

**ANNUAL REPORT OF  
THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF GEORGIA**

**FISCAL YEAR 2006**

# ANNUAL REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION STATE OF GEORGIA

8206 Hazelbrand Road, Suite C, Covington, Georgia 30014

Telephone: (770) 784-3189

Facsimile: (770) 784-2454

Web Site: [www.georgiacourts.org/agencies/jqc](http://www.georgiacourts.org/agencies/jqc)

## **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 2005-2006 ("FY06"). 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 1973 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 FY06 members of the Commission are:

The Hon. Steve C. Jones Chairman and Judge, Superior Court of Western Judicial Circuit.

Gary C. Christy – Vice Chairman, and an attorney practicing in Atlanta, Georgia.

The Hon. Bonnie Chessher Oliver – Judge, Superior Court of Northeastern Judicial Circuit.

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

Ben F. Easterlin – an attorney practicing in Atlanta, Georgia.

Robert P. Herriott, Sr. – a retired pilot for Delta Air Lines residing in Carrollton, Georgia.

W. Jackson Winter, Jr. – a businessman in Atlanta, Georgia.

Robert D. Ingram – an attorney practicing in Marietta, Georgia. (Mr. Ingram was appointed in September 2006.)

The Hon. John D. Allen – Judge, Superior Court of Chattahoochee Judicial Circuit. (Judge Allen was appointed in December 2006.)

**B. THE COMMISSION STAFF**

Ms. Cheryl Fisher Custer serves as the Executive Director of the Commission. Her staff consists of an administrative 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. 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 2005-2006**

The fiscal year of the Commission runs from July 1, 2005 through June 30, 2006. 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 significant events during FY06.

During this fiscal year the membership of the Commission did not change from FY05. However, on May 20, 2006 the Commission suffered a tragic blow with the death of our beloved Vice-Chair, Mr. Gary Christy. Mr. Christy, a native of New Jersey, began his law practice in Cordele in the 1970's where he was an assistant district attorney and later served as the elected District Attorney of the Cordele Circuit. Mr. Christy was a talented trial attorney who co-authored a handbook on medical torts in Georgia. Mr. Christy was appointed to serve on the Judicial Qualifications Commission by the State Bar of Georgia in 1999 and elected by his fellow members to serve as Vice-Chair. In addition to his varied and busy law practice, Mr. Christy

taught seminars to lawyers, doctors and judges. He was dedicated family man, tenacious trial lawyer and caring friend. The Commission members and staff will miss his presence and personality as they continue the work of the Commission.

There were also a number of significant disciplinary matters considered by the Commission during FY06. Principal among the complaints reviewed by the Commission was the matter of Kenneth O. Nix, Judge of the Superior Court of the Cobb Judicial Circuit. Judge Nix consented to a private reprimand with the fact, but not the content of the reprimand being made public as a sanction in Docket Number 05-60. A copy of the public statement to the Supreme Court in this docket is attached to this report as *Exhibit A*.

The Commission also considered the matter of Robert H. Cofer, II, Judge of the Magistrate Court of McDuffie County, Georgia. Initially, Judge Cofer voluntarily agreed to be temporarily suspended from all duties in his court pending an investigation of the complaint against him. A copy of the Consent Order is attached as *Exhibit B*. As the final resolution of this docket Judge Cofer consented to a public reprimand as the agreed upon sanction in the matter of Docket Number 05-71. A copy of the reprimand, which was administered in open court by Chief Superior Court Judge Roger Dunaway of the Toombs Judicial Circuit on January 24, 2006, is attached to this report as *Exhibit C*.

The Commission also investigated complaints filed against R. Rucker Smith, Chief Judge of the Southwestern Judicial Circuit. These complaints were docketed in Docket Numbers 06-01 and 06-02. After an initial investigation, the Commission petitioned the Supreme Court of Georgia for temporary injunctive relief under the Rules of the Judicial Qualifications Commission. A copy of the petition is attached as *Exhibit D*. The Supreme Court appointed Mr. H. Jerome Strickland as Special Master to handle the issues raised in the petition. The Commission and Judge Smith were ultimately able to reach interim relief without the need for a hearing and the Commission requested the Supreme Court to dismiss its petition. A copy of the request for dismissal and the final order of the Supreme Court are attached as *Exhibit E*.

**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 759
- Number of Complaint Forms Received 362
- Number of Complaints Rejected 314
- Number of Complaints Docketed 29

