

# 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 2007-2008 ("FY08"). In reviewing the statistics contained in this report, it is important to remember that each matter 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 current FY08 members of the Commission are:

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

The Honorable Bonnie Chessher Oliver – Vice-Chairman, and Judge, Superior Court of Northeastern 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 John D. Allen – Judge, Superior Court of Chattahoochee Judicial Circuit.

**B. THE COMMISSION STAFF**

Ms. Cheryl Fisher Custer serves as the Executive Director of the Commission. Her staff consists of an executive assistant. The Commission occasionally uses the services of an investigator 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 finding 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 2007-2008**

The fiscal year of the Commission runs from July 1, 2007 through June 30, 2008. 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 FY08.

After a through investigation and review, the Commission filed formal charges in the Supreme Court of Georgia against Brooks E. Blitch, III, Chief Judge, Superior Court of the Alaphaha Judicial Circuit. The Notice of Formal Proceedings was filed on November 7, 2007 and amended on November 20, 2007. In a related, but separate, investigation and review, the Commission also filed, on November 14, 2007, formal charges in the Supreme Court against Berrien L. Sutton, Judge, State Court of Clinch County and Judge, Juvenile Court of the Alaphaha

Judicial Circuit. At the close of FY08 the formal charges against both Judge Blitch and Judge Sutton were still pending.

On October 9, 2007, Linda Peterson, Judge of the Magistrate Court of Clinch County, was suspended pursuant to Rule 15 of the Rules of the Judicial Qualifications Commission, as a result of her felony indictment by a federal grand jury for perjury and false statements. At the close of FY08 Judge Peterson's docket was still pending with the Commission.

The Commission also undertook during FY08 the challenge and cost of creating a new website for the Commission that will provide both the public, as well as members of the judiciary, with searchable access to the Code of Judicial Conduct, the Rules of the Judicial Qualifications Commission and all Opinions rendered by the Commission. The new website will be up and running during FY09.

## **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:

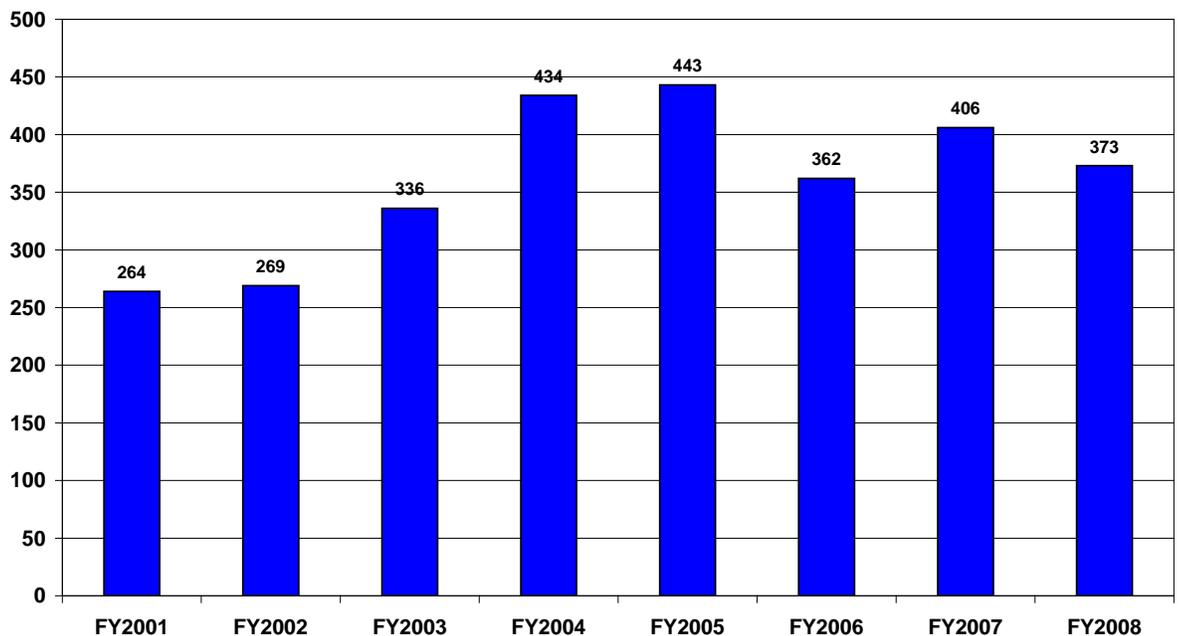
- Number of Complaints Forms Requested 685
- Number of Complaint Forms Received 373
- Number of Complaints Rejected 328

- Number of Complaints Docketed 37
- Number of Complaints Investigated but not Docketed 8

