



Commission on
Judicial Fitness and Disability

COMMISSION ON JUDICIAL FITNESS & DISABILITY

PRESENTATION TO THE JOINT COMMITTEE ON WAYS & MEANS –
SUBCOMMITTEE ON PUBLIC SAFETY

FEBRUARY 8, 2023

HON. STEVEN R. POWERS, CHAIR
RACHEL MORTIMER, EXECUTIVE DIRECTOR



WHAT IS THE COMMISSION ON JUDICIAL FITNESS & DISABILITY (CJFD)?

The Commission is an independent agency within the Judicial Branch tasked with investigating complaints made against Oregon Judges and making recommendations regarding judicial discipline to the Oregon Supreme Court.

The Oregon Supreme Court “has long viewed the judiciary’s duty to cultivate and maintain an image of propriety as a boundary that must not be violated if the public is to have continued confidence in the workings of our courts[.]”

--*State v. Langley*, 363 Or 482, 501 (2018).



MISSION STATEMENT

The mission of the Commission is to ensure the quality and effectiveness of the state judicial system.

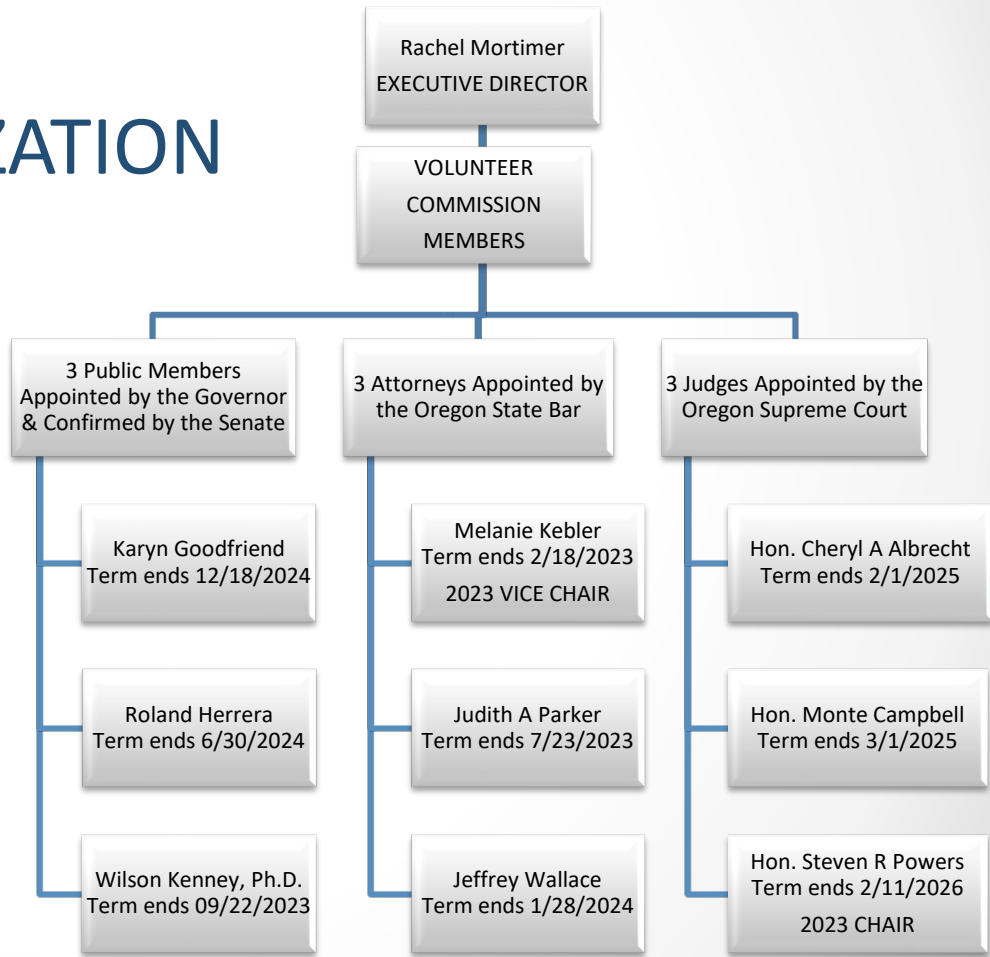
SOURCES OF LAW FOR THE COMMISSION'S MEMBERSHIP AND WORK:

- Article VII (Amended), section 8, of the Oregon Constitution
- ORS 1.410 through 1.480
- CJFD Rules of Procedure (last amended Dec 14, 2018)