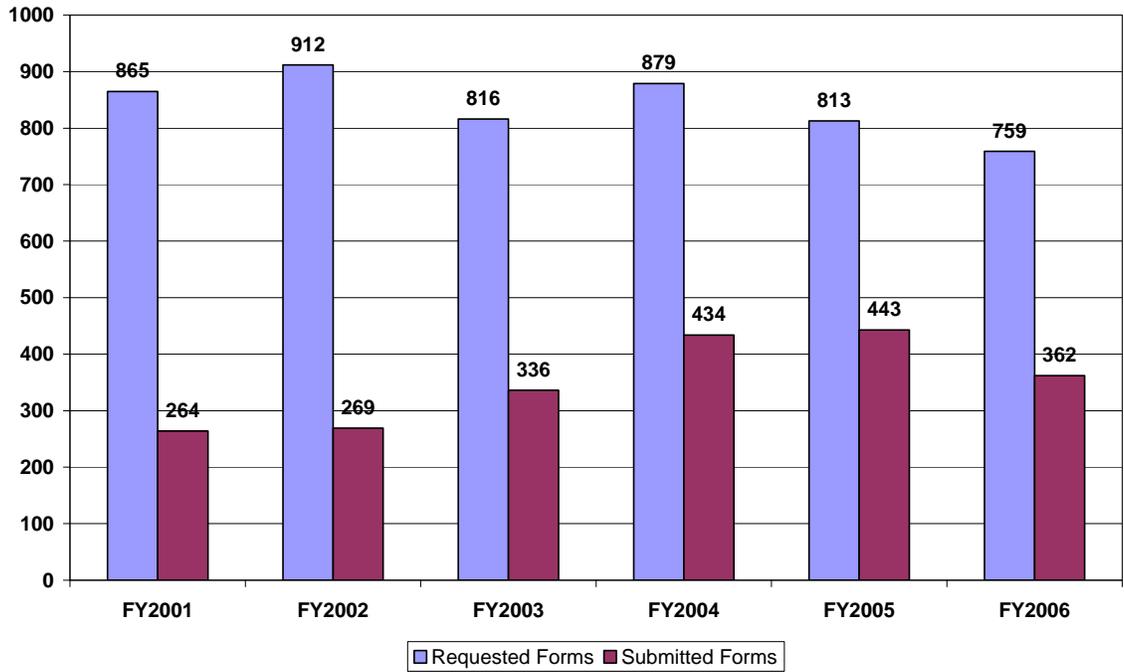
- Number of Complaints Investigated  
but not Docketed

17

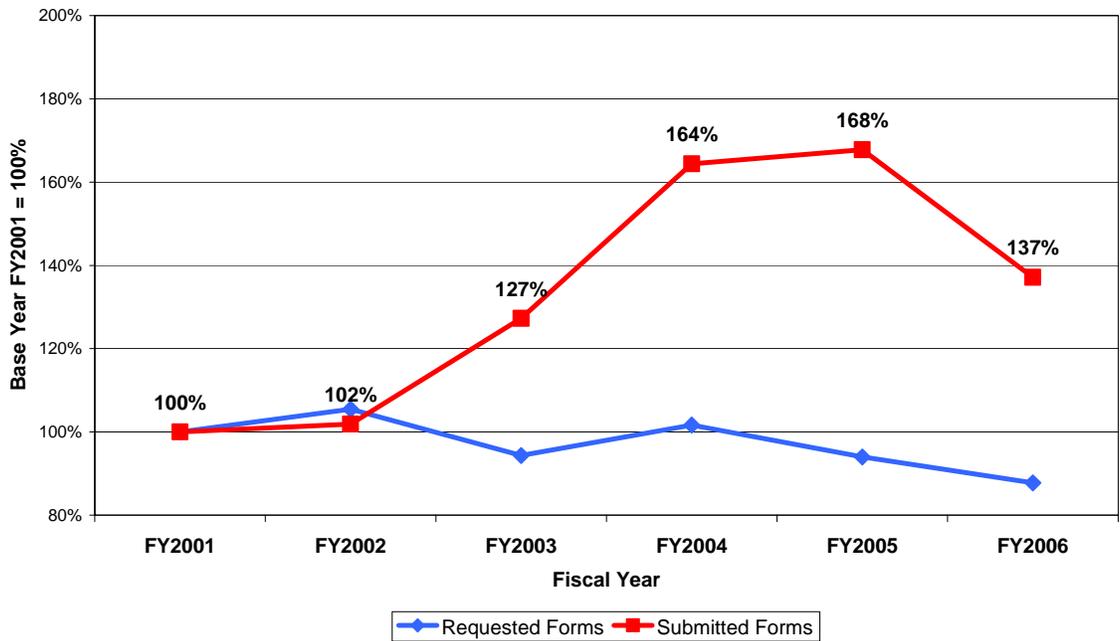
### **1. Total Complaint Forms Received**

The data compiled by the Commission for the past year reflects a slight decrease from the prior year and a slight reversal of the trend of over the past five years which showed a trend of steadily increasing levels of complaints. In FY01, the Commission received 264 complaints while in FY06, the Commission received 362 complaints, a 137% increase. While FY06 did show a decrease in the number of complaints returned to the JQC compared to FY05, the filings of complaints with the JQC still shows a pattern of increased activity since FY02. The complaints filed during fiscal years 2001 through 2005 are graphically set forth in Figures 1 and 2 below:

## Complaint Activity



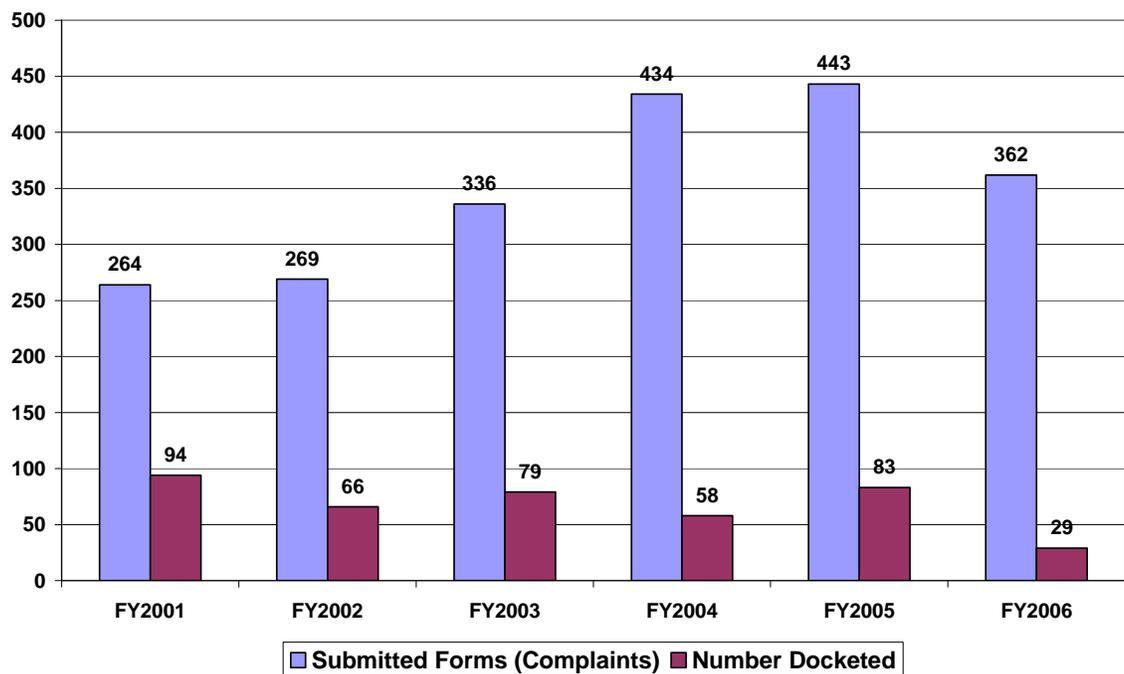
### Increase In Complaint Activity (FY2001 = Base Year = 100%)



## 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 3 graphically sets forth the level of complaints docketed over the past six years:

**Docketed Complaint Trends**



**C. SOURCES OF COMPLAINTS**

The complaints docketed in FY06 came from the following sources:

Litigants, Friends, Relatives	16
Judges	0
Individual Attorneys	4
Non-Litigants/Others	5
Media	4
Public Officials	0
Public Information	0
Request for Opinion	0
Request for Rule Change	0

**D. CLASSES OF JUDGES.**

The complaints docketed in FY06 were made against the following classes of judges:

Juvenile	2
Magistrate	11
Municipal	2
Probate	2
Senior	0
State	5
Superior	5
Judicial Candidate	0
Administrative Law Judge	0

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

The complaints docketed in FY06 involved the following categories of complaints:

Judicial Decision/Discretion	3
Impairment	0
Racial/Sexual Bias/Prejudice	1
Failure to Timely Dispose	2
Ex-Parte Communications	1
Conflict of Interest	5
Denial of Fair Hearing	3
Demeanor / Injudicious Temperament Mistreats Lawyers or Litigants	6
Probate/Estate Matter	0
Decision Matter	1
Personal Activity	2
Campaign Activity	2
Administrative Duties	4
Failure to Follow Law	1
Judge charged with criminal activity	4
Request for Formal Opinion	0
Use of Judicial Position for Personal Gain	2

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

Of the complaints considered by the Commission and resolved in FY06, they were resolved in the following manners:

Dismissed after Minimal Investigation	14
Dismissed with letter of instruction	8
Dismissed after Personal Conference	2
Judge Resigned after Complaint	1

<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.

<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.

Docketed with Commission	
Dismissed-Decline to Render Formal Opinion	0
Dismissed with Private Reprimand	3
Dismissed with Public Reprimand	1
Judge Removed by Supreme Court	0

**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 FY06 the Commission participated in educational conferences for various classes of judges. In addition to judicial conferences, the Commission Executive Director also attended a national seminar of the Association of Judicial Disciplinary Counsel. 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.

