
STATE OF ALABAMA

JUDICIAL INQUIRY COMMISSION
Annual Report

FY 2005



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COMMISSION MEMBERS

Hon. Randall L. Cole

Chairman

Circuit Judge

Fort Payne

Mr. Norman E. Waldrop, Jr.

First Vice Chairman

Attorney at Law

Mobile

Hon. P. Ben McLauchlin, Jr.

Second Vice Chairman

Circuit Judge

Ozark

Hon. George E. Carpenter

District Judge

Tuscumbia

Hon. Craig Pittman

Judge, Court of Civil Appeals

Montgomery

Mr. Lee E. Portis

Lay Member

Prichard

Mr. David Scott

Lay Member

Opelika

Dr. David Thrasher

Lay Member

Montgomery

Mr. J. Mark White

Attorney at Law

Birmingham

STAFF

Margaret S. Childers
Executive Director

Peggy R. Groves
Office Administrator

Chandra B. Brisbon
Secretary

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INTRODUCTION

The Alabama Constitution establishes the Judicial Inquiry Commission to consider, investigate and prosecute complaints of ethical misconduct and disability involving Alabama judges. Like the judicial conduct organizations in every other state, the Commission's purpose is to ensure observance of the high standards of conduct that have been set for judges, both on and off the bench.

The Commission prosecutes charges in the Court of the Judiciary when it finds reasonable basis to do so after investigation. The Commission also provides advisory opinions to judges as to whether contemplated conduct might constitute a violation of the Alabama Canons of Judicial Ethics.

The public interest requires a fair and reasonable process to address judicial misconduct and disability when it occurs, while leaving judges free to act independently and in good faith without concern that their decisions will subject them to discipline. Judges also need a source of information and advice when they have questions about the propriety of contemplated conduct. By providing a forum for citizens with conduct-related complaints, the Commission promotes public confidence in the integrity of the judiciary, which is essential to the rule of law. By providing advice to judges and seeking disciplinary action against those judges who transgress ethical constraints, the Commission seeks to assure compliance with the established standards of ethical judicial behavior. The Commission serves the public interest by investigating complaints, filing and prosecuting charges when it finds reasonable basis to do so, providing advice to judges, and safeguarding the reputations of judges from unfounded accusations.

The Alabama Constitution requires the proceedings of the Commission to be kept confidential, other than charges filed in the Court of the Judiciary. The Commission is authorized to report on its affairs outside of proceedings in the Court of the Judiciary only so long as the identity of any judge or other person involved in an inquiry before the Commission is not identified. This report covers the Commission's activities during Fiscal Year 2005 (October 1, 2004, through September 30, 2005). It also provides general information on the Commission's operations and cumulative statistical information. The information included in this report is intended to promote understanding of the operation of the Commission and of the matters entrusted to it.

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The Alabama Judicial Inquiry Commission

Background, Jurisdiction and Authority

Before 1972, the method for discipline and removal of state judges in Alabama was by impeachment. The Alabama Constitution provided for impeachment of justices of the supreme court for the same grounds and in the same manner as that applicable to impeachment of the governor and other statewide executive officers, *i.e.*, by legislative action, with the house of representatives preferring the charges and the senate sitting as the court of impeachment. Other judges could be removed from office by impeachment proceedings before the Alabama Supreme Court.

In January 1972, the Alabama Judicial Commission was created by constitutional amendment. The Alabama Judicial Commission was authorized to investigate allegations of wrongdoing by judges, hold hearings on the conduct and qualifications of judges, and make recommendations to the Alabama Supreme Court with regard to the retirement, censure, suspension or removal of judges. The grounds for Judicial Commission action were willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice that brought the judicial office into disrepute, and disability that seriously interfered with the performance of duties and was likely to become permanent.

The Judicial Inquiry Commission was established in December 1973 as part of Amendment 328 to the Constitution of Alabama of 1901, which revised the entire judicial department article of the State's constitution. Amendment 328 created a new judicial disciplinary system for the State under which the Commission was convened permanently as an independent agency within the judicial branch of government, with authority to receive and initiate complaints; to conduct investigations; and, where reasonable basis is found by a majority of its members, to file and prosecute complaints before the Court of the Judiciary charging violation of any canon of judicial ethics, misconduct in office, failure to perform duties, or physical or mental inability to perform duties. The Court of the Judiciary was created in Amendment 328

to hear complaints filed by the Commission. It is authorized to remove from office, suspend without pay, or censure a judge for violation of a canon of judicial ethics, misconduct in office, or failure to perform duties, and to suspend with or without pay or to retire a judge who is physically or mentally unable to perform his or her duties. A judge aggrieved by a decision of the Court of the Judiciary may appeal the decision to the Alabama Supreme Court.

In 1996, Amendment 581 to the Alabama Constitution increased the number of Commission members from seven to nine. In the Constitution of Alabama of 1901 (Recompiled), this amendment, which retained the original provisions as to the Commission's powers and responsibilities, is in Article VI, Section 156.

A separate constitutional amendment also adopted in 1996 provides that, in addition to the authority of the Court of the Judiciary, the measures for impeachment in Article VII, §173, also apply to supreme court justices and judges of the appellate courts, but that no such impeachment proceeding may be initiated or continue while the same matter or charge is pending before the Judicial Inquiry Commission or the Court of the Judiciary, a finding of a lack of probable cause or a termination without a finding of wrongdoing by either the Commission or the Court of the Judiciary is a complete defense to an impeachment proceeding, and a judge who has been tried before the Court of the Judiciary may not be impeached on the same subject matter.

The Commission has jurisdiction over all judges of all courts in the state judicial system. It does not have authority over court employees, referees, masters, or administrative law judges. During FY 2005, about 700 judges came within the jurisdiction of the Commission. This figure includes the justices of the Alabama Supreme Court, all appellate, circuit, district, probate, municipal and court of the judiciary judges, retired judges serving in active duty status, and pro tempore judges (persons appointed to serve as judges temporarily).

The Commission's authority is limited to matters of judicial misconduct and disability. The Commission does not act as an appellate court. It cannot reverse, vacate, or otherwise modify any judicial decision, nor may it interfere in ongoing litigation. It does not review either final judgments or allegations of legal error or abuse of judicial discretion during a court proceeding, absent evidence of bad faith. As examples, absent a plausible allegation of bad faith, the Commission does not investigate claims that a judge wrongfully determined the admissibility of evidence, imposed an inappropriate sentence, awarded custody to the wrong party, incorrectly set alimony, failed to protect a defendant's rights in a criminal proceeding, set an excessive bond, or believed perjured testimony. The Commission does not have any authority to order a judge to recuse himself or to take any other action in a case. It also does not give legal advice or assistance to litigants. Persons seeking legal advice or remedial action are advised to consult an attorney for assistance.

Judicial misconduct within the jurisdiction of the Judicial Inquiry Commission almost always involves conduct in conflict with the standards set forth in the Alabama

Canons of Judicial Ethics. See, "The Alabama Canons of Judicial Ethics," *below*. The canons govern a judge's conduct both on and off the bench. Examples of allegations that may be investigated by the Commission include *ex parte* conversations about a pending case, displays of rude or otherwise injudicious conduct during a proceeding, delay in performing judicial duties, improper influence such as the giving or receiving of bribes, public comment about a pending case, prohibited political activity, lewd or corrupt personal conduct, and misuse of public employees or property. The Commission may also investigate whether a judge has a mental or physical disability that has resulted in inability to perform judicial duties.

The Commission does not itself adjudicate complaints. It does not hold formal hearings, and it cannot impose discipline on judges. It has been analogized in function to a grand jury. The Alabama Supreme Court adopts the rules governing the procedures of the Commission, pursuant to Section 156(c) of Article VI of the state constitution (the judicial article). The Commission has subpoena power under Article VI, Section 156(d).

Rule 17 of the procedural rules for the Commission promulgated by the Supreme Court provides that the Commission may render advisory opinions to judges as to whether specified action proposed or by the judge might constitute a violation of the canons of judicial ethics. Any opinion that the conduct specified would not constitute a violation is admissible on behalf of the judge to whom it is directed in any disciplinary proceeding involving such conduct. Advisory opinions issued by the Commission are also considered by the courts of this state when relevant to issues before them, but courts are not bound by the Commission's opinions.