**1. Total Complaints Filed**

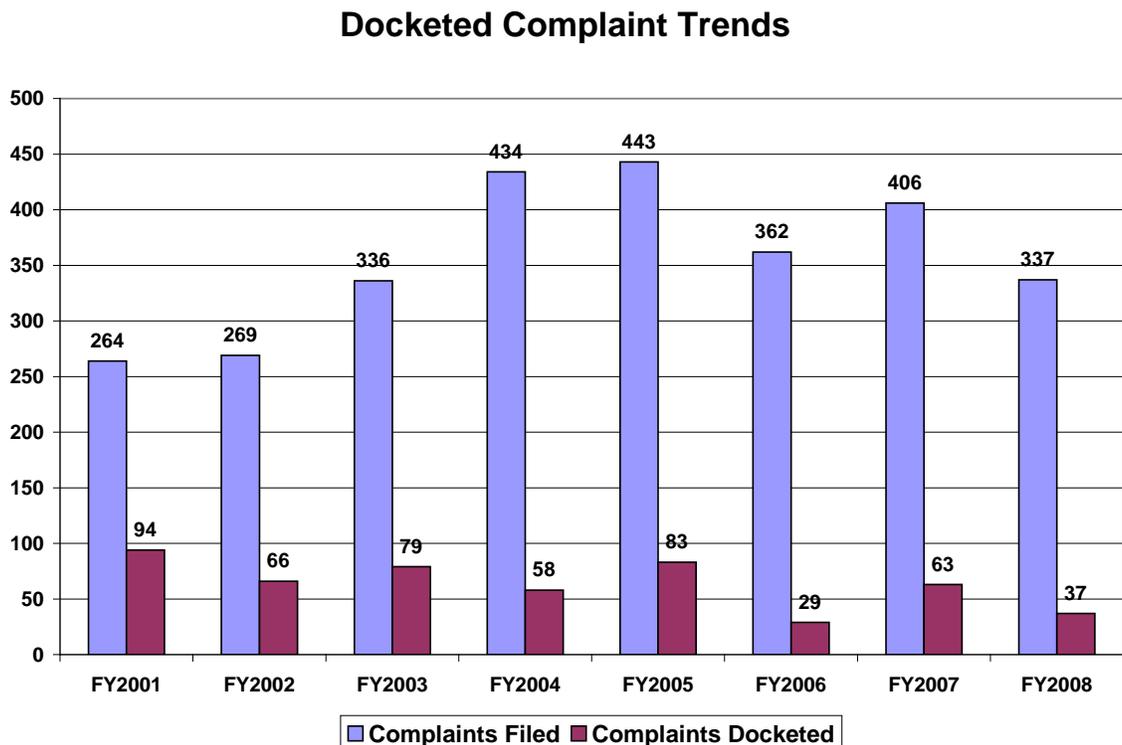
The data compiled by the Commission for the past year reflects a general leveling off in the numbers of complaints filed with the Commission alleging judicial misconduct. The complaints filed during fiscal years 2001 through 2008 are graphically set forth in Figure 1 below:

**Complaints Filed with the Commission**



## 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:

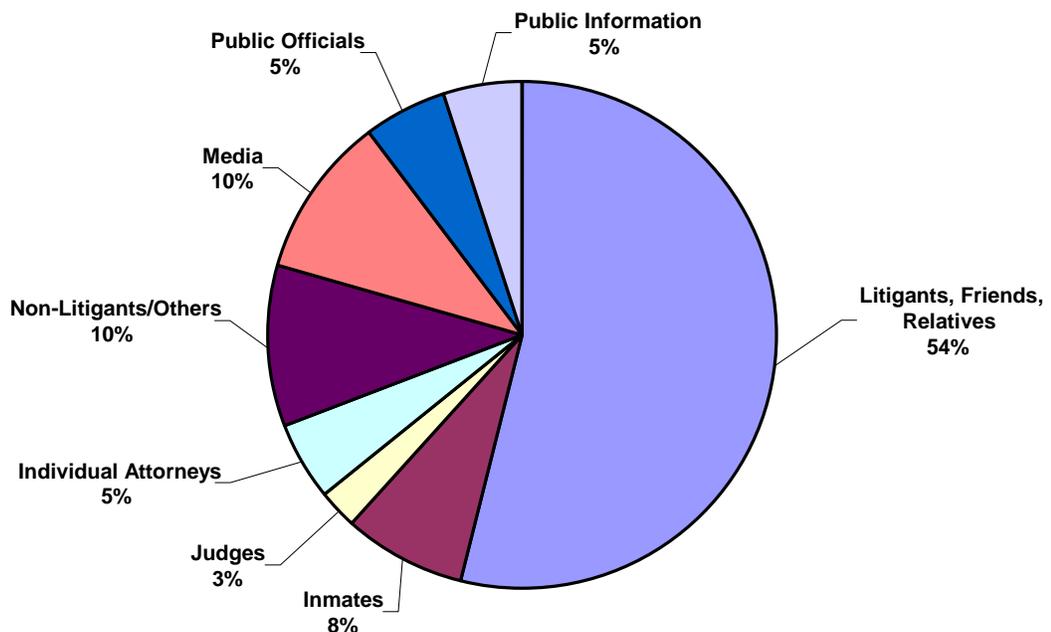


### C. SOURCES OF COMPLAINTS

The complaints docketed in FY08 came from the following sources:

Litigants, Friends, Relatives	21
Inmates	3
Judges	1
Individual Attorneys	2
Non-Litigants/Others	4
Media	4
Public Officials	2
Public Information	2
Request for Opinion	0
Request for Rule Change	0

**Sources of Complaints FY2008**

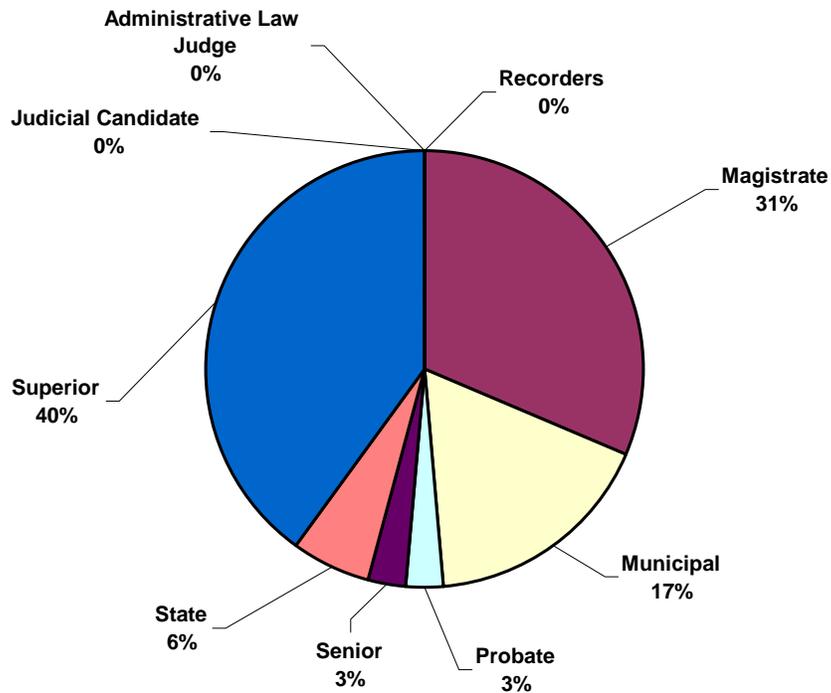


**D. CLASSES OF JUDGES<sup>1</sup>**

The complaints docketed in FY08 were made against the following classes of judges:

Juvenile	2
Recorders	0
Magistrate	11
Municipal	6
Probate	1
Senior	1
State	2
Superior	14
Judicial Candidate	0
Administrative Law Judge	0

**Classes of Judges FY2008**



<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 FY08 involved the following categories of complaints:

Judicial Decision/Discretion	0
Impairment	3
Bias/Prejudice/Partiality	2
Age/Racial/Sexual/Religious Discrimination	5
Failure to Timely Dispose	10
Ex-Parte Communications	7
Conflict of Interest	4
Denial of Fair Hearing	2
Demeanor / Injudicious Temperament	3
Mistreats Lawyers/Litigants	2
Probate/Estate Matter	0
Decision Matter	0
Personal Activity	0
Campaign Activity	0
Administrative Duties other than Delay	1
Failure to Follow Law/Incompetence	2
Judge charged with criminal activity	2
Request for Formal Opinion	0
Use of Judicial Position for Personal Gain	2
Failure to attend Mandatory Training	0
Misconduct off the Bench	5
Improper Public Comment	1

