

**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 2008-2009 (“FY09”). 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 exist 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 the ranks of judicial officers. 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 lawyers.

**A. MEMBERS OF THE COMMISSION**

The FY09 members of the Commission are:

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

The Honorable Bonnie Chessher Oliver – Vice-Chairman, and Judge, Superior Court of Northeastern Judicial Circuit.  
*(Judge Oliver's term ended on February 5, 2009)*

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. 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. *(Judge Russell's term began on February 5, 2009.)*

**B. THE COMMISSION STAFF**

Ms. Cheryl Fisher Custer serves as the Executive Director of the Commission. Her staff consists of an executive assistant, Ms. Tara Moon. The Commission occasionally uses the services of an investigator, Mr. Richard

Hyde, in the investigation of a complaint. 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. 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. The complaint must state facts that substantiate the alleged misconduct. Upon receipt of a complaint, the Executive 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:

- Close 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 require the judge who is the subject of the complaint to appear before the Commission and respond to questioning about 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:

- Close the complaint if the allegations are found to be without merit or if the Commission does not have jurisdiction over them.
- Admonish or reprimand the judge for any misconduct by use of any of the informal sanctions such as a 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, suspension, censure, 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 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 forced resignation or retirement of the judge.

## **II. REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION FOR FISCAL YEAR 2008-2009**

The fiscal year of the Commission runs from July 1, 2008 through June 30, 2009. 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 FY09.

Both Brooks E. Blitch, III, Chief Judge, Superior Court of the Alaphaha Judicial Circuit and Berrien L. Sutton, Judge of the Clinch County State Court and Judge of the Juvenile of the Alaphaha Judicial Circuit, submitted their resignations of their respective judicial positions and entered into Consent Orders with the Commission agreeing to never seek nor hold elective nor

appointed judicial office again. At the conclusion of FY09, both former Judge Blitch and former Judge Sutton still had criminal cases pending in federal court based on issues that were also the basis of the formal charges filed against them.

On August 29, 2008 Notice of Formal Proceedings were filed in the Supreme Court against both Carlton H. Vines, Judge of the State Court for Chattooga County and Misty L. May, Chief Magistrate for Glascock County.

Judge Vines resigned his position and entered into a Consent Agreement where he agreed to never seek nor hold elected or appointed judicial office in the future.

Judge May was defeated in a November 2008 election and she also entered into a Consent Agreement where she agreed to never seek nor hold elected or appointed judicial office in the future.

After review and an investigation into allegations of judicial misconduct, the Commission requested and accepted the retirement of Dwayne D. Forehand, Judge of the Probate Court of Dooly County on September 12, 2008. Judge Forehand entered into a Consent Agreement to never seek nor hold elected or appointed judicial office in the future.

After review and an investigation into allegations of judicial misconduct, the Commission requested and accepted the resignation of Judge Dana

Blackwell, Judge of the Magistrate Court Pickens County. Judge Blackwell had been suspended from her judicial position after she had been arrested for theft by taking for removing funds from the Magistrate Court. Judge Blackwell was suspended from her position with the court until her resignation on April 29, 2009. In addition to her resignation, Judge Blackwell entered into a Consent Agreement where she agreed to never seek nor hold elected or appointed judicial office in the future.

After a thorough review and investigation, on June 11, 2009, the Commission filed formal charges in the Supreme Court of Georgia against Kenneth Fowler, Judge, Probate Court of Twiggs County.

The Commission's new website ([www.gajqc.com](http://www.gajqc.com)) became active during FY09 and provides assistance to members of the public on how and where to file a complaint against a judge, as well as serving as a resource for members of the judiciary. The website contains the Code of Judicial Conduct, the Rules of the Judicial Qualifications Commission and all Opinions rendered by the Commission. The Code, Rules and Opinions are all searchable and can be downloaded for saving or printing.