The Alabama Canons of Judicial Ethics

The judicial article of the Alabama Constitution adopted in 1973 required the Alabama Supreme Court to adopt rules of conduct and canons of ethics for the judges of all courts of the state. Ala. Const. of 1901 (Recompiled) art. VI, §147(c). The Supreme Court appointed an advisory committee of eminent judges, lawyers, law professors and lay persons to make recommendations for such rules of conduct and canons of ethics. In 1975, the Supreme Court adopted the Alabama Canons of Judicial Ethics. The foreword to the canons states that the spirit of the canons can be summed up by the following sentence in the preamble: "The supreme court of Alabama accordingly adopts the following canons, as a code for judges and a declaration of that which the people of the state of Alabama have a right to expect of them."

There have been a number of amendments to the Alabama Canons of Judicial Ethics since they were first adopted. The most recent revisions were made in August 2004. At that time, the Supreme Court approved official commentary to Canon 1, which requires judges to "uphold the integrity and independence of the judiciary." The Court also amended the first sentence of Canon 2C, adding "political"

to the list of types of relationships that a judge should not allow to influence judicial conduct or judgment. The word “knowingly” was added to the last clause of Canon 7B(1)(c), clarifying that a judge or judicial candidate may not “*knowingly* misrepresent his or her identity, qualification, present position, or other fact.” The Court deleted the second clause of forbidden conduct in Canon 7B(2), Campaign Communications; the Court had previously found this clause unconstitutional under the First Amendment. Finally, the Court revised Canon 7B(4)(a) in light of an 11th Circuit United States Court of Appeals decision which held a prohibition against a judicial candidate personally soliciting campaign contributions violates the First Amendment. The revised Canon 7B(4)(a) strongly discourages judicial candidates from personally soliciting campaign contributions, and highly recommends that they establish committees of responsible persons to solicit and accept such contributions.

Members

Under the original constitutional provision creating the Judicial Inquiry Commission, the Commission had seven members: an appellate justice or judge appointed by the Alabama Supreme Court, two circuit judges appointed by the circuit judges' association, two persons who were not lawyers appointed by the governor and two lawyers appointed by the Alabama state bar. In 1996, a constitutional amendment increased total membership to nine, adding a district court judge and a third non lawyer to the Commission. The same amendment added conditions that the appellate judge member may not be a justice on the Supreme Court, and that the governor's appointment of the three non-lawyer members is subject to senate confirmation. The lieutenant governor was given appointment power for the district judge member, subject to senate confirmation, until January 1, 2005, when the appointment authority over this position reverted to the governor, remaining subject to senate confirmation.

Members of the Commission serve four-year terms. A vacancy is filled for a full term in the same manner the original appointment was made. The Commission selects its own chair. Members who are not judges receive per diem compensation and actual expenses. Members who are judges receive only actual expenses. The per diem is set in §12-6-1, Code of Alabama 1975, at an amount equal to one half of one percent of the annual salary paid by the state to circuit judges.

The following individuals have served on the Commission since its inception:

Mr. I. Jud Scott, Jr. (1974-1985)
Mr. Basil Thompson (1974-1990)
*Hon. Robert P. Bradley (1974-1981)
*Oliver P. Brantley, Esq. (1974-1975)
Charles A. Poellnitz, Esq. (1974-1978)
Hon. Cecil Deason (1974-1977)

Hon. Clifford Delony (1974-1980)
Norborne C. Stone, Jr., Esq. (1975-1979)
Hon. Edward N. Scruggs (1976-1979)
Joe H. Calvin, Esq. (1978-1980)
*Hon. Kenneth F. Ingram (1979-1987)
*William B. Hairston, Jr., Esq. (1979-1999)
Hon. Thomas N. Younger (1980-1995)
Paul W. Brock, Esq. (1980-1982)
Hon. Richard L. Holmes (1981-1986)
Broox G. Holmes, Esq. (1982-1986)
Ms. Martha M. Scott (1985-1996)
J. Don Foster, Esq. (1986-1995)
*Hon. William M. Bowen, Jr. (1986-1995)
*Hon. Braxton L. Kittrell, Jr. (1987-1999)
Dr. Alan J. Loveman (1990-1994)
Mr. Samuel L. Jones (1994-2000)
*Hon. Randall L. Cole (1995-present)
Hon. H. Mark Kennedy (1995-1999)
Norman E. Waldrop, Jr., Esq. (1995-present)
Mr. Guice Slawson, Sr. (1996-1998)
Hon. James M. White (1997-2003)
Mr. David Scott (1997-present)
Hon. John B. Crawley (1999-2003)
Hon. P. Ben McLauchlin, Jr. (1999-present)
Dr. Greg Sullivan (1999-2004)
J. Mark White, Esq. (1999-present)
Mr. Lee E. Portis (2000-present)
Hon. Craig Pittman (2003-present)
Hon. George E. Carpenter (2003-present)
Dr. David Thrasher (2004-present)

* Indicates those who have served as chairman of the Commission.

The members of the Commission during FY 2005 are listed at the beginning of this report.

Confidentiality

The Alabama Constitution provides that all proceedings of the Commission shall be confidential, except the filing of a complaint with the Court of the Judiciary.

In October 2001, the Alabama Supreme Court adopted amended rules for the Commission that altered many aspects of the Commission's operations, including confidentiality. Under these rules, the following actions are permitted to be taken by

the Commission and are not deemed a violation of confidentiality:

1. When a judge has been charged or is being investigated, or in any proceeding where the subject matter is generally known to the public and there is a broad public interest, the Commission may, at the request of the judge, issue short announcements approved by the judge to confirm or deny the existence of charges before it, to clarify procedural aspects, to defend the right of the judge to a fair hearing, or to preserve public confidence in the administration of justice.
2. When accusations against a judge have been considered and the Commission has determined there is no basis for filing charges or for further proceedings before the Commission, it may, at the request of the judge, issue an explanatory statement approved by the judge.
3. The Commission may issue press releases and other public statements explaining the nature of its jurisdiction, the procedure for filing complaints, and limitations on its powers and authority, as well as reports on the conduct of the affairs of the Commission, so long as the releases and reports do not by name, position, address or otherwise disclose the identity of any judge or other person involved in an inquiry before the Commission.
4. When in its opinion the seriousness of a matter being investigated warrants, the Commission may inform the Chief Justice of the fact that a particular judge is under investigation.
5. The Commission may comply with obligations created under other Rules of Procedure concerning the provision of information to a judge who is the subject of a complaint filed with the Commission. (Those rules require the Commission to serve copies of all complaints and associated materials, as well as information obtained during a Commission investigation, upon the subject judge. See, Complaint Procedure, below.)

The October 2001 Rule of Procedure on confidentiality also provides that the Commission has "no power to restrict speech or communications by persons other than the members, staff, and agents of the commission itself." Rule 5B.

If charges are filed by the Commission in the Court of the Judiciary, the proceedings before the Court of the Judiciary are public, as is the ruling of that court. The charges and all subsequently filed documents are available for public inspection, and any hearing on the charges also is public.

Complaint Procedure

Any person may make a complaint about the conduct of a judge. Initial contacts with

the Commission are made by telephone, in writing, or by visiting the Commission's office. Under the rules promulgated by the Alabama Supreme Court in 2001, the Commission may not investigate a complaint unless it is verified. Thus, the Commission requires that complaints be in writing and properly verified. The Commission provides a complaint form to anyone wishing to file a complaint, along with a sheet of information about filing a complaint. If a person is unable to prepare a written complaint, staff provide assistance in reducing the complaint to written form. Complainants are requested to supply all pertinent facts and surrounding circumstances, and to describe the judge's alleged misconduct or disability as specifically as possible.

Many initial inquiries are made by persons desiring to file complaints about allegedly erroneous factual findings and/or legal rulings. Since judicial misconduct does not include such matters, commission staff screen complaint inquiries and refer persons seeking relief from judicial rulings to counsel for legal advice and assistance. Persons looking for help with an adverse legal ruling are advised that the filing of a complaint is not a substitute for appeal, nor can it lead to the alteration of a judge's decision. However, any person wishing to do so may file a complaint for consideration by the Commission.

A member of the Commission also may file a verified complaint for consideration by the Commission.

As required by the procedural rules adopted by the Supreme Court in 2001, the Commission serves a copy of every complaint upon the judge named in the complaint within ten days after the complaint is filed. All documents and other materials supporting or accompanying the complaint are served on the judge at the same time.

The executive director prepares a summary of each complaint for the Commission. This summary, the complaint, and documentation provided with the complaint are sent to the members of the Commission for study before the Commission meets to consider the matter. The Commission meets about once a month to consider new complaints, pending complaints under investigation, and requests for advisory opinions. Under the 2001 rules, a complaint would become null and void if the Commission failed to meet and vote on whether or not to investigate within forty-two days after the complaint was filed. Upon initial review, the Commission determines whether the matter alleged in a complaint involves a possible violation of any canon of judicial ethics and, if so, whether sufficient cause exists to proceed with an investigation.