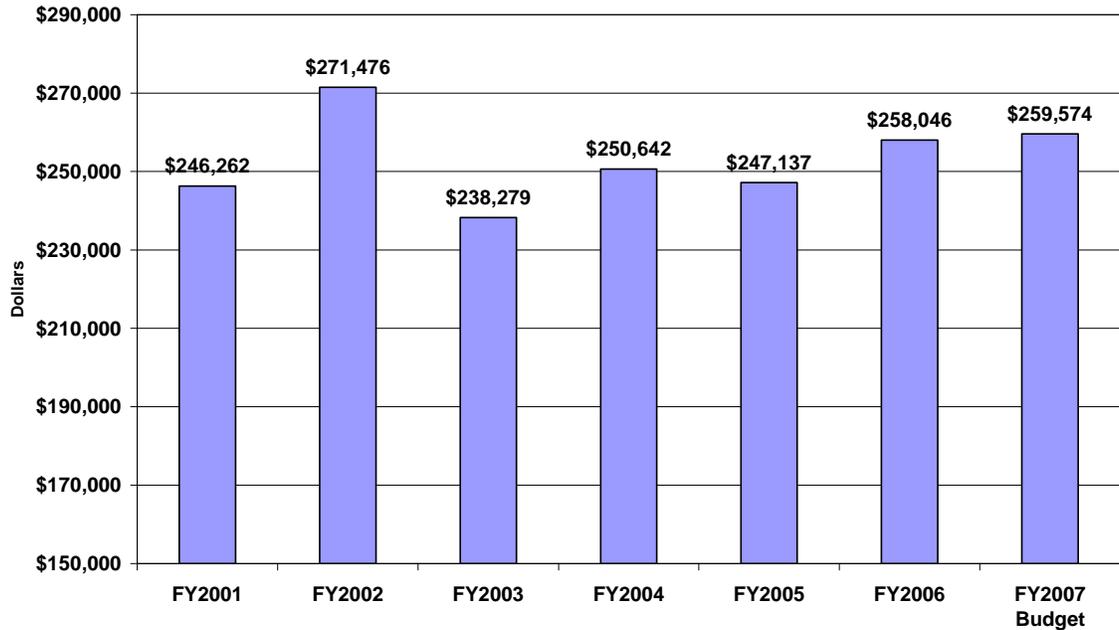
In addition, during any given week, the Commission staff responds to numerous requests for information and advice about the Code of Judicial Conduct and the Rules of the Commission.

Although the Commission may also render formal opinions on ethical questions under its rules, no such opinions were rendered in FY06.

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

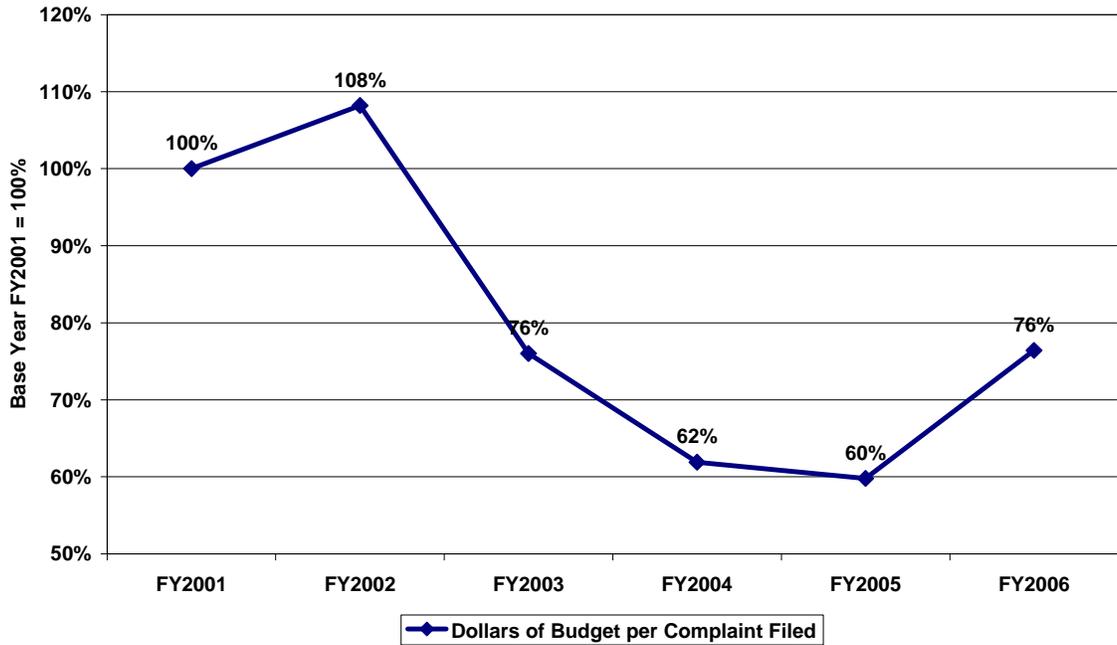
The total amount spent by the Commission for FY06 including salaries and benefits was \$258,046. Over the past six years, the amounts spent by the Commission in fulfilling its role have been relatively static (in nominal dollars) and they will remain so throughout the coming fiscal year: Currently, a total of \$259,574 is budgeted for the work of the Commission for FY07.

**JQC-Funds Available  
Fiscal Year Actuals & FY2007 Budget**



When one compares the budgeted amounts against the numbers of complaints received, reviewed and investigated by the Commission, the results demonstrate that the Commission has been extraordinarily thrifty in the stewardship of its budget and efficient in the management of complaints. As Figure 5 below demonstrates, when the total amount spent by the Commission is allocated across the total number of complaints received, the Commission spent 24% less per complaint received in FY06 than it spent in FY01 when adjusted for inflation.

**Dollars of Budget per Complaint Filed  
Indexed to Base Year FY2001 = 100%**



**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 8<sup>th</sup> day of December, 2006.

Steve C. Jones by esc

Hon. Steve C. Jones

Chair

Judicial Qualifications Commission

Ben F. Easterlin, Esq.

Hon. Bonnie Chessher Oliver

James B. Durham, Esq.

Robert D. Ingram, Esq.

Robert P. Herriott, Sr.

