

Annual
Report

2013

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 body that investigates allegations of misconduct, incapacity, or impairment of judicial officers. The Commission regulates the approximately 1500 judges in the State of Georgia including city courts, recorders courts, juvenile courts, magistrate courts, state courts, superior courts, accountability courts, the Court of Appeals, and the Supreme Court of Georgia.

The Commission consists of seven members appointed to four-year staggered terms. The Georgia Supreme Court appoints two members from any court of record. Three attorney members are appointed by the State Bar of Georgia. Two members who are not members of the State Bar are appointed by the Governor.

A. MEMBERS OF THE COMMISSION AND STAFF

The members of the Commission during FY2013 were:

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

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

James B. Durham – an attorney practicing in Brunswick.

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

Linda Evans – a community volunteer in Atlanta.

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

Richard L. Hyde - a peace officer and investigator from Cobb County.

Staff:

Jeffrey R. Davis, Esq., Director

Tara Moon, Executive Assistant

B. THE COMPLAINT PROCESS

Any person may file a complaint with the Commission by obtaining a form from the Commission staff or from the Commission web site at *www.gajqc.com*. The complaint must be received by the Commission before any action may begin. The Commission may also initiate an investigation on its own upon receipt of information that a judge has engaged in misconduct.

Upon receipt of a complaint form, 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 Code 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 records and other 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.
- 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.
- 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 a resolution 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?**

Only misconduct which constitutes a violation of the Code of Judicial Conduct falls within the Commission's jurisdiction. The Code sets forth a number of ethical canons and rules intended to set basic standards to govern the conduct of, and provide guidance to, all judges.

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 which do not usually 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
- lawful 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 decisions 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, or 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 wilful 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 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 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
- 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 the 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 a question for appeal. However, sanctionable misconduct has been found:

- when a judge did not 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's jurisdictional 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 impairment in the performance of judicial duties. When a judge is charged with DUI, 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 serious traffic offense such as DUI. In addition to any penalties imposed by a court for such violations, even if the alcohol-related charge is reduced, 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 public filing in the Supreme Court.

The Commission believes that calling public attention to the seriousness of alcohol-related offenses will 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 proceeds with great sensitivity, 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 compulsory resignation or retirement.

II. REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION - FY 2013

A brief summary of the activities of the Commission during FY2013 covering the period July 1, 2012 through June 30, 2013 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 FY2013.

Public Disciplinary Matters:

On May 27, 2011, Judge Willie C. Weaver, Jr. of the Municipal Court of the City of Albany was arrested after a physical altercation with his wife. The judge received a reprimand which was made public.

On August 15, 2012, Judge Bryant Cochran, Chief Judge of the Magistrate Court of Murray County, resigned his judicial office which concluded our investigation into allegations

that he allowed the prestige of his office to advance his private interests and that he pre-signed arrest warrants for completion by law enforcement officers in his absence.

On October 1, 2012, Judge Robert W. Wommack, Jr., State Court of Washington County, received a reprimand in connection with his arrest and guilty plea to DUI and speeding charges.

On November 29, 2012, Russ Barnes resigned from his position as Sumter County State Court Judge concluding an investigation by the Commission relating to allegations that he engaged in conduct which brought disrepute onto his judicial office and undermined public confidence by mismanaging and/or misappropriating funds held in a fiduciary capacity.

On December 12, 2012, Shirley Wise, Associate Judge in the Probate Court of Camden County entered into a consent agreement with the Commission wherein she resigned her judicial position after pleading guilty to the felony charges of theft by taking, theft by deception and violation of her oath of office.

On March 11, 2012, following her arrest on March 4, 2013 for theft of fiduciary funds and violation of her oath of office, Chief Magistrate Judge of Crawford County Andrea M. Peterman voluntarily agreed to suspension from office pending final disposition of the proceedings before the Commission.

On March 6, 2013 a formal hearing was held with regard to formal charges filed against State Court Judge J. William Bass, Sr. of Grady County. After the presentation of evidence by Counsel for the Commission, the matter was concluded by agreement between the Commission and the judge. The agreement consisted of the judge being suspended, without pay, for a period of sixty days, and the judge receiving a public reprimand for his admitted violations. Judge Bass further agreed to probation with the Commission for the remainder of his current term and that he will not seek re-election at the conclusion of his term on December 31, 2014.

On May 21, 2013, Judge Bob Smith, Probate Court of Hart County, received a reprimand for engaging in inappropriate campaign activities on behalf of his son, who was a candidate for another judicial office in Hart County.

Confidential Disciplinary Matters:

The Commission also issued confidential discipline in three matters: two letters of admonition and one private reprimand. The conduct which resulted in a letter of admonition involved a part-time Municipal judge who issued a warrant in a case and then, after meeting with the defendant in his capacity as an attorney, he ordered the matter transferred to State Court and made an entry of appearance as counsel of record for the same defendant. The second letter of admonition involved a judicial candidate who was accused of causing signs of her opponent to be removed from private property during a contested judicial race. The Commission also issued a private reprimand involving a judge who improperly used his judicial status in an attempt to detain a citizen he believed was committing a traffic violation.