Many dismissals occur at the initial review stage because the complaint is frivolous, obviously unfounded, an attempt by a disappointed litigant to secure review of a legal decision that is subject to appeal, based on a misunderstanding of judicial proceedings or the proper role of a judge, or otherwise either presents no potential ethical violation or involves a matter outside the jurisdiction of the Commission.

Complaints filed with vague or unclear allegations are usually dismissed, as are ones lacking sufficient information for the Commission to investigate. A complaint may also be dismissed by the Commission at this stage when, in the Commission's judgment, there is no likelihood of obtaining reliable and/or credible evidence to support the matter alleged, or the allegation involves a potential minor violation and a) it was an isolated incident not likely to recur, b) the judge has already taken corrective action, or c) the judge is no longer on the bench.

The rules promulgated at the beginning of fiscal year 2001 require an affirmative vote of a majority of all members of the Commission at a duly called meeting in order to investigate a complaint. If an investigation is approved, the Commission may request further information from the complainant, either to clarify the allegations made or to identify other sources of information. Witnesses may be interviewed and court transcripts and other records may be examined. The Commission exercises its subpoena power when necessary to obtain documents or witness statements.

In compliance with the rules adopted in October 2001, within ten days of instituting an investigation, the Commission serves on the judge a description of the conduct to be investigated and all materials and information possessed by the Commission tending to establish or to refute that the conduct alleged occurred or that the investigation is or is not appropriate. If the Commission decides not to investigate, the judge is promptly notified that the complaint has been dismissed.

If an investigation is instituted, the judge may be invited to attend a Commission meeting to discuss the complaint, or he or she may be asked to provide an oral or a written response. The rules promulgated in October 2001 provide that a judge may not be compelled to give evidence against himself or herself, but that a judge who chooses to testify is subject to cross examination. The judge may be represented by counsel if he or she desires.

Every four weeks after serving disclosure of the investigation, the Commission must serve on the judge copies of all materials obtained in the investigation that have not already been served upon him or her, along with a statement whether the Commission then intends to continue the investigation. The Commission also is required to serve a copy of any subpoena it issues on the judge, prior to or simultaneously with service on the person or entity being subpoenaed.

The Commission does not have any investigators on staff. The Attorney General may assign an investigator from his office to a matter under consideration by the Commission upon request by the Commission, in his discretion and subject to availability. Investigations also are conducted by Commission members, the executive director, an assistant attorney general assigned to the Commission and contract investigators. Depending on the complexity of the complaint, final disposition of a complaint that is investigated may take several months.

A judge may expect to be invited to meet with the Commission before a decision is

made to file charges in the Court of the Judiciary. The Commission would make a decision to charge before extending such an invitation only in the most unusual of circumstances.

Most complaints that are investigated are resolved either through a finding that no ethical violation occurred, or through a determination that reasonable basis does not otherwise exist to file charges in the Court of the Judiciary. The judge is notified promptly of such decisions. If appropriate, a judge may be advised that further like conduct may provide a reasonable basis for the filing of charges, or he or she may be given counseling or other assistance to clarify applicable rules of conduct which were not understood by the judge.

The Commission may defer continuation of an investigation under appropriate circumstances. Deferral may be warranted when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint will be resolved, or when criminal or other proceedings involving the judge are pending, so as to prevent the complaint from affecting court proceedings and/or reduce the potential for duplicative proceedings and inconsistent adjudications.

The Commission files a complaint in the Court of the Judiciary when a majority of its members decide that reasonable basis exists to charge a judge with a violation of a canon of judicial ethics, misconduct in office, failure to perform duties, or physical or mental inability to perform duties. The complainant and the judge are informed when charges are filed in the Court of the Judiciary. A complaint filed in the Court of the Judiciary begins a formal, public disciplinary proceeding. Under Article VI, §159 of the Alabama Constitution of 1901 (Recompiled), a judge is automatically disqualified from acting as a judge, without loss of salary, while a complaint is pending against the judge in the Court of the Judiciary.

The rules adopted by the Supreme Court in 2001 contain a dispute resolution procedure whereby, at any time during the pendency of a charge or investigation but more than ten days before the trial in the Court of the Judiciary, the judge is entitled to demand a hearing before the entire Commission to attempt to resolve the matter on terms to be presented by joint motion to the Court of the Judiciary. A majority of the Commission may bind it to any such resolution, which may be accepted or rejected by the Court of the Judiciary. The rules provide that all statements made by or for the judge in or for such a hearing are privileged and inadmissible as either substantive or impeachment evidence against the judge.

The Commission prosecutes the complaints it files before the Court of the Judiciary in accordance with the Rules of Procedure of the Court of the Judiciary. Under the Rules of Procedure of the Judicial Inquiry Commission adopted by the Alabama Supreme Court, it is the duty of the Attorney General to represent the Commission in the prosecution of such charges except where, in the opinion of the Commission, there exists or may arise a conflict of interest or the interests of justice would not

thereby be served. In such instances, the Commission may employ counsel to prosecute the charges.

Advisory Opinion Procedure

Under Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission, a judge may make a written request to the Commission for an opinion as to whether specified action contemplated or proposed to be taken by the judge might constitute a violation of the canons of judicial ethics. The Commission, in its discretion, may then render such written opinion as it deems appropriate.

Advisory opinions may only be issued at the request of a judge, and the Commission may only provide an opinion with respect to the requesting judge's own course of conduct. Requests for opinions are usually considered at the first meeting of the Commission after receipt of the request and, in most instances, the Commission is able to adopt an opinion in response to the request at that time. The Commission will attempt to provide an opinion before the next meeting if an emergency need for an opinion warrants such action.

Each advisory opinion is numbered, summarized in a synopsis adopted by the Commission, and indexed both by subject matter and by the canons discussed in the opinion. Copies of the opinions and/or the synopses of opinions are provided to the Administrative Office of Courts, various law libraries, the American Judicature Society's Center for Judicial Ethics,¹ and all judges of the state court system. Commission staff will supply copies of past advisory opinions to judges, attorneys and others upon request. Copies of all opinions also are added to the Commission's web page shortly after they are adopted; the page is managed by ALALINC, the State Law Library's website. The address to the search page for Commission opinions is www.alalinc.net/jic.

As an alternative to a formal opinion, judges sometimes request informal discussion of questions that arise about ethical conduct issues. Informal discussions of conduct issues are had confidentially with requesting judges. The executive director and Commission members are available to assist judges informally with questions concerning the canons of judicial ethics. Judges are encouraged to contact the Commission whenever they have a question about the application of a canon to a particular set of facts.

¹ The American Judicature Society's Center for Judicial Ethics is a national clearinghouse for information on judicial conduct and ethics. Judicial conduct organizations around the country submit information to the Center on disciplinary cases, advisory opinions, and other proceedings related to judicial conduct and ethics. The Center provides published materials on judicial ethics, indexed judicial discipline cases and advisory opinions from across the nation, research assistance and educational program materials. It also conducts a biennial National College on Judicial Conduct and Ethics.

Budget and Staff

Section 156(d) of Article VI of the Alabama Constitution (Recompiled) authorizes the Commission to appoint and direct its staff, and it requires the Legislature to "appropriate funds for the operation of the commission." As an independent state agency, the Commission prepares and submits its own budget request for consideration by the Legislature. The amount appropriated for the Commission in FY 2005 was \$339,773.

Funds appropriated for the Commission are used for staff salaries, employee benefits, per diem and actual travel expenses for Commission members, office rent, equipment and office repair and maintenance, postage, telephone and fax and internet service, supplies, equipment purchases, educational conferences, investigation and litigation costs, charges by the Personnel Department and Risk Management, other operational expenses, and membership in the American Judicature Society.

The following is an itemization of actual expenditures by the Commission in FY 2005:

Personnel Costs	\$202,209
Employee Benefits	46,740
In-State Travel	19,407
Out-of-State Travel	6,754
Repairs and Maintenance	176
Rentals and Leases	33,574
Utilities and Communication	11,372
Professional Services	3,151
Supplies, Materials and Operating Expenses	12,384
Other Equipment Purchases	3,973
Total	\$339,741

The small remainder of the funds appropriated for the Commission for FY 2005 reverted to the state general fund. The amount expended for out-of-state travel reflects expenses for attending the biennial National College on Judicial Conduct and Ethics.

The Commission had three full-time employees in FY 2005, an executive director, an office administrator, and a secretary (Administrative Support Assistant I).

