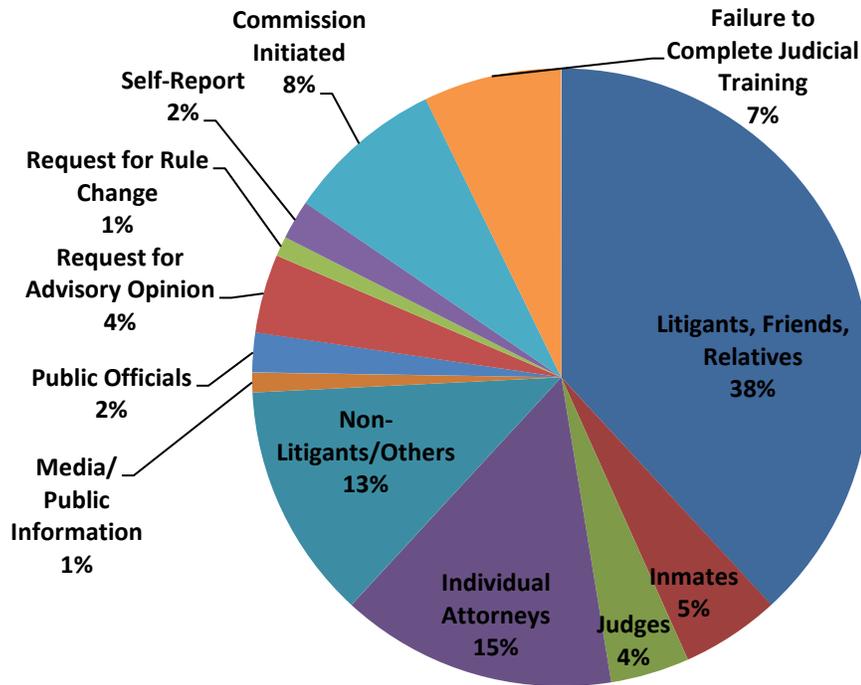
Since FY2008 there has been a steady increase in the number of complaints filed and the number of docketed cases. The Commission believes these increases are attributed to: (a) increased awareness by the legal community and the general public of the role and actions of the Commission; (b) greater media 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 in the future.

C. CLASSIFICATION OF COMPLAINTS

The complaints docketed in FY2011 are classified as follows:

Classification of Complaints

Litigants, Friends, Relatives	38
Inmates	5
Judges	4
Individual Attorneys	15
Non-Litigants/Others	12
Media/Public Information	1
Request for Advisory Opinion	4
Request for Rule Change	1
Self Report	2
Commission Initiated	8
Failure to Complete Judicial Training	7

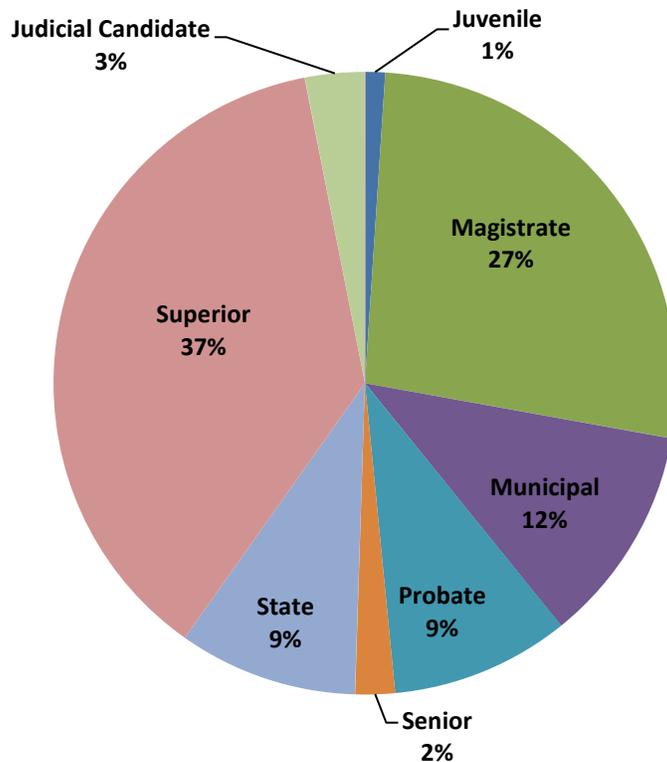


D. CLASSES OF JUDGES

The complaints docketed in FY2011 were made against the following classes of judges:

Classes of Judges

Juvenile	1
Recorders	0
Magistrate	26
Municipal	11
Probate	9
Senior	2
State	9
Superior	36
Judicial Candidate	3
Administrative Law Judge	0



E. CATEGORIES OF COMPLAINTS

The complaints docketed in FY2011 involved the following categories of complaints:

Categories of Complaints

Judicial Decision/Discretion	5
Impairment	3
Bias/Prejudice/Partiality	7
Failure to Timely Dispose	6
Ex-Parte Communications	10
Conflict of Interest	11
Denial of Fair Hearing	3
Demeanor / Injudicious Temperament	9
Mistreats Lawyers/Litigants	2
Personal Activity	4
Campaign Activity	4
Failure to Follow Law/Incompetence	11
Judge charged with criminal activity	5
Request for Formal Opinion	2
Use of Judicial Position for Personal Gain	6
Failure to attend Mandatory Training	4
Misconduct off the Bench	5
Improper Public Comment	1

- 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.

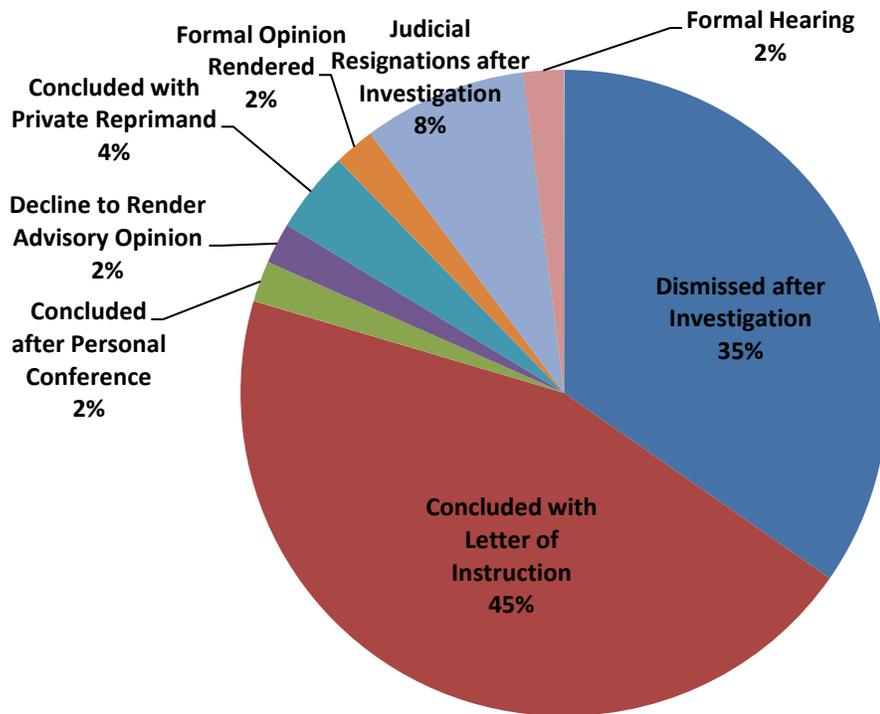
F. DISPOSITION OF COMPLAINTS

The complaints docketed in FY2011 were resolved in the following manner:

Disposition of Complaints

Dismissed after Investigation	17
Concluded with Letter of Instruction	22
Concluded after Personal Conference	1
Decline to Render Advisory Opinion	1
Concluded with Private Reprimand	2
Formal Opinion Rendered	1
Judicial Resignations after Investigation	4
Formal Hearing	1

- 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 FY2011, 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. Judicial 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.