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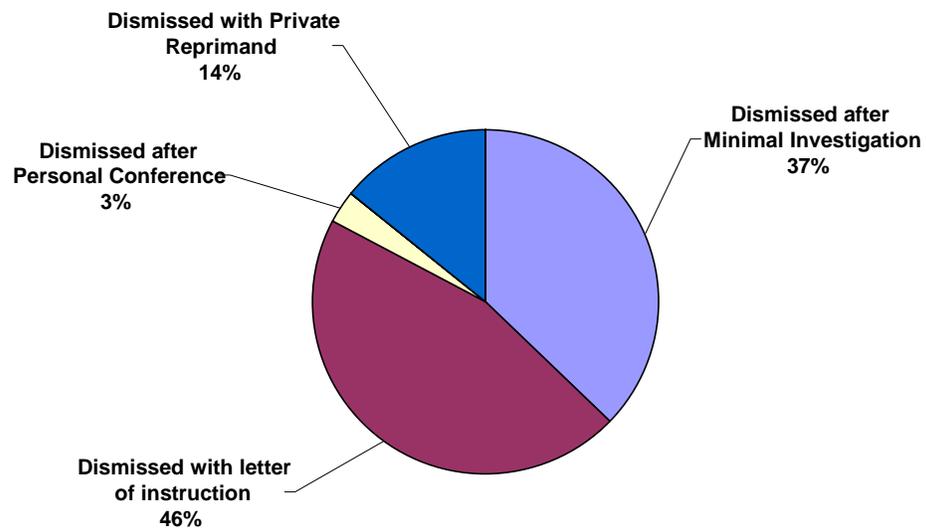
<sup>2</sup> Numbers in table do not correspond with the number of docketed complaints or the number of judges because many resolutions involve communications about more than one subject or type of conduct.

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

Of the complaints considered by the Commission and resolved in FY08, they were resolved in the following manners:

Dismissed after Minimal Investigation	13
Dismissed with letter of instruction	16
Dismissed after Personal Conference	1
Judge Resigned after Complaint Docketed with Commission	0
Dismissed-Decline to Render Formal Opinion	0
Dismissed with Private Reprimand	5
Dismissed with Public Reprimand	0
Judge Removed by Supreme Court	0
Formal Opinion Rendered	0

**Disposition of Complaints FY2008**



<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 FY08 the Commission participated in educational conferences for various classes of judges. In addition to judicial conferences, the Commission Executive Director, Ms. Custer, attended the annual national seminar of the Association of Judicial Disciplinary Counsel (AJDC). At that meeting, Ms. Custer was elected 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. In 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. This subcommittee of the State Bar of Georgia is co-chaired by Commission member Judge Bonnie Chessher Oliver.

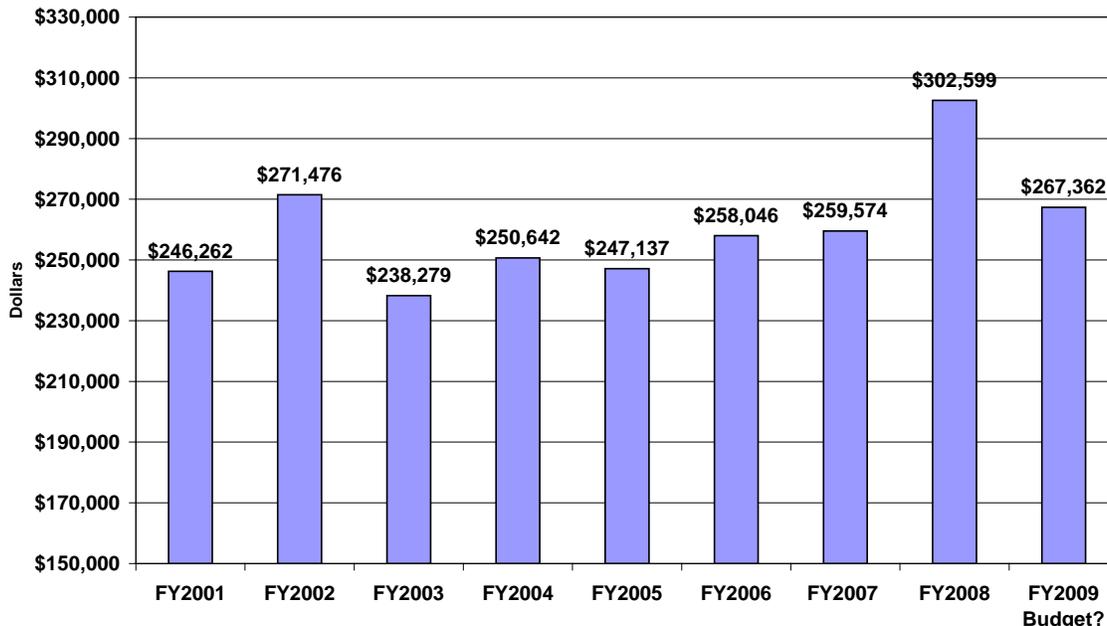
In addition, during any given week, the Commission staff responds to numerous requests for information and advice about the Code of Judicial Conduct and the Rules of the Commission.

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

The total amount spent by the Commission for FY08 including salaries and benefits was \$302,599. The Commission requested, and was granted, an increase in budgeted funds to cover anticipated litigation costs for two complex, pending disciplinary cases. 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 seven 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 FY2009.

**JQC-Funds Available  
Fiscal Year Actuals & FY2009 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 5<sup>th</sup> day of December, 2008.

  
Benjamin F. Easterlin III, Esq.  
Chair  
Judicial Qualifications Commission

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