The executive director is responsible for carrying out the Commission's directions and policies, and for proper administration of the Commission's office. The executive director also responds to inquiries, processes complaints and advisory opinion

requests, coordinates meetings of the Commission and other official commission activities, and directs the daily operation of the office. The executive director is the primary liaison between the Commission and the judiciary, the public, and the media. The Commission has historically selected its executive director to serve as the Commission's executive secretary and, as such, the executive director is ex-officio clerk of the Commission.

Margaret S. Childers has been appointed by the Commission to serve as its executive director since 1998. Ms. Childers previously was employed as an assistant attorney general, and she acted as one of the assistant attorneys general assigned to the Commission from 1994 through 1996. Since appointment of an attorney as executive director, the duties of the position were expanded to include performing legal research related to complaints; researching and drafting proposed advisory opinions; informally discussing conduct issues with inquiring judges; writing a quarterly newsletter to judges; developing and maintaining a web site for advisory opinions and information about the Commission; writing and maintaining a desk reference manual for judges; preparing other reference materials for judges; and making presentations at conferences on judicial conduct and ethics.

The duties of the office administrator, Peggy R. Groves, include serving as the Commission's property manager, maintaining the Commission's accounts, preparing and maintaining all payroll and personnel records, preparing purchase vouchers, purchasing and maintaining supplies and equipment, developing budget and operations plan recommendations, and providing other assistance needed for proper office operation. She also provides information to potential complainants, supplies copies of advisory opinions upon request, oversees preparation of the workbooks for Commission meetings, handles meeting logistics, maintains complaint and advisory opinion files and databases, and acts as executive secretary to the executive director.

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Commission Activities in FY 2005

Complaints

The Judicial Inquiry Commission received 171 verified complaints in fiscal year 2005. Twenty-six new complaint investigations were conducted or commenced. The other new complaints decided during the fiscal year were dismissed by the Commission upon an initial review that revealed no need for investigation. Eleven complaints were open at the close of the fiscal year; five were under investigation and six were pending initial review.

The foregoing statistics reflect only verified written complaints. They do not include the numerous unverified complaints and complaint inquiries made by telephone, letter or visit to the Commission's office. During FY 2005, staff received and handled at least 633 telephonic and 21 in-person complaints or complaint inquiries, as well as approximately 177 written complaints or complaint inquiries that were not followed by the filing of a verified complaint.

Complaints and Complaint Inquiries	
Unverified Complaints & Inquiries	831 *
Verified Complaints	171
Complaint Dispositions	176

Table 1. Inquiries and complaints during FY 2005.

*Does not include written inquiries followed by a verified complaint.

A single complaint may include allegations of more than one instance or type of misconduct. Of the 176 verified complaints disposed of during the 2005 fiscal year,

102 included matters outside the jurisdiction of the Commission, such as legal rulings.² Ninety-two complaints of misconduct presented no reasonable basis to charge the subject judge. Thirty-two allegations of misconduct were found to involve no ethical violation. Three complaints were resolved through writing to the judge, and one through meeting with the judge. Two complaints were dismissed due to insufficient evidence or factual allegations. One complaint was closed because the person named was no longer a judge when the complaint was filed, and one was closed when the judge left office while the complaint was pending.

Disposition of Complaints	
Category	Number
No Jurisdiction	102
No Reasonable Basis to Charge	92
No Ethical Violation	32
Wrote to Judge	3
Insufficient Evidence or Factual Allegations	2
Met with Judge	1
No Longer a Judge When Complaint Filed	1
Left Office While Complaint Pending	1

Table 2. Findings in complaint resolutions in FY 2005.

The Commission also addressed requests by complainants to reconsider the initial disposition of eight complaints. It denied reconsideration with respect to five of the complaints, reaffirmed its original disposition of two complaints, and found no jurisdiction and no reasonable basis to charge on reconsideration of the allegations in the remaining complaint.

As in prior years, the majority of complaints were filed by litigants in civil cases and defendants in criminal cases (68%). Others were received from prisoners (12%), relatives of litigants (9%), crime victims (2%), attorneys (1%), a group or association (1%), judges (1%) and other citizens (5%). A trial witness, a court employee and an election candidate each also filed a complaint.

² The Commission does not investigate complaints about judicial decisions absent a plausible allegation of bad faith (*i.e.*, malice, ill will, or improper motive). The Commission is not an appellate court and cannot reverse or remand court decisions; a complaint that merely alleges an erroneous legal ruling does not state a complaint within the jurisdiction of the Commission.

Source of Complaints	
Category	Number
Litigant	116
Prisoner	20
Relative of Litigant	15
Citizen	9
Victim	3
Attorney	2
Group or Association	2
Judge	2
Election Candidate	1
Trial Witness	1
Court Employee	1
TOTAL	172*

Table 3. Number of complaints filed in FY 2005 by category of complainant.

*One complaint has two complainants.

Because complaints often include more than one type of allegation, the statistical breakdown of allegations by subject matter, like the one by disposition category, exceeds the total number of complaints. One hundred twenty-seven complaints filed in FY 2005 (74%) included an allegation that the judge had made one or more erroneous rulings. Twenty-eight (16%) alleged a judge had wrongly failed or refused to disqualify himself or herself from hearing a case. Twenty-two complaints (13%) included allegations of general bias. Fifteen complaints (9%) involved or included allegations of improper procedure; the same number asserted improper demeanor or decorum. Fourteen (8.2%) involved or included allegations of improper *ex parte* communications. Thirteen (7.6%) alleged failure to perform judicial duties. Twelve complaints (7%) alleged abuse of power by a judge. Eleven (6%) involved allegations of undue delay in cases. Nine (5.3%) accused judges of corruption, and the same number involved other conduct inappropriate to judicial office. Eight (4.7%) asserted use of improper language by a judge. Seven (4%) alleged loss of temper, and seven involved other improper conduct on the bench. There were six complaints (3.5%) of racial bias. Five complaints (3%) asserted misconduct in connection with administrative responsibilities. Four (2%) included allegations of failure to accord a full hearing of a matter, and four alleged criminal activity. The

Commission also received two complaints each that included allegations of campaign violations, dishonesty, and physical or mental disability. One complaint each alleged improper broadcasting of a proceeding and conflict of interest.

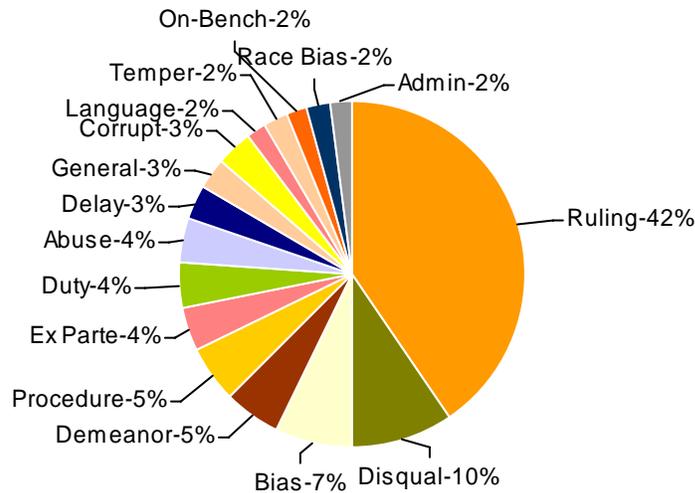
The subject matter of complaints may also be analyzed according to the total number of the various types of allegations in all complaints filed during the year. The table below includes both analyses of types of allegations in complaints filed in FY 2005, expressing in absolute numbers and percentages the most frequent types of allegations in the verified complaints filed with the Commission.

Nature of Most Frequent Allegations			
Type	Number	Percent of All Allegations	Percent of All Complaints
Ruling	127	39	74
Failure to Disqualify	28	9	16
Bias	22	7	13
Demeanor	15	5	9
Procedure	15	5	9
<i>Ex Parte</i> Communication	14	4	8
Failure to Perform Duty	13	4	8
Abuse of Power	12	4	7
Delay	11	3	6
General Conduct	9	3	5
Corruption	9	3	5
Language	8	2	5
Temper	7	2	4
Other On-Bench	7	2	4
Racial Bias	6	2	4
Administrative Responsibility	5	2	3
Inadequate Hearing	4	1	2
Criminal Activity	4	1	2

Table 4. Most frequent types of allegations in complaints filed in FY 2005.

The chart below illustrates the most frequently made allegations in the complaints filed in FY 2005.

Frequency of Allegations



Complaints may involve any level of court. The following table shows complaints filed in FY 2005, listed by the type of judge named in the complaint:

Judicial Position	
Category	Number
Circuit Judge	113
District Judge	36
Municipal Judge	11
Probate Judge	8
Retired Active Judge	2
Appellate Judge	1

Table 5. Complaints filed in FY 2005 by type of judge.