W. Jackson Winter, Jr.

# Exhibit

# A

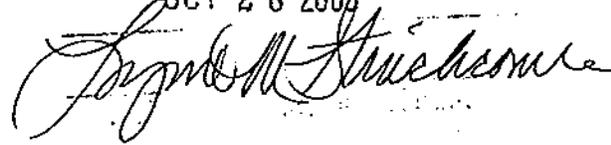
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF GEORGIA

In Re: An Inquiry Concerning )  
A Judge, *Kenneth O. Nix* )

JQC Docket Number: 05-60 )  
)  
)  
)  
)

OCT 28 2005



Report of Disposition Pursuant Rule 4(D) of the  
Rules of the Judicial Qualifications Commission

This matter originated before the Judicial Qualifications Commission (the Commission) with media reports of the arrest of Judge Kenneth O. Nix by the Lawrenceville, Georgia City Police Department for the offense of driving under the influence of alcohol on February 11, 2005. Judge Nix tendered his nolo contendere plea to the charge of driving under the influence in the Municipal Court of the City of Lawrenceville on March 15, 2005. He was sentenced to a monetary fine, twelve (12) months of non-reporting probation, one (1) day of house arrest, mandatory attendance at a risk reduction course, and sixty (60) hours of community service.

After the Commission noted the print and broadcast media reports of Judge Nix's arrest the Commission requested that Judge Nix provide any

comments concerning his arrest. In response the Commission received numerous written replies and documents from the judge and his counsel. The Commission then held a personal conference with Judge Nix, and his counsel, to discuss the facts of the arrest and a resolution of the pending ethical complaint.

Following the above events, during which Judge Nix complied with every request of the Commission, and prior to voting to hold a formal hearing, this matter was concluded pursuant to Rule 4(d) with an agreed upon disposition of Complaint number 05-60. The disposition consists of a private reprimand with the fact, but not the content of the reprimand being made public by the filing of this report with the Supreme Court of Georgia. Judge Nix also agreed to personally speak during continuing judicial education seminars to each and every class of Georgia judges, through the Institute of Judicial Education, detailing his experience with being arrested, his punishment by the court and the fact that he received a private reprimand from the Commission.

In agreeing to such a disposition, the Commission attempted to balance its responsibility to the public to insure an honorable and independent judiciary with its responsibility to deal fairly and humanely with a judge who has devoted his life to the law and public service, and in

doing so concluded that the agreed-upon disposition was fair and just to all concerned.

Thereafter letter by letter dated October 27, 2005 the private reprimand was duly administered, and this Report of Disposition is submitted for filing in the public records of the Supreme Court of Georgia.

This 27<sup>th</sup> day of October, 2005

JUDICIAL QUALIFICATIONS COMMISSION

By: \_\_\_\_\_

*Cheryl Fisher Custer*  
Cheryl Fisher Custer  
Executive Director

State Bar Number: 261695

# Exhibit B



and 2 of the Code of Judicial Conduct and that grounds exist for the JQC to seek emergency interim relief under Rule 25 of the Code of Judicial Conduct; and

Whereas, Judge Cofer has consented to this Order in lieu of a formal proceeding under Rule 25 of the Code of Judicial Conduct, without waiving any of his rights to defend himself in the underlying complaints into the allegations that Judge Cofer was cited on April 27, 2005 for driving under the influence;

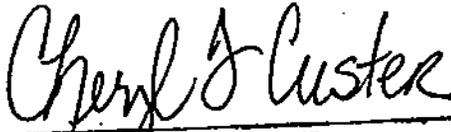
Now Therefore, it is hereby ordered as follows:

1. Judge Cofer shall be suspended from his position as Judge of the Magistrate Court of McDuffie County indefinitely, *with pay*, pending a full investigation and resolution by the JQC into the matters raised in the complaints.
2. Judge Cofer shall not preside in court, maintain office hours for the Magistrate Court of McDuffie County, nor decide any legal matters in the Magistrate Court of McDuffie County during the time of his suspension.

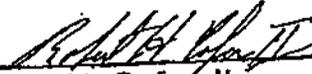
Judge Cofer has voluntarily complied with all requirements of this order since Monday, June 13, 2005.

This order shall be made public and shall take effect immediately.

This 16<sup>th</sup> day of June, 200~~5~~<sup>8</sup>



Cheryl F. Custer, Esq.  
Executive Director  
Judicial Qualifications Commission



Robert H. Cofer, II  
Judge  
Magistrate Court of McDuffie County

# Exhibit C

investigated the circumstances surrounding the arrest of Judge Cofer and on June 16, 2005 Judge Cofer consented to be suspended, with pay, from his position as Chief Magistrate pending continued investigation into this matter.

II.

**Final Disposition:** As part of a negotiated resolution of the complaint, Judge Cofer received a public reprimand administered in open court by Chief Judge Roger Dunaway. A copy of the transcript of the public reprimand is attached as Exhibit A.

This 30<sup>th</sup> day of March, 2006.