## **B. COMPLAINT INFORMATION**

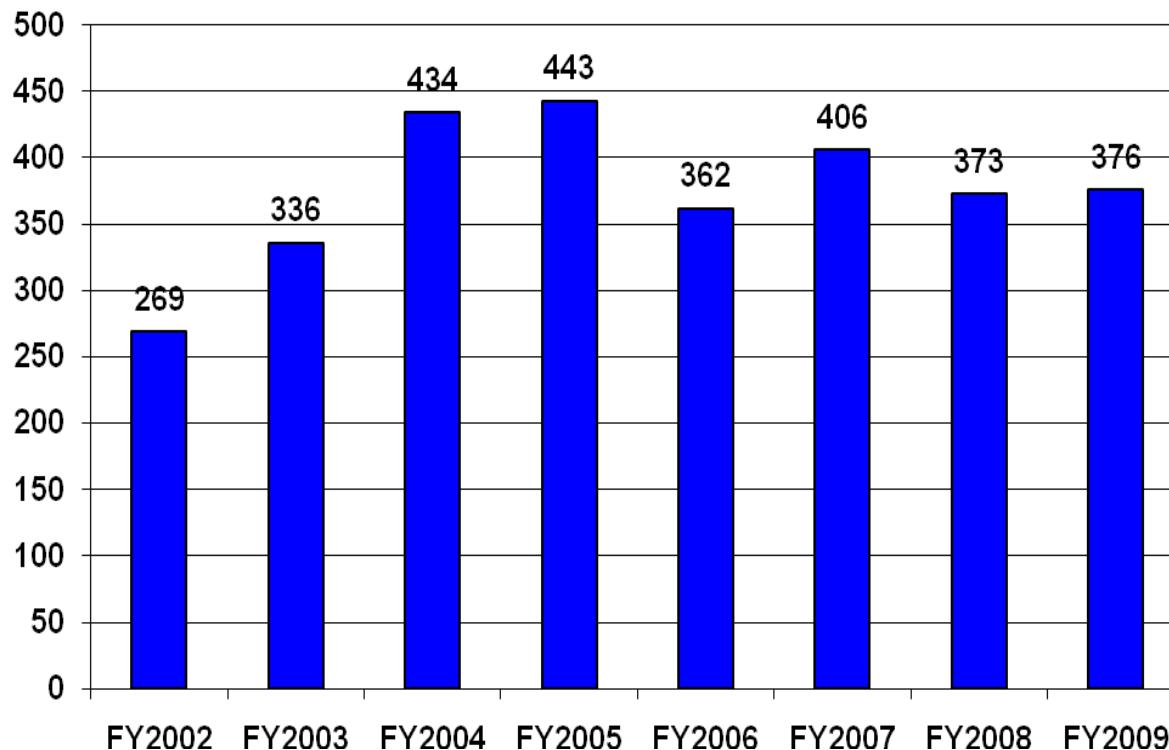
The Commission receives a large number of complaints each year from individuals that complain about a number of judges alleging various types of misconduct. Set out below are some key statistics about those complaints:

Number of Complaint Forms Requested	692
Number of Complaint Forms Received	376
Number of Complaints Rejected: No Merit or Lack of Jurisdiction	337
Number of Complaints Docketed	44
Number of Complaints Investigated but not Docketed	8

## **1. Total Complaints Filed**

The data compiled by the Commission for the past year reflects a general leveling off in the numbers of complaints filed with the Commission alleging judicial misconduct. The complaints filed during fiscal years 2002 through 2009 are graphically set forth in Figure 1 below:

### **Complaint Activity**

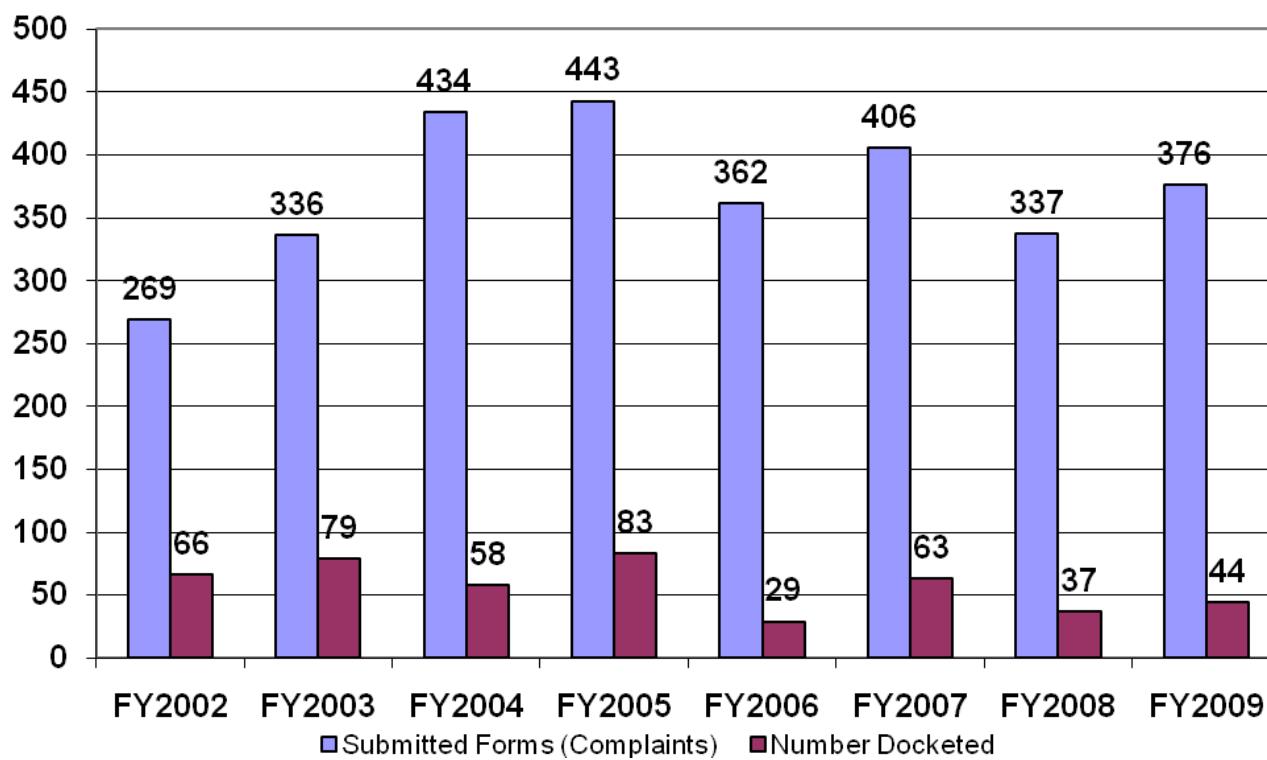


## **2. Total Complaints Docketed**

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 seven years:

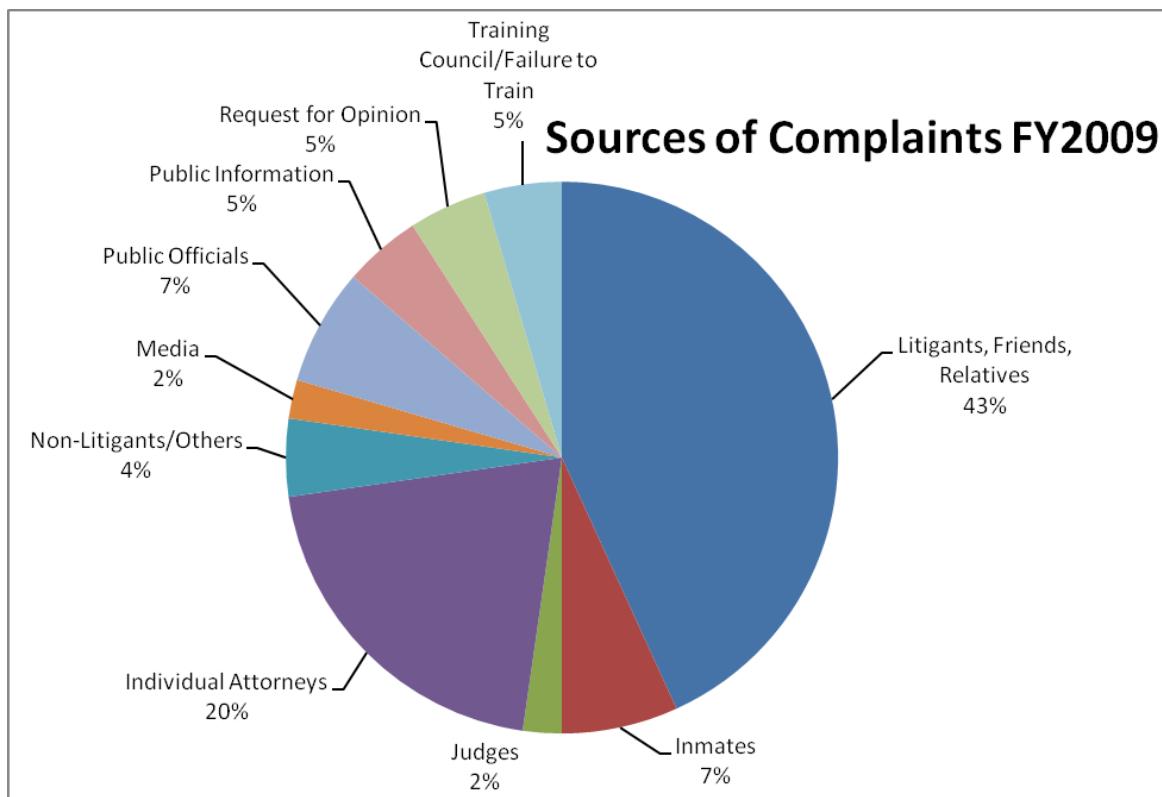
## **Docketed Complaint Trends**



## C. SOURCES OF COMPLAINTS

The complaints docketed in FY09 came from the following sources:

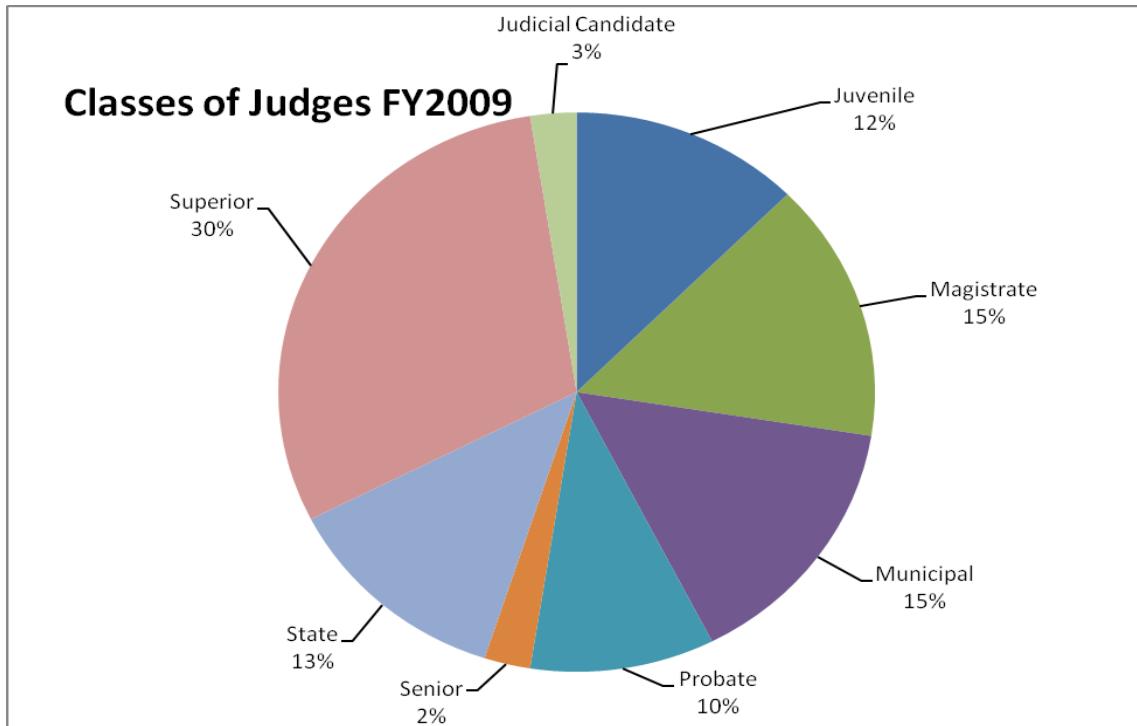
Litigants, Friends, Relatives	19
Inmates	3
Judges	1
Individual Attorneys	9
Non-Litigants/Others	2
Media	1
Public Officials	3
Public Information	2
Request for Opinion	2
Request for Rule Change	0
Training Council/ <i>Failure to Train</i>	2



## D. CLASSES OF JUDGES<sup>1</sup>

The complaints docketed in FY09 were made against the following classes of judges:

Juvenile	5
Recorders	0
Magistrate	6
Municipal	6
Probate	4
Senior	1
State	5
Superior	12
Judicial Candidate	1
Administrative Law Judge	0



<sup>1</sup> Numbers in table do not correspond with the number of docketed complaints since some dockets are filed by multiple complainants.