Almost all complaints filed with the Commission are related to a legal proceeding. As usual, the complaints filed in FY 2005 were associated with a wide variety of types of litigation. The next table lists the categories of legal proceedings in which complaints filed during FY 2005 arose.

Nature of Litigation	
<i>Proceeding</i>	<i>Number</i>
Criminal	72
General Civil	41
Domestic Relations	34
Juvenile	9
Mental Commitment	2
Other Probate	5
Small Claims	3
None	5

Table 6. Complaints filed in FY 2005 by type of proceeding.

Investigations

The Commission authorized the investigation of twenty-six new complaints during fiscal year 2005. Twenty-three of these complaints did not require extensive inquiry. Three needed substantial investigation. In addition, seven investigations were open at the beginning of the year. Five investigations initiated during the year were in progress at the end of the year.

Table 7 shows the dispositions made by the Commission of complaints that were closed after investigation during FY 2005. Some complaints had multiple resolutions as a result of multiple allegations.

Dispositions After Investigation	
Category	Number
No Reasonable Basis to Charge	16
No Ethical Violation	14
Wrote to Judge, Resolved	3
No Jurisdiction (legal)	2
Met with Judge, Resolved	1

Table 7. How complaints were resolved after investigation.

Prosecutions

COJ 33

In August 2003, the Commission filed a complaint in the Court of the Judiciary against the chief justice of the Alabama Supreme Court. The complaint arose from his conduct in two related cases in the United States District Court for the Middle District of Alabama. The complaint contained six charges; each asserted the chief justice "willfully failed to comply with an existing and binding court order directed to him." Charges One and Two alleged violation of Canon 1 requirements: that judges uphold the integrity and independence of the judiciary, and that they observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. Charge Three asserted the chief justice had failed to avoid impropriety and the appearance of impropriety in all his activities as required by Canon 2, and Charge Four asserted the chief justice had failed to respect and comply with the law as required by Canon 2A. Charge Five stated the chief justice had failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by Canon 2A. The final charge averred the chief justice had failed to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute, in violation of Canon 2B.

In November 2003, the Court of the Judiciary issues its judgment following a one-day trial. The court unanimously decided the chief justice violated Canons 1, 2, 2A and 2B, as alleged by the Commission, and should be removed from office. The court's opinion included the following observations:

Any person who undertakes a solemn oath to carry out a public trust must act in a manner that demonstrates both respect for and compliance with established rules of law of the institution the person serves. Here, however, we are faced with

a situation in which the highest judicial officer of this state has decided to defy a court order. . . The Supreme Judicial Court of Maine, in a judicial-disciplinary case, said that “[l]awless judicial conduct -- the administration, in disregard of the law, of a personal brand of justice in which the judge becomes a law unto himself -- is as threatening to the concept of government under law as is the loss of judicial independence.” *In re Ross*, 429 A.2d 858, 861 (Me. 1981). To that same effect is the observation of the Supreme of New Mexico that “judges who, as self-perceived defenders of justice, set themselves above the law, to promote a personal belief about what the law should be, do a disservice to justice.” *In re Eastburn*, 121 N.M. 531, 914 P.2d 1028, 1035 (1996).

In re Moore, No. 33, slip op. at 9 - 10 (Ala. Court of the Judiciary Nov. 13, 2003).

The chief justice appealed the decision of the Court of the Judiciary. The remaining members of the Alabama Supreme Court recused themselves from the case, after which a Special Supreme Court was appointed by a process of random selection from a pool of all retired justices and judges. In April 2004, the Special Supreme Court affirmed the decision of the Court of the Judiciary. The Special Court found the Court of the Judiciary had before it clear and convincing evidence the chief justice had violated Canons 1, 2, 2A and 2B as charged in the complaint filed by the Commission by willfully refusing to obey a lawful and binding order of a federal court. With regard to the sanction imposed, the Special Supreme Court wrote:

[T]he sanction of removal from office was not plainly and palpably wrong, manifestly unjust, or without supporting evidence. In fact, the evidence of Chief Justice Moore’s violations of the Canons of Judicial Ethics was sufficiently strong and convincing that the Court of the Judiciary could hardly have done otherwise than to impose the penalty of removal from office.

Moore v. Judicial Inquiry Comm’n of State of Ala., 891 So.2d 848, 862 (Ala. 2004).

A petition by the chief justice asking the United States Supreme Court to review the decision of the Special Alabama Supreme Court was pending at the beginning of fiscal year 2005. The petition for writ of certiorari was denied on October 4, 2004. *Moore v. Judicial Inquiry Comm’n of State of Ala.*, 543 U. S. 875 (2004).

Advisory Opinions

The Commission rendered fourteen advisory opinions during FY 2005. The subjects of inquiry were diverse but, as is usually the case, the majority of the questions

concerned disqualification issues. The following topics were addressed by the Commission in opinions on disqualification: public criticism by a party; the case involving police officers of a city of which the judge's spouse is the mayor; private parties contributing to a court program; receipt of an *ex parte* communication; a party's close relative serving in the state legislature; a close relative making a late appearance as counsel in a case; the defendant being a close relative of the judge's doctor; a close relative being an employee of a law firm in the case; a close relative being an attorney in a related matter; previous prosecution of the defendant by the judge; a party having filed complaints against the judge; former employment as attorney for a party; former membership in a law firm representing a party; alleged past involvement in an investigation also involving a party; and prior representation of a witness.

Other opinions addressed questions concerning accepting an honorarium, a quasi-judicial activity (soliciting participation in a volunteer lawyers program), and publishing certain convictions.

The following table shows the number of advisory opinions issued in FY 2005 according to the category of judge requesting the opinion.

FY 2005 Advisory Opinions	
<i>Category of Judge</i>	<i>Number</i>
Circuit	10
District	4

Table 8. Opinions by category of requesting judge.

The executive director and individual members of the Commission also received numerous inquiries from judges and attorneys requesting informal advice on issues of judicial conduct. During FY 2005, the executive director responded to at least 169 such inquiries from Alabama judges and attorneys. When prior opinions did not address the subject of inquiry, information was provided to assist an inquiring judge in deciding whether he or she wished to request a written opinion.

Other Activities

➤ **NEWSLETTER TO JUDGES**

The Commission continued publication of a quarterly newsletter to state judges in FY 2005. Through the *Judicial Conduct Letter*, the Commission keeps judges

informed about conduct rules and guidelines with which they should be familiar, about developments at the Commission's office, and about judicial discipline cases from across the nation.

➤ **INTERNET WEB SITE**

The Commission also continued to make its advisory opinions available on the Internet in FY 2005 through a partner page on the ALALINC web site. (ALALINC is the electronic legal information service provided by the State Law Library.) The address is www.alalinc.net/jic. The Commission's annual report for FY 2004 also was posted on the web site, which also contains with the constitutional provisions governing the Commission and the Court of the Judiciary and the Alabama Canons of Judicial Ethics.

➤ **EDUCATIONAL ACTIVITIES**

Several Commission members attended the American Judicature Society's 19th National College on Judicial Conduct and Ethics in Chicago in October 2004. Executive director Margaret Childers also attended the College, as a member of the faculty. She served on a panel that presented a session on Disqualification.

In December 2004, Chairman Randall L. Cole and executive director Childers presented a session on judicial ethics at New Judge Orientation using a PowerPoint program that was developed for the event. New Judge Orientation is conducted by the Administrative Office of Court's Alabama Judicial College and the Circuit and District Judges Association.

Chairman Cole and executive director Childers also presented a session on judicial ethics at the 2005 Mid-winter Circuit and District Judges' Conference. A PowerPoint program was created for this presentation.

Ms. Childers attended a meeting of the board of directors of the Association of Judicial Disciplinary Counsel in March 2005 where she participated in planning the Association's annual meeting and continuing legal education seminar. She also attended the annual meeting and CLE seminar in July 2005.

In April 2005, Chairman Cole and executive director Childers addressed the attendees at the annual Probate Judges' Meeting in Tuscaloosa. Again, a PowerPoint presentation was created for this meeting.

The executive director attended the annual meeting of the American Judicature Society in Chicago on August 5 - 6, 2005. The educational program, Focus on Judicial Ethics, included sessions on proposed revisions to the Model Code of Judicial Ethics being considered by a committee of the American Bar Association, and on addressing cases of judicial impairment.

