

ANALYSIS

Item 4: Commission on Judicial Fitness and Disability Case Backlog

Analyst: John Borden

Request: Allocate \$40,000 General Fund from the Emergency Fund to the Commission on Judicial Fitness and Disability and authorize an increase of 0.25 FTE to an existing position, on a one-time basis, to address a caseload backlog.

Analysis: The Commission on Judicial Fitness and Disability (CJFD) is requesting \$40,000 General Fund to support a one-time increase of 0.25 FTE to an existing permanent position to address a caseload backlog. This would provide resources to temporarily increase the Executive Director position from 0.50 FTE to 0.75 FTE for the remainder of the 2023-25 biennium. Of the total amount needed, which is estimated to be \$52,072, the Commission can offset \$12,240 of the costs due to savings identified within the agency's 2023-25 legislatively approved budget leaving a balance of \$39,832.

CJFD investigates and acts upon complaints of judicial misconduct or disability. A violation of the Oregon Code of Judicial Conduct is basis for a finding of misconduct. The Commission has a 2023-25 legislatively approved budget of \$386,660 General Fund and one position (0.50 FTE). The budget is organized into routine operational costs (\$333,420 or 86%) and extraordinary costs (\$53,240 or 14%). The routine operating budget pays for a half-time executive director, office rental and supplies, meeting accommodations, travel reimbursements, complaint reviews, and initial investigations. Formal investigations and prosecutions are classified as extraordinary expenses since the Commission has no control over the number of valid complaints or their cost.

The Commission's workload is variable and depends upon the number of complaints received and upon the number and complexity of any investigations and prosecutions initiated in response to complaints. A significant number of the complaints involve the legal determination of a judge, and, after initial review by the Commission, are dismissed because they fall outside the Commission's statutory authority to investigate judicial misconduct. Complaints that are within the Commission's statutory authority are initially investigated. If there is sufficient evidence in support of a complaint, a formal investigation is conducted by outside counsel hired by the Commission.

The following table compares historical averages of complaints, investigations, and prosecutions to the first six months or data for the current calendar year 2024.

The data reflects an increasing trend in initial complaint filings as well as the number of Commission investigations being initiated, however, the data does not suggest an increase in the number of prosecutions. These trends are increasing the amount of staff time needed to review initial complaints and pursue Commission investigations.

Statistic - Calendar Year 2012 to 2023				
Time Period	Initial Complaints	Commission Investigations (% Initial Complaints)	Formal Investigations (outside counsel) (% Initial Complaints)	Prosecutions (outside counsel) (% Initial Complaints)
First 6-Months CY24	166.0	27.0 (16.3%)	2.0 (1.2%)	3.0 (1.8%)*
3-Year Average	252.7	35.7 (14.1%)	3.3 (1.3%)	0.0 (0.0%)
5-Year Average	211.8	26.2 (12.4%)	2.6 (1.2%)	0.0 (0.0%)
10 Year Average	169.1	18.6 (11.0%)	1.9 (1.1%)	0.1 (0.1%)
12 Year Average	164.3	16.5 (10.0%)	1.8 (1.1%)	0.5 (0.3%)

**These were from two cases opened in 2022 and one opened in 2023. One case resolved with the judge resigning, one resolved with a public censure, with the final case remaining outstanding)*

During the 2023 session, the Commission requested an increase to the executive director's FTE from 0.50 to 0.75 FTE; however, that request was not approved by the Legislature. The Legislature did approve \$20,000 General Fund for a new case management system, which has since been implemented on schedule, within scope, and on budget.

The Legislative Fiscal Office recommendation is to approve the General Fund request of \$40,000 on a one-time basis, which will provide CJFD the resources to administratively increase the number of hours worked by the Executive Director to address complaint caseloads in the current biennium. However, the 0.25 FTE increase in budgeted position authority is not recommended due to a limitation in the state's position control system that prevents temporarily increasing the FTE on an existing permanent position. The 2025 Legislature will have the opportunity to consider any ongoing increase, as the Commission has submitted a 2025-27 policy package for a permanent FTE increase to the Executive Director's position.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board allocate \$40,000 General Fund from the Emergency Fund to the Commission on Judicial Fitness and Disability, on a one-time basis, to address a caseload backlog.

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Commission on Judicial Fitness and Disability
Gehringer

Request: Allocate \$40,000 from the State Emergency Fund on a one-time basis and authorize an increase of 0.25 full-time equivalent to a current part-time position to address a backlog of complaints.

Recommendation: The Commission on Judicial Fitness and Disability is not under Executive Branch budgetary authority.

Discussion: The Commission on Judicial Fitness and Disability is experiencing a significant backlog due to the rising number and complexity of complaints against judges. The current Executive Director (0.50 FTE) staffing is insufficient to manage the workload, leading to delays in case triage and review.