COMMISSION ORGANIZATION

- Independent Agency in Judicial Branch
- One half-time Executive Director
- Nine Volunteer Commission Members
 - Three Public Members
 - Three Lawyers
 - Three Judges





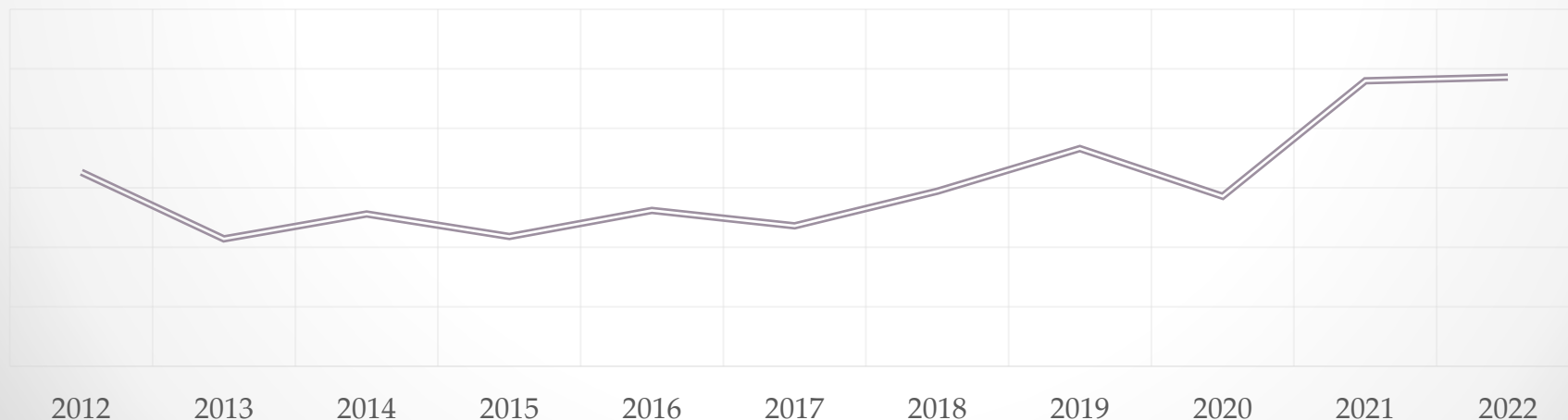
JURISDICTION

- Jurisdiction over Oregon's:
 - 179 Circuit Court Judges
 - 20 Appellate Judges
 - ~100 *Pro Tem* Judges
 - ~50 Senior Judges
 - 14 Judicial Referees
 - 32 Justice of the Peace
 - Judicial Candidates
- No jurisdiction over municipal court judges, arbitrators, or administrative law judges



Number of cases opened each year

- 2012: 163 new complaints
- 2013: 107 new complaints
- 2014: 128 new complaints
- 2015: 108 new complaints
- 2016: 131 new complaints
- 2017: 118 new complaints
- 2018: 147 new complaints
- 2019: 183 new complaints
- 2020: 143 new complaints
- 2021: 240 new complaints
- 2022: 243 new complaints