➤ **REFERENCE MANUAL FOR JUDGES**

The Commission publishes a reference manual on judicial conduct and ethics for Alabama judges. The manual contains the Alabama Canons of Judicial Ethics,

information on the Commission and its activities and procedures, information concerning the Court of the Judiciary and its procedures, a complete set of the synopses of Commission advisory opinions with detailed indexes by both subject matter and canons addressed, and a section for retention of Commission newsletters. Quarterly updates to the synopses section of the manual were prepared, published and distributed in FY 2005, as well as an annual cumulative update to the entire manual in July 2005.

➤ **ASSOCIATION WITH OTHER CONDUCT COMMISSIONS AND NATIONAL ORGANIZATIONS**

The Commission responds to requests for non confidential information from other judicial conduct organizations throughout the country seeking solutions to issues they are confronting. The Commission also assists the American Judicature Society's Center for Judicial Ethics to maintain accurate information about the judicial disciplinary system in Alabama, advisory opinions issued by the Commission, and cases in the Court of the Judiciary. During FY 2005, the Commission's executive director continued to serve on the board of the national Association of Judicial Disciplinary Counsel.

3

Cumulative Summary

Complaints and Prosecutions

Four thousand five hundred twenty-two complaints were filed with the Commission between its creation in 1973 and the end of FY 2005. No ethical violation findings were made on 1,961 complaints, and no jurisdiction findings were made on 1,960. Six hundred eight complaints have been found to include allegations that presented no reasonable basis or otherwise insufficient basis to file charges. One hundred eighty-three were resolved through meeting or other communication with the judge. Twenty-two complaints were withdrawn or canceled; twenty-one were resolved when the judge left office; sixteen were resolved in court action; five were dismissed for lack of a verified complaint; and fourteen were otherwise resolved.

During this period, thirty-three complaints were filed by the Commission in the Court of the Judiciary. Judges have been charged with various forms of dereliction of duty, personal and fiduciary financial improprieties, sexual misconduct, *ex parte* communications, misrepresentations to the Commission, presiding over cases in which they were disqualified, criminal activity, mental inability, abuse of power, public comment about pending proceedings, use of obscene and racist language, campaign misconduct, perjury and subornation of perjury, improper relationships with litigants, improper use of judicial prestige and influence, ruling in bad faith, and willfully failing to comply with a binding court order.

The Court of the Judiciary has removed four judges from office based on charges prosecuted by the Commission. Eleven judges resigned while charges were pending against them; in eight of these cases, the charges were then dismissed as moot and, in two cases, the Commission agreed to dismiss the charges upon resignation of the judge. In ten cases, the Court of the Judiciary imposed suspension from office for various periods as the appropriate sanction for the misconduct found to have been committed. The Commission dismissed one

complaint after changes were made to the procedural rules governing it, in order to avoid breaching commitments of confidentiality duly made under the rules of procedure as they existed at the time the underlying complaint was filed with and investigated by the Commission. In one case, the Court of the Judiciary imposed no discipline. In the remaining cases, the sanction imposed by the Court of the Judiciary was censure.

Advisory Opinions

The Commission has issued a broad spectrum of advisory opinions since the inception of its authority to issue opinions in 1975. The Commission issued a total of 856 advisory opinions between 1976 and the close of the 2005 fiscal year. About one half of these opinions have addressed questions concerning disqualification to hear cases under Canon 3C(1). A considerable number of opinions also have been issued on inquiries regarding business and other financial activities (Canon 5C), civic and charitable activities (Canon 5B), and political activities (Canon 7). A substantial number of opinions have addressed adjudicative and administrative responsibilities (Canons 3A and 3B) and issues peculiar to part-time judges.

All categories of judges throughout the state have requested written advisory opinions and have sought informal discussion of ethical conduct issues. This includes municipal, probate, district, circuit, appellate, court of the judiciary, retired, and pro tempore judges, and justices of the Alabama Supreme Court.

Ten-Year Statistical Comparison

The table below and the chart on the following page contain comparisons of the volume of complaint-related and advisory opinion work performed by the Commission over the past ten years.

Activity Over Ten-Year Period										
Indicator	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Complaints Received	250	264	291	215	279	176	141	112	167	171
Complaints Resolved	271	248	276	222	277	171	172	115	160	176
Investigations	44	43	40	64	94	53	21	21	29	26
Advisory Opinions	45	43	41	31	25	26	16	18	22	14

Table 8. Key Indicators of activity level during the last decade.

Complaints Received and Resolved

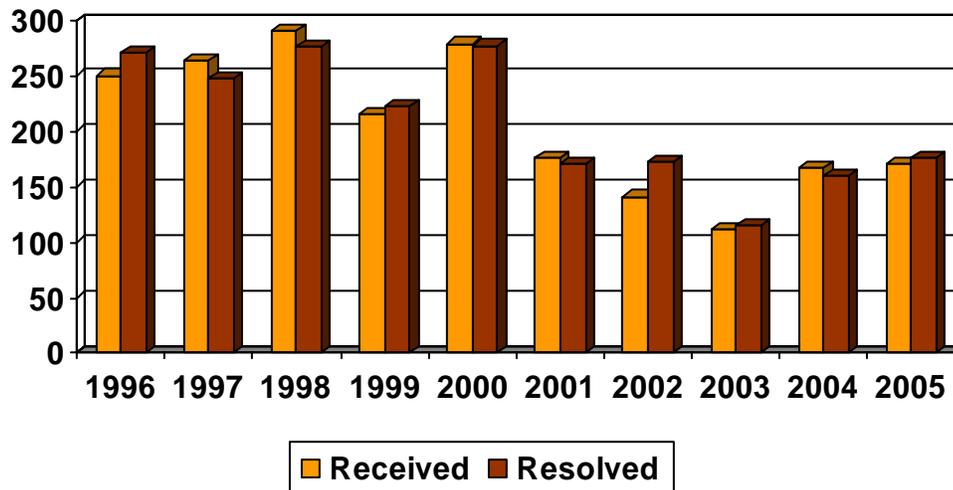


Chart 1. Number of complaints received and resolved over the past decade.

It is usual to receive more complaints in a year in which judicial elections are held (even-numbered years) than in non-election years.

Changes in the procedural rules governing the Commission made at the beginning of the 2002 fiscal year required verified complaints and early service of all complaints on the named judge. Since many persons who have contacted the Commission about filing a complaint after implementation of the new rules have stated they would not file a complaint since it would be sent to the judge, and since the rules changes prohibited consideration of some complaints submitted near the end of FY 2001, it is believed that the general decline in the number of complaints reported in and since FY 2001 may be attributed, at least in part, to the changes to the rules.

CONCLUSION

Public confidence in the high standards, integrity and impartiality of the judiciary is essential to the rule of law. An independent disciplinary system which keeps judges accountable for their conduct is required to maintain such confidence. Judges also need a source of information and advice for resolving conduct issues that inevitably will arise. The Judicial Inquiry Commission is dedicated to fulfilling these roles. It also strives to increase awareness of the appropriate ethical standards incumbent on all state judges, and to contribute where it is able to the fair and proper administration of justice.

Appendix

Complaint Form

Synopses of Advisory Opinions Issued in FY 2005

Constitutional Provisions

Procedural Rules

Synopses of Advisory Opinions in FY 2005

SYNOPSIS 04-843

A judge may receive an honorarium for his participation as a speaker at a conference where his participation was permitted by the canons, the source of the payment does not give the appearance of influencing the judge in his judicial duties or otherwise give an appearance of impropriety, and the amount of the payment is reasonable and does not exceed the amount paid to other participants.

SYNOPSIS 04-844

A judge is not disqualified to sit in a case due to one of the parties having written a letter to the editor of the local newspaper that may be viewed as criticizing the local judicial system so long as the judge has no actual personal bias toward a party resulting from the incident.

SYNOPSIS 04-845

I. The mere fact that the judge's spouse is mayor of a city does not disqualify the judge to hear criminal jury trials, youthful offender applications, youthful offender trials, motions to suppress evidence or motions to exclude evidence in which a police officer of the city may testify as a witness, or criminal cases in which a defendant is charged with assaulting a police officer employed by the subject city. However, the judge is disqualified if she has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts as a result of her spouse's position, if her spouse has an interest that could be substantially affected by the outcome of the proceeding, or if her spouse has a personal interest or direct involvement in a particular case.

II. The judge should disclose her relationship to the mayor in cases in which a police officer from the subject city may testify as a witness. This may be done in open court, by written notice to the parties, or by filing the information with the clerk of the court.

SYNOPSIS 04-846

A judge is disqualified to hear a civil action seeking the garnishment of stock options where the judge knows that the plaintiff private entity has provided a large sum of money toward the funding of the local dug court program, which the judge was instrumental in establishing and over which he presides, including dealing with

budget and personnel issues. Under these facts, the Commission is of the opinion that a person of ordinary prudence might reasonably question the judge's impartiality.