## E. CATEGORIES OF COMPLAINTS<sup>2</sup>

The complaints docketed in FY09 involved the following categories of complaints:

Judicial Decision/Discretion	2
Impairment	0
Bias/Prejudice/Partiality	5
Age/Racial/Sexual/Religious Discrimination	2
Failure to Timely Dispose	6
Ex-Parte Communications	9
Conflict of Interest	4
Denial of Fair Hearing	9
Demeanor / Injudicious Temperament	14
Mistreats Lawyers/Litigants	0
Probate/Estate Matter	0
Decision Matter	0
Personal Activity	1
Campaign Activity	0
Administrative Duties other than Delay	2
Failure to Follow Law/Incompetence	8
Judge charged with criminal activity	2
Request for Formal Opinion	2
Use of Judicial Position for Personal Gain	1
Failure to attend Mandatory Training	2
Misconduct off the Bench	0
Improper Public Comment	2

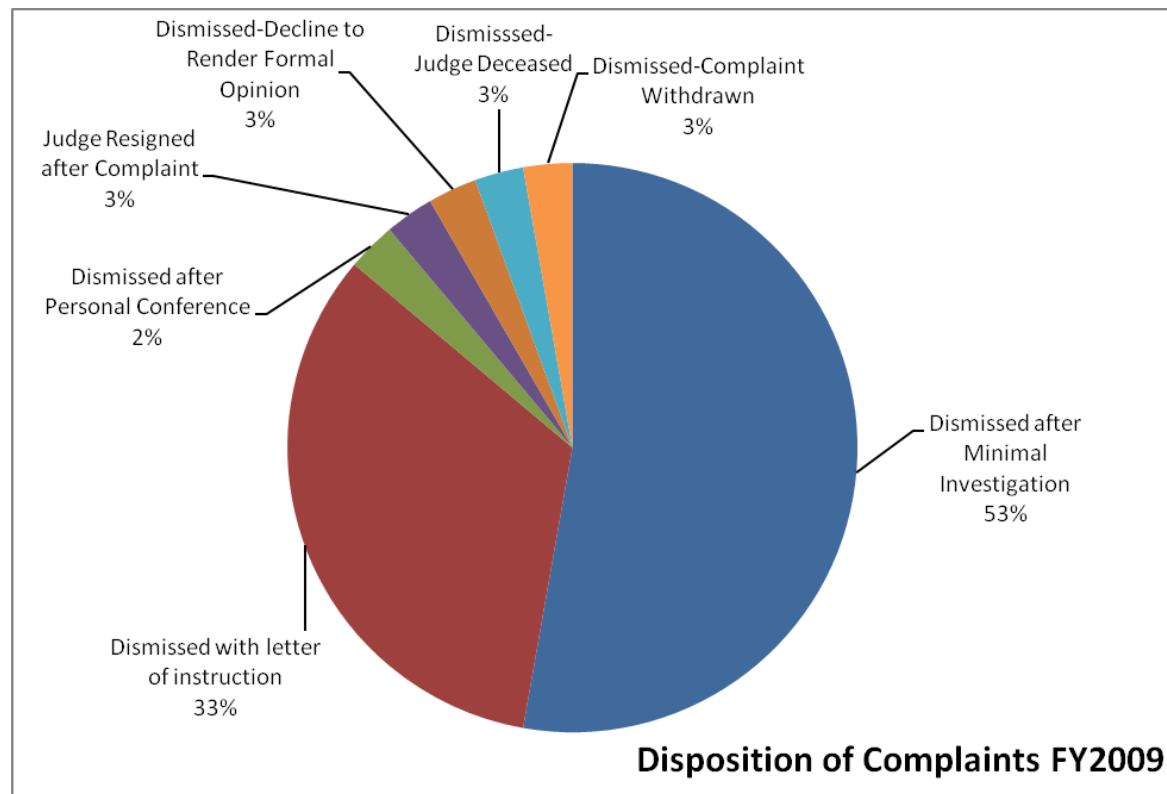
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<sup>2</sup> Numbers in table do not correspond with the number of docketed complaints or the number of judges because many resolutions involve communications about more than one subject or type of conduct.