*Steve C. Jones by permission CSC*

Judge Steve C. Jones  
Chair

Judicial Qualifications Commission  
Georgia Bar Number: 403577

*Cheryl F. Custer*

Cheryl F. Custer, Esq.  
Executive Director

Judicial Qualifications Commission  
Georgia Bar Number: 261695

Judicial Qualifications Commission  
8206 Hazelbrand Road  
Suite C  
Covington, GA 30014

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1 PUBLIC REPRIMAND OF JUDGE ROBERT H. COFER

2 THE COURT: Good morning, ladies and gentlemen. I  
3 want to welcome you to this special session of Superior  
4 Court of McDuffie County. This week will be devoted to  
5 the disposition of misdemeanor cases. Yesterday we had a  
6 status conference on all the cases. We narrowed the  
7 calendar down to the cases that will require a jury's  
8 consideration today, and then later in the week we will be  
9 trying bench trials. Those are cases in which the  
10 defendants have waived their right to jury trial and  
11 requested that their case be tried by the Court sitting  
12 without a jury. I will tell you there are some 81 cases  
13 on that calendar, but the calendar for the jury  
14 consideration is not quite that lengthy.

15 However, before we proceed with the regular business  
16 of this term of Superior Court of McDuffie County, there  
17 are--frankly, there are two matters that we need to take  
18 up. One of them is quite serious. As Chief Judge of this  
19 Court, I have been instructed to administer a public  
20 reprimand on behalf of the Judicial Qualifications  
21 Commission.

22 So that you may have a better understanding of what  
23 is about to happen, the Constitution of the State of  
24 Georgia, Article 6, Section 7, Paragraph 6, provides in  
25 part that the power to discipline, remove, and cause

1 involuntary retirement of judges shall be vested in the  
2 Judicial Qualifications Commission. The members of this  
3 commission are appointed by the Supreme Court of the State  
4 of Georgia, the State Bar of Georgia, and Governor of the  
5 State of Georgia. The Judicial Qualifications Commission  
6 is the agency which polices the judiciary of this state.  
7 I am pleased to have with us today Ms. Cheryl Custer, who  
8 is the Executive Director of the Judicial Qualifications  
9 Commission, and also Mr. Jack Winter, who is a member of  
10 the Judicial Qualifications Commission.

11 Ms. Custer and Mr. Winter, we welcome you to the  
12 Superior Court of McDuffie County.

13 MS. CUSTER: Thank you, Judge Dunaway. Appreciate  
14 it.

15 THE COURT: Now, ladies and gentlemen, I have been,  
16 as I say, directed by the Judicial Qualifications  
17 Commission to extend a public reprimand to Judge Robert H.  
18 Cofer.

19 At this time, Judge Cofer, I would ask for you to  
20 appear--would you present yourself before the bench.

21 [Judge Cofer complies.]

22 THE COURT: Judge Cofer, pursuant to Rule 4(e) of the  
23 Judicial Qualifications Commission and the terms of an  
24 agreed upon disposition of the investigation by the  
25 Judicial Qualifications Commission, this Court has been

1 called upon to administer a public reprimand to you as  
2 Chief Magistrate Court Judge for this county for acts of  
3 misconduct which have been deemed violations of Canon 1  
4 and Canon 2 of the Code of Judicial Conduct.

5 Specifically, the acts of misconduct are described as  
6 follows: That on April the 27, 2005, you were arrested  
7 for the offense of driving under the influence of alcohol  
8 and failure to stop at a stop sign by the Georgia State  
9 Patrol. Your careless and erratic driving resulted in an  
10 accident in which an individual in another car received  
11 physical injuries. A state certified test of your breath  
12 revealed a blood alcohol level of 0.134. The legal limit  
13 for blood alcohol content while operating a motor vehicle  
14 in the state of Georgia is 0.08.

15 These improper actions, which have been acknowledged  
16 by you, are violations of the Canon 1 of the Code of  
17 Judicial Conduct which provides in part:

18 Judges Shall Uphold the Integrity and Independence of the  
19 Judiciary.

20 An independent and honorable judiciary is  
21 indispensable to justice in our society. Judges shall  
22 participate in establishing, maintaining, and enforcing  
23 high standards of conduct, and shall personally observe  
24 such standards of conduct so that the integrity and  
25 independence of the judiciary may be preserved.

1           Your actions are also a violation of Canon 2A of the  
2 Code of Judicial Conduct, which states in part:

3           Judges Shall Avoid Impropriety and the Appearance of  
4           Impropriety in All Their Activities.

5           Judges shall respect and comply with the law and  
6 shall act at all times in a manner that promotes public  
7 confidence in the integrity and impartiality of the  
8 judiciary. Public confidence in the judiciary is eroded  
9 by irresponsible or improper conduct of judges. Judges  
10 must avoid all impropriety and appearance of impropriety.  
11 Judges must expect to be the subject of constant public  
12 scrutiny. Judges must therefore accept restrictions on  
13 their conduct that might be viewed as burdensome by the  
14 ordinary citizen, and they should do so freely and  
15 willingly.

16           It is reasonable for the public to expect judges to  
17 comply with the criminal laws that they enforce upon  
18 others. Although historically the offense of driving  
19 under the influence was not widely perceived by the public  
20 as particularly reprehensible, that perception has changed  
21 greatly. The public is very conscious of the potentially  
22 devastating consequences of driving under the influence of  
23 alcohol, and our legislature and our judiciary have  
24 responded by increasing the consequences of this offense.  
25 Your act of driving under the influence of alcohol, which

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resulted in a collision with injuries to another individual, is not acceptable behavior from a judge.