B. COMPLAINT INFORMATION

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

Judicial Complaints FY2013

Number of Complaints Filed	451
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	334
Number of Complaints Docketed	51
Number of Complaints Investigated but not Docketed	66

- The numbers above reflect complaints received and processed in FY2013. This data does not reflect complaints which have not been processed or acted upon.

Data compiled by the Commission for FY2013 reflects, for the first time since FY2008, a slight downward trend of complaints alleging judicial misconduct. Complaints are docketed when the complaint form alleges conduct that falls within the jurisdiction of the Commission and when a preliminary inquiry indicates that the complaint may have merit. Once docketed, the complaint will be considered by the Commission at a regularly scheduled meeting.

Since FY2008 there has been a steady increase in the number of complaints filed. We believe that recent increases in complaints 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.

C. CLASSIFICATION OF COMPLAINTS

The complaints docketed in FY2013 are classified as follows:

Classification of Complaints

Litigants, Friends, Relatives	14
Inmates	0
Judges	2
Individual Attorneys	9
Non-Litigants/Witnesses/Other	6
Media/Public Information	5
Request for Advisory Opinion	5
Request for Rule Change	0
Self-Report	2
Commission Initiated	1
Failure to Complete Judicial Training	0
Court Personnel	5
Law Enforcement/Prosecutors	2

D. CLASSES OF JUDGES

The complaints docketed in FY2013 were made against the following judges:

Classes of Judges

Juvenile	3
Magistrate	13
Municipal/Recorder's	12
Probate	7
Senior	0
State	8
Superior	7
Judicial Candidate	1
Administrative Law Judge	0

E. CATEGORIES OF COMPLAINTS

The complaints docketed in FY2013 involved the following categories of complaints:

Categories of Complaints

Judicial Decision/Discretion	3
Mental Impairment/Incapacity	4
Bias/Prejudice/Partiality	13
Failure to Timely Dispose/Rule	6
Ex-Parte Communications	9
Conflict of Interest/Failure to Recuse	14
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	4
Request for Formal Opinion	6
Use of Judicial Position for Personal Gain	9
Failure to attend Mandatory Training	2
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 communications about more than one subject or type of conduct.

F. DISPOSITION OF COMPLAINTS

The complaints docketed in FY2013 were resolved in the following manner:

Disposition of Complaints

Dismissed after Investigation	11
Concluded with Letter of Instruction	7
Concluded after Personal Conference	1
Decline to Render Advisory Opinion	3
Concluded with Private Reprimand with Rule 4(D) filing in Supreme Court	3
Letter of Admonition	2
Private Reprimand	1
Judicial Resignation after Investigation	3
Suspension Pending Formal Disciplinary Proceedings	1
Removal by Supreme Court of Georgia	0
Public Reprimand and Suspension	1
Formal Hearing	1
Formal Opinion Rendered	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. ADVISORY OPINIONS

The Commission issued Opinion 239 which underscores the need for judges to ensure public access to courtrooms and to close or restrict access courtrooms only when there is specific legal authority to do so. Opinion 239 is a proactive effort by the Commission to educate judges regarding recent precedent by the U.S. Supreme Court on public access to court proceedings.

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, we hope to reduce the complaints filed against judges and otherwise encourage ethical behavior by all members of the judiciary.

Commission members and staff actively participate in providing seminars to judges on the subject of professionalism and ethics. During FY2013, 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.

In FY2013, the Commission responded to over 350 ethics inquiries and requests for information from members of the judiciary, the bar, and the public.

I. THE COMMISSION BUDGET

The budget for FY2013 was \$512,215.00. The Commission returned \$100,000.00 (19.5%) of unexpended funds to the State. The Commission continues to process a large volume of complaints and complete investigations of pending matters in a timely and efficient manner, with a full time staff of two, being the Director and his Executive Assistant. We continue to effectively prosecute judicial misconduct cases within the budget which has been allocated to us. Among the costs associated with the handling of cases in FY2013, 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.

We will continue to do our work with the budget appropriated by the legislature. Given the unpredictability of our caseloads and whether or not trials will be required, budgeting for future years is often difficult to predict. However, we will continue to be mindful of both our constitutional mandate and the need to be fiscally responsible. We anticipate that the Commission can continue to properly investigate and prosecute allegations of judicial misconduct.

III. CONCLUSION

We continue to face challenges to the maintenance of an independent judiciary in the State of Georgia. 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 31st day of March, 2014.

/s/

Robert D. Ingram
Chair, Judicial Qualifications Commission

Current Members:

Robert D. Ingram, Chair
S. Lester Tate, Vice-Chair
Linda Evans
Richard L. Hyde
Benda S. Weaver
Patsy Y. Porter
James B. Franklin