OPERATIONS

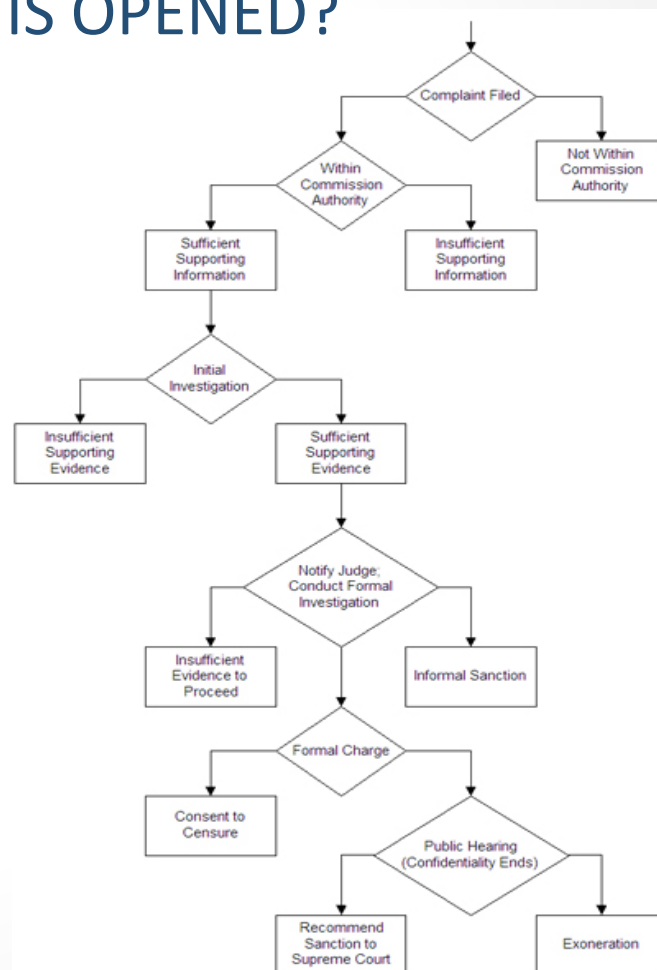
BI-MONTHLY COMMISSION MEETINGS

- Assess merit of complaints and direct investigations
 - Complaint can be submitted online through the Commission's website, or mailed, faxed, or e-mailed to the Commission
 - Does the complaint implicate a departure from the Code of Judicial Conduct?
 - Does the complaint contain sufficient supporting information? Is a preliminary investigation required? Or is there sufficient information triggering notification to the judge and a formal investigation?
- Assign and supervise contracted investigators and prosecutors
- Commission potentially holds public hearings and makes finding of fact, conclusions of law, and recommendations to the Supreme Court



WHAT HAPPENS WHEN A COMPLAINT IS OPENED?

- Complaint is received, reviewed, summarized. Obtain court records/audio for review.
- Commission reviews each complaint.
 - If the complaint indicates a violation of the Code of Judicial Conduct or if more information is needed, Commission conducts an initial investigation. This may include:
 - Querying the judge
 - Querying the complainant
 - Obtaining more records
 - Hiring an investigator for interviews and more information gathering
- If the investigation substantiates a violation, the Commission may proceed with formal charges and prosecution or issue an informal disposition letter to the judge.
- Potential for a formal hearing, which is public, and recommendations to Oregon Supreme Court





Commission on Judicial Fitness and Disability



The Commission exists to ensure that Oregon's judges uphold the ethical standards of the Oregon Code of Judicial Conduct and the Oregon Constitution.

Commission Role

- Investigates complaints
- Conducts hearing if required
- Prepares record
- Makes recommendation



Supreme Court Role

- Authority to discipline



Agency Requests to professionalize and modernize the Commission:

- POP 101 – Increase the sole staff position from 0.5 FTE to 0.75 FTE
- POP 102 – Implement a Case Management System



POP 101

Increase the staffing for the Commission from .5 FTE to .75 FTE
\$90,524

- Increased contacts in the last several years include rising numbers of new complaints, along with time spent on information and referral.
- The Commission is committed to maintaining a high-level professional response to complaints, along with the appropriate level of investigation for each case.



The Executive Director is the only staff member of the Commission.

Duties include:

- Screening & opening all complaints
- Engaging in all contacts and making appropriate referrals
- Preparing all complaints for Commission review, including basic investigative tasks
- Managing complex investigations
- All administrative and executive tasks associated with directing a state agency



Staff has had to cut time from other work to focus on complaints.

With the requested time, staff could again engage in:

- Outreach
- Recruitment & Training of Commission Members
- Professional Development
- Rules of Procedure Review
- Develop Reporting Capabilities



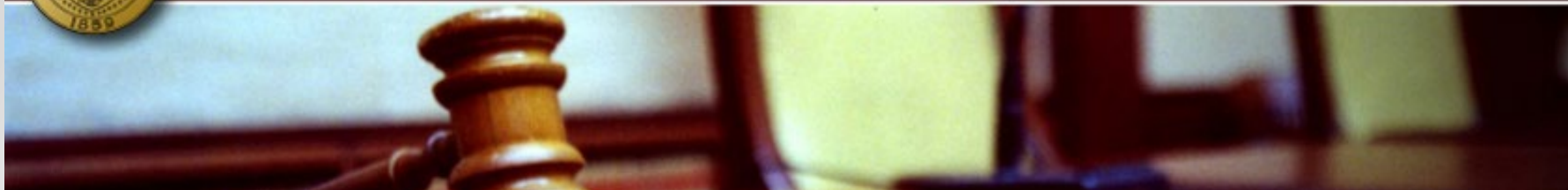
POP 102

Modernize the Commission's Capabilities by Investing in a Case Management System

- \$20,000 requested for purchase, customization & implementation of a case management system.
- The Commission has never had a case management system. A new basic system will dramatically improve workflow and reporting capabilities.