SYNOPSIS 04-847

The canons do not prohibit a judge from sending a particular letter to members of a local bar association encouraging participation in the State Bar's Volunteer Lawyers Program. The letter, as written, is an activity to improve the administration of justice that does not reflect adversely upon the judge's impartiality or otherwise create an appearance of impropriety.

SYNOPSIS 05-848

I. A judge is not disqualified to hear a case because, before realizing it concerned a case pending before him, the judge read a letter from a party to a Congressman that had been forwarded to his office. The judge had promptly disclosed the communication to the parties, and he did not develop a personal bias or prejudice concerning a party as a result.

II. A judge is not disqualified to hear a divorce proceeding on the ground that the defendant's father serves on the Judiciary Committee of the chamber of the Alabama Legislature of which he is a member.

SYNOPSIS 05-849

A judge may continue to hear a case when a close relative makes a late appearance and the opposing party remits the disqualification but the party retaining the attorney relative declines to do so if the judge determines either that the attorney relative is precluded from appearing in the case or that the party who retained the attorney relative waived the disqualification.

SYNOPSIS 05-850

Under the facts presented, unless he personally feels that he might be affected, a judge is not disqualified to hear a case due to one of the parties in the case, a private entity, having made large contributions for the funding of a court program.

SYNOPSIS 05-851

The facts presented include sufficient circumstances to create a reasonable question

as to a judge's impartiality and, thus, the judge is disqualified to hear a particular criminal case in which the defendant is the child of the judge's long time personal physician.

SYNOPSIS 05-852

Where the judge's spouse is no longer employed by the firm and never had any involvement in the case, a judge is not disqualified to hear a case in which a party is represented by a law firm at which his spouse was recently employed as a secretary.

SYNOPSIS 05-853

The canons of judicial ethics do not permit a circuit judge to publish in a local newspaper the names, pictures and addresses of persons convicted of sex offenses in his court.

SYNOPSIS 05-854

Under the facts presented, a judge is disqualified to hear a charge of probation violation related to a school suspension when the judge's spouse has acted, and may also in the future act, as the attorney for the school board in connection with the underlying incident.

SYNOPSIS 05-855

A judge is not disqualified to hear a case because (a) the judge prosecuted the defendant in an unrelated case more than twenty years ago, (b) the defendant asserts he has filed complaints against the judge with the Judicial Inquiry Commission and Ethics Commission alleging the judge is biased against him, (c) the judge was employed by the plaintiff city more than fifteen years ago, (d) the judge was, almost twenty years ago, a member of the law firm that is representing the plaintiff city, and/or (e) the defendant alleges that he and the judge were "involved in an investigation by the EEOC and the FBI" several years ago of which the judge has no knowledge. The judge has no personal bias against the defendant, and the circumstances presented do not create a reasonable question as to the judge's impartiality.

SYNOPSIS 05-856

A judge is not disqualified to hear a capital murder case on the ground that he briefly

represented a predicate crime victim/witness in the case, standing in for his law partner, who was the individual's attorney. Neither the judge nor his law partner represented the victim/witness in the matter that is now before the judge. The representation that was provided by the judge was not only very brief, it was of a very limited nature and character. The Commission finds no reasonable question as to the judge's impartiality under the facts presented.

Constitutional Provisions

CONSTITUTION OF ALABAMA OF 1901 (Recompiled) **Article VI**

Sec. 156 Judicial Inquiry Commission

(a) A Judicial Inquiry Commission is created consisting of nine members. The Supreme Court shall appoint one appellate judge who shall not be a Justice on the Supreme Court; the Circuit Judges' Association shall appoint two judges of the circuit court; the Governor shall appoint three persons who are not lawyers, who shall be subject to Senate confirmation before serving; the Lieutenant Governor shall appoint one district judge who shall be subject to Senate confirmation; and the governing body of the Alabama State Bar shall appoint two members of the state bar to serve as members of the commission. Provided, however, that on January 1, 2005, the appointment authority granted to the Lieutenant Governor shall revert to the Governor and the Governor shall thereafter be entitled to appoint three persons who are not lawyers and one district judge, all subject to Senate confirmation. The commission shall select its own chair. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations and receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the Court of the Judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to charge that the judge is physically or mentally unable to perform his or her duties. All proceedings of the commission shall be confidential except the filing of a complaint with the Court of the Judiciary. The commission shall prosecute the complaints.

(c) The Supreme Court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses; members who are judges shall receive necessary expenses only. The Legislature shall appropriate funds for the operation of the commission.

Sec. 157 Court of the Judiciary

(a) The Court of the Judiciary is created consisting of one judge of an appellate court, other than the Supreme Court, who shall be selected by the Supreme Court and shall serve as Chief Judge of the Court of the Judiciary; two judges of the circuit court, who shall be selected by the Circuit Judges' Association; and one district judge who shall be selected by the District Judges' Association. Other members of the Court of the Judiciary shall consist of two members of the state bar, who shall be selected by the governing body of the Alabama State Bar, two persons who are not lawyers who shall be appointed by the Governor, and one person appointed by the Lieutenant Governor. Members appointed by the Governor and Lieutenant Governor shall be subject to Senate confirmation before serving. Provided, however, that on January 1, 2005, the appointment authority granted to the Lieutenant Governor shall revert to the Governor and the Governor shall thereafter be entitled to appoint three persons who are not lawyers, subject to Senate confirmation. The court shall be convened to hear complaints filed by the Judicial Inquiry Commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may prescribed by law, for violation of a Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his or her duties.

(b) A judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court. The Supreme Court shall review the record of the proceedings on the law and the facts.

(c) The Supreme Court shall adopt rules governing the procedures of the Court of the Judiciary.

(d) The Court of the Judiciary shall have power to issue subpoenas. The Legislature shall provide by law for the expenses of the court.

Sec. 159 Disqualification

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Rules of Procedure for Judicial Inquiry Commission

As amended, effective October 9, 2001

Table of Rules

1. Definitions.
2. Disqualification.
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Rule 1. Definitions.

In these rules, unless the context or subject matter otherwise requires:

- (a) "Commission" means judicial inquiry commission.
- (b) "Judge" means any judge or justice of the judicial system of this state.
- (c) "Chairman" means the chairman of the judicial inquiry commission and includes the acting chairman.
- (d) "Secretary" means such person as may be designated by the commission to act as secretary and includes the acting secretary. The secretary shall be ex-officio clerk of the commission.
- (e) "Examiner" means any person designated by the commission to gather information, conduct field investigations, take depositions or prosecute charges preferred by the commission with the court of the judiciary.
- (f) "Subpoena" means any type subpoena which may be issued by any court of this state.
- (g) "Shall" is mandatory and "may" is permissive.
- (h) "Mail" includes ordinary mail and personal delivery.
- (i) The masculine gender includes the feminine gender.

Rule 2. Disqualification.

A member of the commission may not participate as such in any proceeding involving a charge against himself, or in which he is involved, or involving a charge against a person who is related to him within the ninth degree by consanguinity or within the fifth degree (computed according to the rules of the civil law) by affinity.

Rule 3. Style of proceedings and process.

Proceedings and process issued by the commission shall be styled:

"BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA
Inquiry Concerning a Judge, No.____ "

Rule 4. Privilege.

All papers filed with and proceedings before the judicial inquiry commission shall be privileged in any action for defamation.

Rule 5. Confidentiality of proceedings.

A. All proceedings of the commission shall be confidential, except the filing of a complaint with the court of the judiciary; provided, however, that none of the following actions permitted to be taken by the commission shall be deemed a violation of confidentiality:

(1) When a judge has been publicly charged or is the subject of an investigation by the commission, or in any proceeding in which the subject matter is generally known to the public and in which there is a broad public interest, the commission may, at the request of the judge involved, issue one or more short announcements approved by the judge confirming or denying the existence of charges before it, clarifying the procedural aspects, or defending the right of a judge to a fair hearing, or in order to preserve public confidence in the administration of justice.

(2) In any instance where accusations against a judge have been considered by the commission and it has been determined that there is no basis for the filing of charges against him or for further proceedings before the commission, the commission may, at the request of the judge issue an explanatory statement approved by the judge.

(3) The commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, procedure for institution of complaints, limitations upon its powers and authority, and reports on the conduct of the affairs of the commission, provided that such releases and reports shall not identify by name, position, address or otherwise the identity of any judge or other person involved in any inquiry before the commission.

(4) The commission may, when in its opinion the seriousness of a matter being investigated warrants it, inform the Chief Justice of the fact that a particular judge is under investigation.

B. The commission shall have no power to restrict speech or communications by persons other than the members, staff, and agents of the commission itself.

