

Annual
Report

2014

Judicial Qualifications Commission
State of Georgia

AN OVERVIEW OF THE JUDICIAL QUALIFICATIONS COMMISSION

I. OVERVIEW AND HISTORY 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 approximately 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. The State Bar of Georgia appoints three attorney members 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 AND STAFF

The members of the Commission during FY2014 are:

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

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

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

The Honorable Brenda S. Weaver – Judge, Superior Court of the Appalachian Circuit

The Honorable Patsy Y. Porter – Judge, State Court of Fulton County, Georgia

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

Mr. Richard L. Hyde – a peace officer from Atlanta, Georgia.

Staff:

Mr. Jeffrey R. Davis, Director

Ms. Tara Moon, Executive Assistant

B. 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 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 on its own motion 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.
- Negotiate an appropriate discipline with the judge and/or the judge's counsel, which may include an agreement never again to hold judicial office.

C. 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;
- injudicious temperament;
- conflicts of interest;
- sexual harassment or other sexual misconduct;
- improper use of the prestige of the judicial position;
- criminal conduct;
- improper campaign activities; and
- other conduct (on or off the bench) 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;
- 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.

D. JURISDICTION – WHAT THE COMMISSION CAN AND CANNOT DO

[This Section is adapted from "How Judicial Conduct Commissions Work," by Cindy Gray, *American Judicature Society* (1999)]

Many complaints are dismissed every year as beyond the jurisdiction of the Commission because, in effect, they are asking the Commission to act as an appellate court and review the

merits of a judge's decision, claiming that the judge made an incorrect finding of fact, misapplied the law, or abused his or her discretion. These complaints are frequently filed by disappointed litigants, particularly in emotionally charged litigation such as divorce or custody cases, contested probate cases, or criminal trials.

Making an error, however, is not unethical judicial conduct in most cases; it simply reflects the fallibility of judges, and the Commission was not established to punish such mistakes. Correcting errors is the role of the appellate courts, not the Commission. Disappointed litigants are not allowed to circumvent the appellate process by filing a complaint with the Commission as a substitute for appeal.

Finally, the power of the Commission is limited to protect the independence of the judiciary: a judge must feel free to make a decision that may prove to be unpopular with the public or cause the losing party to become hostile without fearing that he or she will be disciplined by the Commission.

E. LEGAL ERROR OR JUDICIAL MISCONDUCT?

[This Section is adapted from "How Judicial Conduct Commissions Work," by Cindy Gray, *American Judicature Society* (1999)]

Although review of a judge's decision is left to the appellate court in most cases, occasionally, we may review a judge's actions to determine if the decision or exercise of discretion (such as determining sentence or bail) was motivated by an improper motive (such as bias or revenge), the legal error was egregious, or there was a pattern or practice of legal error.

To determine whether a decision was made in bad faith, in other words, committed for any purpose other than the faithful performance of judicial duties, the Commission will ask:

- Was the decision based on a demonstrated bias or prejudice?
- Was the purpose of the action to teach someone a lesson or send someone a message extraneous to the enforcement of the law?

- Did the judge display intemperate conduct?
- Did the judge's rulings evidence a consistent pattern of abuse of lawyers and/or others appearing before the judge?
- Did the judge have a conflict of interest?
- Did the judge abuse the judicial power?
- Did the judge abandon his or her role as a neutral and detached magistrate?
- Was there fraud, dishonesty, or willful misrepresentation?
- Did the judge have a corrupt motive?

To determine whether a legal error or abuse of discretion was egregious enough to constitute misconduct, the Commission will ask:

- Was the decision contrary to clear and determined law about which there is no confusion or unsettled question?
- Did the judge flagrantly disregard important procedural requirements?
- Did the judge deny fundamental rights, for example, a criminal defendant's constitutional right to counsel?
- Were the parties denied a full and fair hearing?
- Did the judge abdicate the duty to exercise judgment?
- Did the judge demonstrate a lack of understanding of the law?
- Did the judge demonstrate an unwillingness to apply the law?

To illustrate:

Ordinarily, a complaint about a judge's refusal to release a defendant on bail or about the amount of bail set would be dismissed by the Commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct would include situations:

- When a judge refused to release a defendant on bail because the judge had been required to get out of bed to conduct the arraignment.

Ordinarily, a complaint about a judge's sentence would be dismissed by the Commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct has been found:

- When a judge imposed a higher than usual fines for non-residents of the county.