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This system must meet certain requirements, including:

- Secure information storage
- Stable with a proven record
- Ongoing reasonable licensing and support fees
- Basic capabilities such as mail merge, contact management, and case flow management
- Ability to develop reports on timeliness and case trends

With a case management system, the Commission will be able to:

- streamline and reduce repetitive administrative tasks
- enhance internal controls
- increase tracking and reporting capabilities
- communicate better with those involved in cases

The case management system will be able to do all of this in a cost-efficient manner.



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The Commission is committed to implementing a system that is right-sized for our work.

- The Commission has jurisdiction over approximately 300 state judges, judicial referees, and justices of the peace across the entire state.
- The Commission currently opens over 200 complaints per year.
- The Commission, even with increased cases, remains small.
- The Commission is staffed part-time and by a single employee; it does not employ IT professionals.
- A basic case management system will help modernize the Commission's capabilities and enhance internal controls.



APPROVED KEY PERFORMANCE MEASURES (KPMS)

1. Percent of Commission recommendations forwarded to the Supreme Court that are upheld by the Supreme Court.
2. Percent of judges prosecuted by the Commission who are not exonerated.
3. Percent of stipulated agreements unchanged and approved by the Supreme Court.
4. Percent of prosecutions completed within two years of first review through date of final Commission action before the Supreme Court.
5. Percent of total best practices met by the Board. 100%

No cases were formally prosecuted in this review period.



Looking ahead: potential future proposal for KPM

Percent of complaints upon which the Commission makes a decision within six months of when the complaint is received in the Commission office. (Target: 75%)

The Commission reviewed the KPMs of other small regulatory agencies and found that most of them had a performance measure based on the timeliness of complaint resolution. The Commission does not currently have an efficient way to track this type of information. Once a case management system is implemented, the Commission will explore proposing this type of KPM as one measure of our work.



BUDGET FOR THE COMMISSION COMES FROM THE GENERAL FUND AND IS SPLIT INTO TWO COMPONENTS:

OPERATIONS

- Personal Services for .5 FTE Director position
- Services and Supplies

EXTRAORDINARY EXPENSES

- Costs to investigate and, when required, prosecute apparent violation of *Code of Judicial Conduct*.
- This amount is unpredictable and driven by the requirements of individual cases.



EXTRAORDINARY EXPENSES FOR THE COMMISSION ARE SEVERELY IMPACTED BY INVESTIGATIONS AND PROSECUTIONS, WHICH ARE NOT PREDICTABLE

2021-23 Biennium – Operations	\$ 286,091
Extraordinary Expenses	\$ 20,073
2019-21 Biennium – Operations	\$ 228,295
Extraordinary Expenses	\$ 24,414
2017-19 Biennium – Operations	\$ 222,346
Extraordinary Expenses	\$ 20,713
2015-17 Biennium – Operations	\$ 216,134
Extraordinary Expenses	\$ 218,564



BUDGET OVERVIEW - CURRENT SERVICE LEVEL

CSL for 2023-25	<u>\$313,096</u>
Operations	\$291,257
Extraordinary Expenses	\$21,839

OPERATIONS	<u>\$291,257</u>
Personal Services	\$211,238
Services & Supplies	\$ 80,019



BUDGET OVERVIEW – AGENCY REQUEST BUDGET

ARB for 2023-25 \$ 423,620

POP 101

\$90,524

Increase Executive Director
from 0.50 to 0.75 FTE

POP 102

\$20,000

Implement Case
Management System



REDUCTION OPTIONS

The Commission identified and submitted the following options:

Eliminate Extraordinary Fund - \$21,839

- This funds investigations and prosecutions.
- Eliminating this fund would significantly delay investigations as it would require the Commission to seek Emergency Board funding to initiate any investigative work.

Eliminate Travel - \$9,471

- This commission has geographic diversity and, in non-pandemic times, holds in-person meetings six times per year. Providing for travel to the meetings supports continued engagement by all of our members.
- Specialized staff training provided by a national organization focused on judicial discipline requires travel.



Commission on Judicial Fitness and Disability

For more information about the Commission and its work, including the full text of the Oregon Code of Judicial Conduct and the Commission's Rules of Procedure, please visit: <https://www.courts.oregon.gov/programs/cjfd>

Questions?

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