C. No mandate for confidentiality shall be construed to abrogate or to restrict in any way the obligations of the commission to communicate with, and to disclose information to, a judge under investigation or charge.

Rule 6. Investigations.

A. Investigations may be instituted by the commission only upon a verified complaint filed either by a member of the public or by a member of the commission and only upon the affirmative vote of a majority of all members of the commission at a duly called meeting agreeing to investigate the complaint.

B. Within 42 days after a complaint is filed with the commission, whether by a member of the public or of the commission, the commission must meet and vote on whether or not to investigate the complaint. A complaint shall become null and void if the commission fails to meet for such a vote within the 42 days allowed or if, upon the vote at a meeting, fewer than a majority of all members of the commission vote to investigate it. The commission shall promptly notify the judge named in the complaint upon its becoming null and void.

C. Within ten days after any person, whether a member of the public or of the commission, files a complaint with the commission, the commission must serve upon the judge who is the subject of the complaint copies of the complaint and any and all documents, photographs, tape recordings, transcripts, notes, and other materials of any nature whatsoever constituting, supporting, or accompanying the complaint.

D. Within ten days of instituting an investigation upon the vote required by subdivision A above, the commission must serve on the judge to be investigated a full description of the conduct to be investigated and all information received, gathered, or possessed by the commission tending to establish or to refute that the conduct occurred or that the investigation is appropriate and must serve on the judge copies of any and all documents, photographs, tape recordings, transcripts, notes, and other materials of any nature whatsoever tending to prove or to disprove the occurrence of the conduct to be investigated or the appropriateness of the investigation.

E. Every four weeks after serving the disclosures, statements, and materials required by subdivision D of this rule, the commission must serve on the judge being investigated or to be investigated copies of any and all materials of any nature whatsoever not already served upon him or her tending to establish that the conduct either did or did not occur or that the investigation is or is not still appropriate and shall serve upon the judge a full statement of whether the commission then intends to continue the investigation.

F. Any failure to serve disclosures, statements, or materials upon the judge as required by subdivisions C and D of this rule shall bar any prosecution for the conduct being investigated or to be investigated and shall bar the continuation of the investigation.

G. Any failure to serve disclosures, statements, or materials upon the judge as required by subdivisions E of this rule shall bar any prosecution for the conduct

being investigated or to be investigated and bar the continuation of the investigation if the judge moves the commission to supply the overdue subdivision E disclosures, statements, or materials and the commission does not serve them within seven days thereafter.

H. No judge may be compelled to give evidence against himself or herself; provided, however, that a judge who chooses to testify on his or her own behalf shall be subject to cross-examination.

I. Service shall be by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing.

Rule 7. Subpoenas and other process.

A. Subpoenas for attendance of witnesses or for the production of documentary evidence (including the production of documentary evidence for copying) before the commission, and other process of the commission, may be served in the same manner provided for service of subpoenas and other process under the rules of civil procedure applicable to the circuit courts of this state and may be served by mail or by any person designated by the commission, its clerk or chairman. The commission shall have jurisdiction coextensive with the circuit courts of this state to compel the attendance of witnesses and the production of documents; and the failure of any person without adequate excuse to obey a subpoena or other process of the commission shall constitute contempt of the commission. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this state.

B. Any subpoena must be relevant to the particular complaint filed.

C. Prior to or simultaneously with serving a subpoena on a person or entity being subpoenaed, the commission shall serve a copy of the subpoena on the judge being investigated, charged, or prosecuted. Failure to serve the judge as required by this subdivision of this rule shall bar the admissibility of the information or material sought by the subpoena, all information and material obtained in response to the subpoena, and all information and material discovered as a result of information or material obtained in response to the subpoena.

D. Service shall be by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing.

Rule 8. Contempt.

The commission shall have power coextensive with that of the circuit courts of this state to punish for contempt of the commission.

Rule 9. Meetings.

Meetings of the commission may be held at such times and places as the commission may, from time to time, determine. Meetings may be called by the chairman, acting chairman, or by any two members of the commission on three days' notice, which notice may be given by telephone message left during normal business hours at the business or residence of the members.

Meetings may be held at any time and place by unanimous consent of the members.

A majority of the commission shall constitute a quorum for the transaction of business, and the action of a majority of the members at a meeting at which a quorum is present shall constitute the action of the commission, except that no charges against any judge may be filed with the court of the judiciary except upon affirmative vote of a majority of all the members of the commission, taken at a duly called meeting of the commission and except that no investigation may be instituted nor subpoena issued except upon the affirmative vote of a majority of all the members of the commission taken at a duly called meeting of the commission. The institution of an investigation contrary to the provisions of this rule shall bar prosecution of the matter to be investigated. The issuance of a subpoena contrary to the provisions of this rule shall bar the admissibility of all information and material sought by the subpoena, all information and material received in response to the subpoena, and all information and material discovered as a result of information or material received in response to the subpoena.

Rule 10. Alternate dispute resolution.

A. At any time during the pendency of a charge or investigation but more than 10 days before the trial, the judge being charged or investigated may demand, and the whole commission must conduct, a hearing before the whole commission to discuss the charge or suspected conduct and to attempt to resolve the charge or investigation on terms to be presented by joint motion to the Court of the Judiciary. A majority of the commission may bind it to any such resolution. Any such resolution reduced to writing and signed by the judge and a majority of the commission shall bind the judge and the commission unless and until the proposed resolution is rejected by the Court of the Judiciary.

B. All statements made by or for the judge in or for a hearing conducted or to be conducted pursuant to this rule shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

Rule 11. Officers of the commission.

In addition to its chairman, the commission may elect one or more vice-chairmen, an executive secretary who shall be ex-officio clerk of the commission, and such other

officers and agents, including examiners, as the commission may, from time to time, determine. In the absence of the chairman or in any instance in which he may not be readily available, either of the vice-chairmen, or any member of the commission designated by the executive committee, may act as chairman.

Rule 12. Executive committee.

The commission may appoint an executive committee consisting of the chairman and two other members of the commission to advise with him on matters arising between meetings of the commission in which action is deemed desirable. If any member or members of the executive committee so appointed are not readily available to act when action by the remaining member or members is deemed desirable, the remaining member or members may select other members of the commission to serve in his or their stead.

Rule 13. Seal.

The commission may adopt a seal.

Rule 14. Judge acting as such while disqualified.

If any judge shall continue to act as such while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary, such conduct shall constitute misconduct in office and the commission may apply to the supreme court of Alabama for such writ or writs as may be appropriate to enforce section 6.17, Amendment 328, Constitution of Alabama, 1901.

Rule 15. Prosecution of charges before court of the judiciary.

It shall be the duty of the attorney general of Alabama to prosecute charges filed by the commission with the court of the judiciary except in instances where, in the opinion of the commission, there exists or may arise a conflict of interest or the interests of justice would not thereby be served, in which instances the commission may employ counsel to prosecute such charges.

Rule 16. Matters heretofore pending before judicial commission.

All equipment, records, documents and supplies belonging to, and all funds granted to or appropriated for the former judicial commission of Alabama are, effective

December 27, 1973, transferred to the judicial inquiry commission. All pending proceedings before the judicial commission of Alabama are hereby transferred to the judicial inquiry commission, effective December 27, 1973.

Rule 17. Advisory opinions.

A judge may direct to the commission in writing a request for an opinion as to whether certain specified action contemplated or proposed to be taken by him may constitute a violation of the canons of judicial ethics, and the commission may, in its discretion, render to the judge in writing such opinion as it may deem appropriate in the premises. Any such opinion rendered by the commission that certain specified conduct by the judge would not constitute a violation of the canons of judicial ethics shall be admissible on behalf of the judge to whom it is directed in any disciplinary proceeding involving the propriety of such conduct by the judge to whom the opinion is directed.

Rule 18. Right to relief from violations by commission.

Any judge who is the subject of investigation, charge, or prosecution by the commission and who claims to be aggrieved by any violation of these rules may petition the Supreme Court directly for relief. Such a petition shall be denominated simply "Petition for Relief," and a copy shall be served on the commission.

Rule 19. Publication.

A. These rules shall be deposited with the Clerk of the Supreme Court of Alabama and shall be published in all publications wherein the rules of the Supreme Court of Alabama are published.

B. All amendments to these rules shall be effective immediately as to all pending and future complaints, investigations, and charges; provided, however, that, for complaints or charges filed, investigations initiated, and subpoenas issued before the promulgation of these rules, the commission shall have twenty-one days to serve the required disclosures, statements, and copies of subpoenas and other materials on the respective judges named in any pending complaints or charges.