The public expects and the Code of Judicial Conduct demands that judges be held to a high standard of ethical conduct both on and off the bench. Your actions can be perceived as self-indulgent, callous to the safety of yourself and others, and as highly irresponsible.

For your conduct, you are hereby publicly reprimanded. You are further cautioned that any repetition of such conduct can, and will likely, result in punishment of the severest possible nature.

You are instructed and directed to carefully review and fully comply with each and every provision of the Code of Judicial Conduct and to hereafter conduct yourself in accordance with such provisions of the Code of Judicial Conduct.

This concludes your public reprimand, and if you would now come forward and receive a stamped file copy of your reprimand.

[Judge Cofer complies.]

THE COURT: Okay. You are dismissed, Judge Cofer.

[Concludes at 9:38 a.m.]

//  
//  
//

CERTIFICATE OF COURT REPORTER

I, Cathy T. Pirtle, Certified Court Reporter in and for the State of Georgia, hereby certify that I reported the Public Reprimand of Judge Robert H. Cofer, as stated in the caption, on the 24th day of January, 2006; that the foregoing pages 3 through 7 constitute a true, complete, and accurate transcription of said proceeding; and that said proceeding was reported by the method of Stenomask.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially or otherwise interested in said cause.

In witness thereof, I have set my hand and seal this 31st day of January, 2006.



CATHY T. PIRTLE, CCR

CERTIFIED COURT REPORTER

GEORGIA CERTIFICATE # B-1763

# Exhibit D



2.

On July 31, 2005, Judge R. Rucker Smith was arrested by the Sumter County Sheriff's Department and charged with the offense of battery on the grounds that he did allegedly "cause substantial visible bodily harm to Rachel Oliver by grabbing or pushing Ms. Oliver in the neck and chest area cause[ing] redness to said area." Judge Smith was processed at the Sumter County Jail and released on his own recognizance. Based on the media reports, and a formal complaint filed by Ms. Rachel Oliver, the JQC docketed complaints against Judge Smith and began to review these allegations of misconduct.

3.

The Solicitor General of the State Court of Sumter County, Mr. Howard S. McKelvey, Jr., recused himself from handling the investigation or prosecution of the charges against Judge Smith and requested that the Attorney General of Georgia appoint a special prosecutor to handle this matter. Georgia Attorney General Thurber Baker appointed Mr. Barry Morgan, the Solicitor General for Cobb County, GA, as special prosecutor for the investigation and possible prosecution of Judge Smith.

4.

On March 8, 2006 Solicitor General Morgan, acting as special prosecutor, filed a formal accusation in the State Court of Sumter County charging Judge R. Rucker Smith with 1) the offense of battery, a violation of O.C.G.A. §16-5-23.1, alleging that he did unlawfully and intentionally cause visible bodily harm to

Rachel Oliver, to wit: did push her to the ground and grab her throat; 2) the offense of simple battery, a violation of O.C.G.A. §16-5-23(a)(2), alleging that he did unlawfully and intentionally cause physical harm to the person of Rachel Oliver; 3) the offense of simple battery, a violation of O.C.G. A. §16-5-23(a)(1), alleging that he did unlawfully and intentionally make physical contact of an insulting and provoking nature with the person of Rachel Oliver.

5.

The JQC has reviewed the police reports, photos, statements from the alleged victim, the judge's response to the allegations of misconduct, and the formal accusation charging Judge R. Rucker Smith with battery and simple battery and has determined that, without making a determination of guilt or innocence, an appearance of impropriety and partiality is created by Judge Smith's continued service as a member of the Georgia judiciary while he is formally accused of a crime under the laws of our state. A real and apparent conflict of interest now exists that prohibits Judge Smith's continued service as a finder of fact and interpreter of the laws of this state. Judge Smith is presently charged with criminal offenses that are, as a matter of course, routinely heard by him in his capacity as Chief Judge of the Superior Court of the Southwestern Judicial Circuit.

6.

The JQC has determined that the temporary suspension, with pay, of R. Rucker Smith, Chief Judge of the Superior Court of the Southwestern Judicial Circuit, is warranted under the above facts in that his continued service, in the

face of the existing charges against him, would result in violations of Canon 1 ("Judges shall uphold the integrity and independence of the judiciary", Canon 2 ("Judges shall avoid impropriety and the appearance of impropriety in all their activities"), and Canon 3 ("Judges shall perform the duties of their office impartially and diligently") of the Code of Judicial Conduct. The JQC has further determined that the continued service of Judge Smith, in the face of such charges, is presently causing an erosion of public confidence in the independence and impartiality of the judiciary as well as the orderly administration of justice such that the provisions of Rule 25 of the Rules of the Judicial Qualifications Commission should be invoked.

WHEREFORE, the JQC respectfully prays that this Court:

- (a) assign a Special Master, according to Rule 25, to review this petition and to conduct a hearing at which time the JQC will show cause why the relief sought should be granted;
- (b) suspend Judge R. Rucker Smith from his position as Chief Judge of the Superior Court of the Southwestern Judicial Circuit, with pay, pending the final disposition of disciplinary proceedings against him;
- (c) grant such other and further relief as is just and proper.