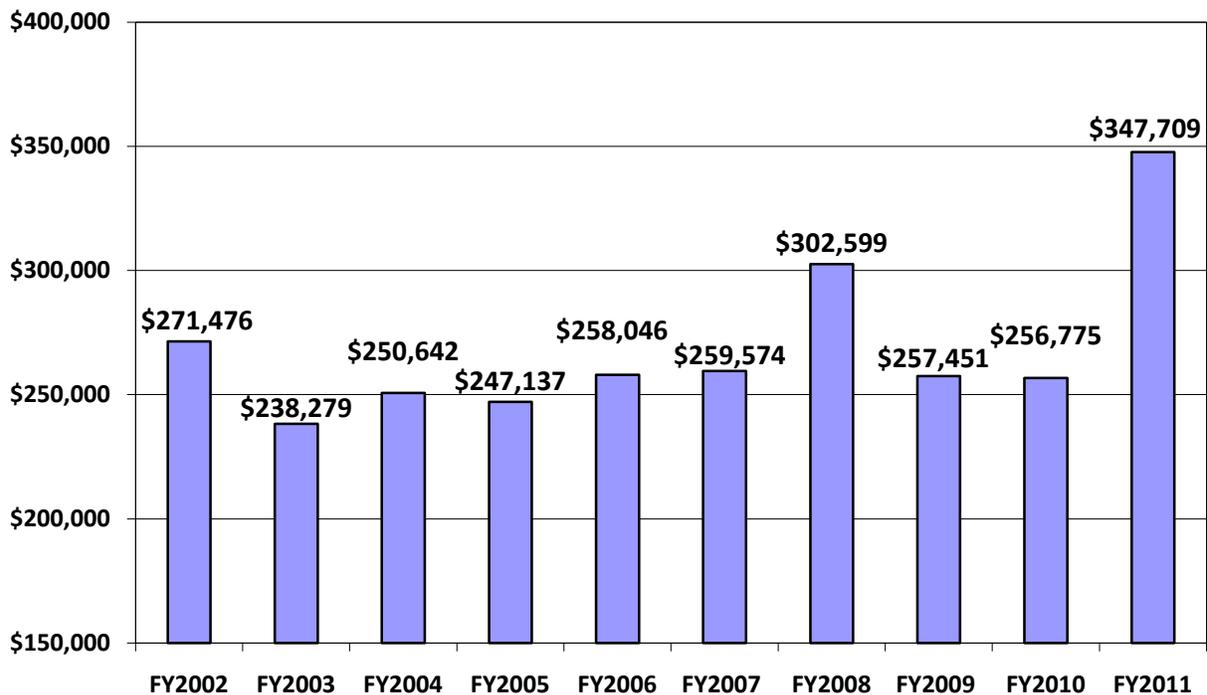
During any given week, the Commission staff responds to numerous requests for information and advice from both members of the judiciary, the bar, and the public about the Code of Judicial Conduct and the Rules of the Commission.

H. THE COMMISSION BUDGET

The total amount spent by the Commission for FY2011 was \$347,709. 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.

In FY2011, the Commission was appropriated an enhancement to the FY2011 budget and an adequate increase to fund the anticipated work of the Commission in FY2012. This funding will enable the Commission to continue to properly investigate and prosecute judicial misconduct.

Commission Funds Over the Last Decade



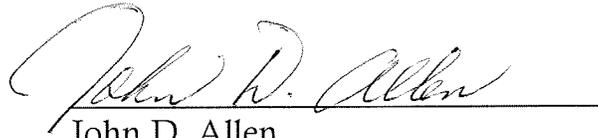
The Commission continues to be extraordinarily thrifty in the stewardship of its budget and efficient in the management of complaints. The Commission reviews, investigates and resolves hundreds of complaints a year with a staff of only two persons, a small budget compared to similar organizations around the country, and with a completely volunteer Commission.

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. The number of docketed complaints before the Commission in FY2011 was almost 300% greater than in FY2010.

III. CONCLUSION

The Commission continues to face challenges to the maintenance of an independent judiciary in the State of Georgia. The Commission must be prepared to confront these challenges in an environment where governmental resources are increasingly scarce. The Commission is 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 that the Commission is experiencing, continued adequate funding for the Commission's work is critically important in fulfilling its constitutional mandate.

Respectfully submitted this 5th day of August 2011.



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