## F. DISPOSITION OF COMPLAINTS<sup>3</sup>

Of the complaints considered by the Commission and resolved in FY09, they were resolved in the following manners:

Dismissed after Minimal Investigation	19
Dismissed with letter of instruction	12
Dismissed after Personal Conference	1
Judge Resigned after Complaint Docketed with Commission	1
Dismissed-Decline to Render Formal Opinion	1
Dismissed with Private Reprimand	0
Dismissed with Public Reprimand	0
Judge Removed by Supreme Court	0
Formal Opinion Rendered	0
Dismissed-Judge Deceased	1
Dismissed-Complaint Withdrawn	1



<sup>3</sup> 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 FY09 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, the Commission Executive 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 continues to serve 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 Executive Director served on the State Bar of Georgia's subcommittee on the judiciary.

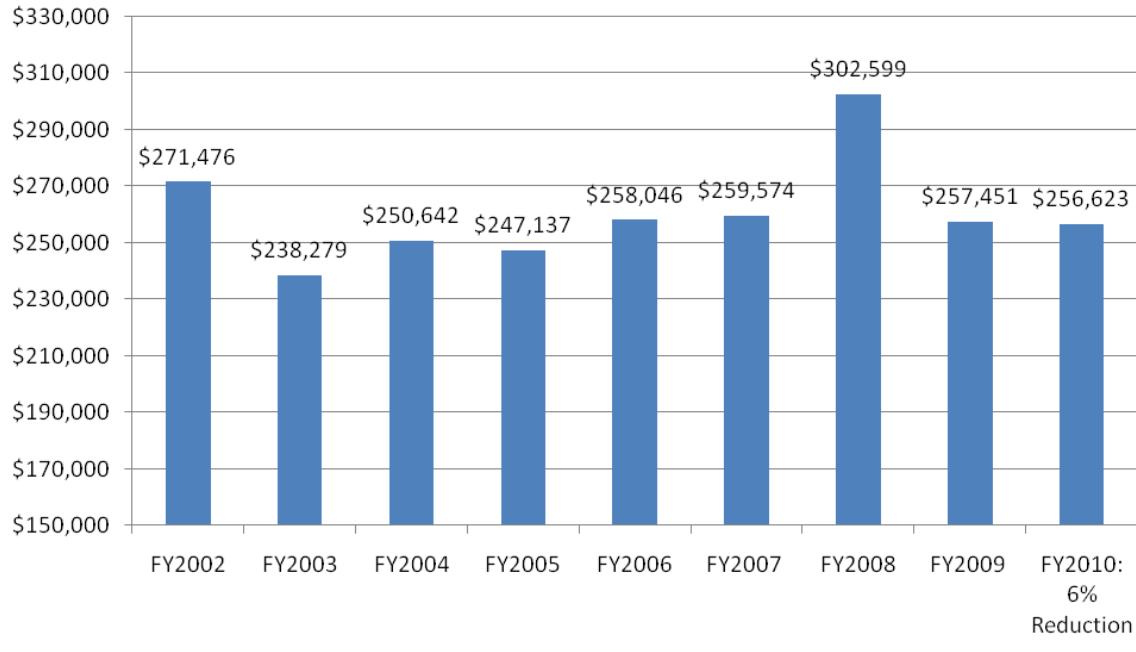
During any given week, the Commission staff responds to numerous requests for information and advice from both members of the judiciary, members of the bar, and members of the public about the Code of Judicial Conduct and the Rules of the Commission.

#### **H. THE COMMISSION BUDGET**

The total amount spent by the Commission for FY09 including salaries and benefits was \$257, 451. 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 investigate and prosecute ethical misconduct by judges with the anticipated mandatory reduction in budget amounts for FY2010.

## JQC-Funds Available Fiscal Year Actuals & FY2010 Budget?



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.

### **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 is more than prepared to meet these challenges and to ensure that the judiciary remains free and independent.

Respectfully submitted this 30th day of November, 2009.

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

Honorable John D. Allen, Vice-Chair  
Honorable Constance C. Russell  
James B. Durham, Esq.  
Robert P. Herriott, Sr.  
W. Jackson Winter, Jr.  
Robert D. Ingram, Esq.