Ordinarily, a complaint about a judge's issuance of a warrant would be dismissed by the Commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct has been found:

- When a judge issued a warrant for the judge's son (a police officer) who sought the warrant from his mother after an alleged altercation with a defendant.
- When a judge issued a warrant and before it had been served, received an *ex parte* call about the circumstances of the altercation from a lawyer representing the defendant. After speaking with the attorney *ex parte*, the judge called the sheriff and recalled warrant.
- When a judge pre-signed warrants and permitted law enforcement officers to complete the warrants, and execute them, in the absence of the judge's review.

Ordinarily, a complaint about contempt of court would be dismissed by the Commission as raising a question for appeal. However, sanctionable misconduct has been found:

- When a judge did not strictly adhere to proper procedures for holding someone in direct criminal contempt who was not even before the court, because of personal animosity.

Ordinarily, a judge's decisions are not subject to review by the Commission. However, sanctionable misconduct or incompetence has been found:

- When a judge made a number of rulings that were so contrary to established law as to demonstrate a lack of understanding of the law. Where the judge said to the defendant that it was not the state's burden to prove his guilt, it was the defendant's burden to prove his innocence.
- When a judge entered a judgment in a case without holding a trial or administering an oath to the witnesses, allowing the public to "testify" by standing up in the court, not allowing for cross-examination, and entering a judgment that exceeded the court jurisdictional authority, without any legal authority.
- When a judge illegally modified a sentence, out of term, and without notice to the State for a local attorney who contacted the judge *ex parte*.

F. DRUG AND ALCOHOL 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 and chargeable as a misdemeanor. When a judge is charged with DUI, public confidence in the judiciary is eroded. A judge is required by the Canons 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 misdemeanor such as DUI. In addition to any penalties imposed by the court for such violations, even if the alcohol-related charge is reduced down to a non-criminal violation or reckless driving, the judge will also be subject to discipline for the conduct, regardless of the ultimate disposition by the court.

The posture of disciplinary enforcement toward alcohol-related offenses has evolved over the years. Presently, for a first-time alcohol-related offense, where there are no other aggravating factors, the standard sanction imposed is a private letter of admonition with the contents of the admonition being confidential, but the fact of the imposition of the discipline being made public by a filing in the Supreme Court. This allows the public, and other judges to have confidence that the Commission impose discipline of a public nature.

The Commission believes that calling public attention to the seriousness of alcohol-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.

G. PHYSICAL AND MENTAL 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 - FY 2014

A brief summary of the activities of the Commission during FY2014 covering the period July 1, 2013 through June 30, 2014 follows.

A. SIGNIFICANT EVENTS

While all matters that come before the Commission are treated with care and given consideration, there were a number of noteworthy events during FY2014.

Commission Director, Mr. Jeffrey R. Davis tendered his resignation, effective July 1, 2014 to accept the position as Executive Director of the State Bar of Georgia.

Public Disciplinary Matters:

On March 4, 2013, Judge Andrea Peterman, Chief Magistrate Judge of Crawford County, was arrested by agents of the Georgia Bureau of Investigation on two felony charges. Prior to indictment, on March 8, 2013 Judge Peterman voluntarily agreed to be suspended from her judicial position pursuant to Rule 15 of the Judicial Qualifications Commission pending final disposition of disciplinary proceedings. On October 1, 2013,

Judge Peterman resigned her position as Chief Magistrate thus concluding the inquiry by the Commission.

On January 9, 2014, Judge Melvin Johnson, Judge of the Municipal Court of Lithonia, Georgia was removed from his judicial position for failure to obtain judicial training mandated by OCGA 6-32-11 (c).

B. COMPLAINT INFORMATION

The Commission receives a significant 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 FY2014

Number of Complaint Forms Received	412
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	314
Number of Complaints Docketed	60
Number of Complaints Investigated but not Docketed	38

- The numbers above reflect complaints received and processed in FY2014. This data does not reflect complaints that have not been processed or acted upon.

The data compiled by the Commission for FY2014 reflects a slight downward 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.