This 28<sup>th</sup> day of March, 2006.

Steve C. Jones by cjc with permission

Steve C. Jones

Judge

Superior Court Western Judicial Circuit  
Chairman

Judicial Qualifications Commission

Georgia Bar Number: 403577

Cheryl F. Custer

Cheryl F. Custer, Esq.

Executive Director

Judicial Qualifications Commission

Georgia Bar Number: 261695

Judicial Qualifications Commission  
Suite C  
8206 Hazelbrand Road  
Covington, GA 30014

VERIFICATION

Pursuant to Rule 25 of the Rules of the Judicial Qualifications Commission, Steve C. Jones, Judge Superior Court, Western Judicial Circuit, Chairman, and Cheryl F. Custer, Director, hereby swear or affirm that the information contained in this petition is true and correct to the best of their knowledge, information, and belief.

Steve C. Jones by CFC with permission.

Steve C. Jones  
Judge  
Superior Court Western Judicial Circuit  
Chairman  
Judicial Qualifications Commission  
Georgia Bar Number: 403577

Cheryl F. Custer

Cheryl F. Custer, Esq.  
Executive Director  
Judicial Qualifications Commission  
Georgia Bar Number: 261695

Sworn to and subscribed  
Before me this 28 day of  
March, ~~2004~~ 2006

Jana Rogers Mon  
Notary

My commission expires:  
August 1, 2009

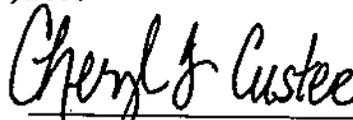
[Seal]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the above and foregoing petition by certified mail to *R. Rucker Smith*, Chief Judge of the Superior Court of the Western Judicial Circuit by and through his counsel at the following address:

Mr. Mark Brimberry  
Brimberry, Kaplan & Brimberry  
P.O. Box 1085  
Albany, GA 31702-1085

This 20<sup>th</sup> day of March, 2006



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Cheryl Fisher Custer  
Executive Director  
Judicial Qualifications Commission  
Georgia Bar Number: 261695

# Exhibit

# E



filed against him. The JQC and Judge Smith were ultimately able to agree upon interim relief pending the resolution of the criminal charges without the need for a hearing.

2.

On May 4, 2006, a six person jury in the State Court of Sumter County acquitted Judge R. Rucker Smith of all charges pending against him.

3.

Based on this acquittal, the JQC has determined that the requested emergency relief sought by the Commission is no longer needed and that there is presently no longer an erosion of public confidence in the independence and impartiality of the judiciary as well as the orderly administration of justice such that the provisions of Rule 25 of the Rules of the Judicial Qualifications Commission should be invoked.

WHEREFORE, the JQC respectfully prays that this Court:

- (a) allow the JQC to withdraw its petition for suspension and other relief against Judge R. Rucker Smith;
- (b) release the appointed Special Master, Mr. H. Jerome Strickland, from all duties or orders of this court which were required by Rule 25; and
- (c) provide such other and further relief as may be required.

This 22<sup>nd</sup> day of June, 2006.

Steve C. Jones by permission  
CJC

Steve C. Jones  
Judge  
Superior Court Western Judicial Circuit  
Chairman  
Judicial Qualifications Commission  
Georgia Bar Number: 403577

Cheryl Fisher Custer

Cheryl Fisher Custer  
Executive Director  
Judicial Qualifications Commission  
Georgia Bar Number: 261695

Judicial Qualifications Commission  
Suite C  
8206 Hazelbrand Road  
Covington, GA 30014

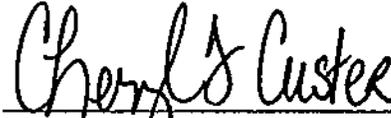
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the above and foregoing motion by facsimile and certified mail to the following addresses:

**Chief Judge R. Rucker Smith**  
c/o Mr. Mark Brimberry (Counsel for Judge Smith)  
Brimberry, Kaplan & Brimberry  
P.O. Box 1085  
Albany, GA 31702-1085

**Mr. H. Jerome Strickland**  
Special Master  
Jones, Cork & Miller  
435 Second Street, Suite 500  
Macon, GA 31208

This 22nd day of June, 2006



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Cheryl Fisher Custer  
Executive Director  
Judicial Qualifications Commission  
Georgia Bar Number: 261695



**SUPREME COURT OF GEORGIA**  
Case No. S06B1220

**RECEIVED**

JUL 17 2006

JUDICIAL  
QUALIFICATIONS  
COMMISSION

Atlanta July 13, 2006

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

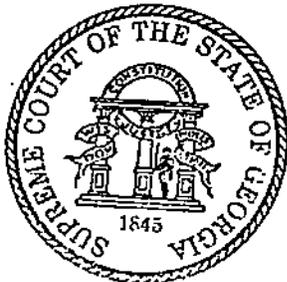
**INQUIRY CONCERNING JUDGE R. RUCKER SMITH**

The Court having considered the request for withdrawal of the petition for temporary injunctive relief brought the Judicial Qualifications Commission for the State of Georgia, the same is hereby granted.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.



 , Chief Deputy Clerk