C. CLASSIFICATION OF COMPLAINTS

The complaints docketed in FY2014 are classified as follows:

Classification of Complaints

Litigants, Friends, Relatives	13
Inmates	0
Judges	2
Individual Attorneys	2
Non-Litigants/Witnesses/Other	4
Media/Public Information	12
Request for Advisory Opinion	9
Request for Rule Change	0
Self-Report	1
Commission Initiated	8
Failure to Complete Judicial Training	2
Court Personnel	2
Law Enforcement/Prosecutors	4

D. CLASSES OF JUDGES

The complaints docketed in FY2014 were made against the following judges:

Classes of Judges

Juvenile	2
Magistrate	9
Municipal/Recorder's	4
Probate	3
Senior	0
State	12
Superior	11
Judicial Candidate	1
Court of Appeals	1

E. CATEGORIES OF COMPLAINTS

The complaints docketed in FY2014 involved the following categories of complaints:

Categories of Complaints

Judicial Decision/Discretion	4
Mental Impairment/Incapacity	0
Bias/Prejudice/Partiality	8
Failure to Timely Dispose/Rule	3
Ex-Parte Communications	3
Conflict of Interest/Failure to Recuse	2
Denial of Fair Hearing	4
Demeanor/Injudicious Temperament	2
Mistreats Lawyers/Litigants	1
Personal Activity	6
Campaign Activity	3
Failure to Follow Law/Incompetence	11
Criminal Allegations/Charges	1
Request for Formal Opinion	11
Use of Judicial Position for Personal Gain	2
Failure to attend Mandatory Training	2
Misconduct off the Bench	0
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 communications about more than one subject or type of conduct.

F. DISPOSITION OF COMPLAINTS

The complaints docketed in FY2014 were resolved in the following manner:

Disposition of Complaints

Dismissed after Investigation	19
Concluded with Letter of Instruction	6
Concluded after Personal Conference	0
Decline to Render Advisory Opinion	2
Concluded with Private Reprimand with Rule 4(D) filing in Supreme Court	1
Formal Opinion Rendered	2
Judicial Resignation after filing of Formal Charges	1
Judicial Resignation after Investigation	7
Removal by Supreme Court of Georgia	0
Public Reprimand and Suspension	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 continue forward.

G. ADVISORY OPINIONS

On August 28, 2013, Opinion 239 was issued to address the public's right to access of courtrooms in Georgia courts. (A copy is attached as Exhibit 1).

On November 25, 2013, Opinion 240 was issued to address the propriety and parameters of Juvenile Court Judges, which periodically preside in Superior Court cases, designated to sit as a Superior Court Judge. (A copy is attached as Exhibit 2).

H. 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 FY2014, 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. In FY2014, the Commission responded to over 200 ethics inquiries from members of the judiciary.

I. THE COMMISSION BUDGET

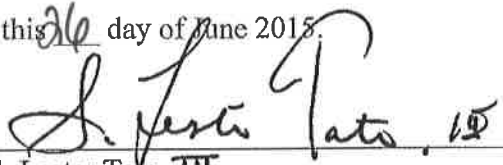
The total budget at the beginning of FY2014 was \$518,504.00. However, the Commission expended only 90.7% of the amount allocated by the State, or \$470,647.33. The Commission continues to be among the most frugal and active judicial conduct commissions in the nation. The Commission continues to process a large volume of complaints and complete investigations of pending matters in a timely and efficient manner. The Commission continues to operate effectively with a staff of two, the Director and his Executive Assistant. Although Georgia is among the lowest funded judicial conduct commissions in the nation, we continue to effectively prosecute judicial misconduct cases within the budget that has been allocated to us. We do not expend state resources unless such an expense is required to properly investigate and prosecute our cases. Among the costs associated with the handling of cases in FY2014, other than salaries and benefits of our two staff members, 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.

The Commission will continue to do its work with the budget appropriated by the State. Given the unpredictability of our caseloads and whether or not trials will be required, budgeting for future years is often difficult. However, we will continue to be mindful of both our constitutional mandate and the need to be fiscally responsible. We anticipate that the legislature will continue to provide adequate funding, as they have in previous years, to ensure that the Commission can continue to properly investigate and prosecute judicial misconduct.

III. CONCLUSION


The Commission continues to face challenges to the maintenance of an independent judiciary in the State of Georgia. The Commission is ever mindful of its need to serve the citizens of Georgia with greater efficiency in the years ahead. Given the significant volume 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 26 day of June 2015.



S. Lester Tate, III
Chair, Judicial Qualifications Commission

Current Members:


Mr. S. Lester Tate, Chair
Judge Benda S. Weaver, Vice-Chair
Ms. Linda Evans
Judge Patsy Y. Porter
Mr. James B. Franklin
Mr. Lester B. Johnson, III
Ms. Maggie Rickman