The request indicates the backlog is due to increased complaints, limited staffing, time-consuming investigations, and the additional duties of the sole staff member. The number of complaints has risen significantly, especially since the implementation of an online complaint form in 2018. The Commission has only one half-time employee, which is insufficient to handle the growing volume and complexity of cases. Each complaint requires extensive triage and investigation, often taking several hours per case. Finally, the Executive Director has numerous other duties, which would have otherwise been deprioritized to manage the influx of complaints, leading to delays and backlog.

The letter requests \$40,000 to fund a one-time 0.25 FTE increase to help address this backlog and prevent the situation from escalating.

Legal Reference: Allocation of \$40,000 from the State Emergency Fund to supplement the appropriation made by chapter 381, section 1(1), Oregon Laws 2023, for the Commission on Judicial Fitness and Disability, Administration for the 2023-25 biennium.



Commission on Judicial Fitness and Disability

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August 22, 2024

Senator Rob Wagner, Co-Chair
Representative Julie Fahey, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Commission on Judicial Fitness & Disability is requesting \$40,000 from the General Fund for a one-time 0.25 FTE increase to the existing 0.50 FTE position to address the increasing number and complexity of the cases brought before the Commission, which has resulted in a growing backlog.

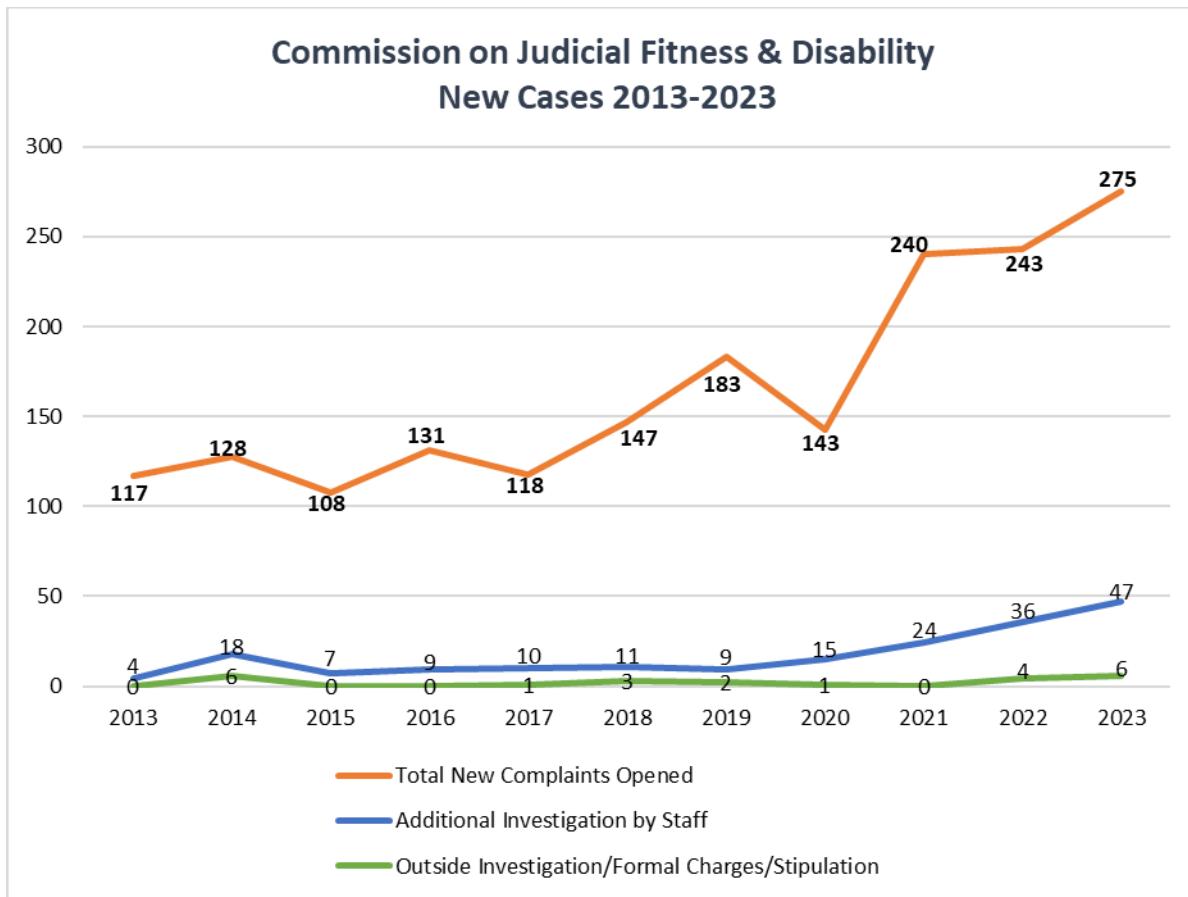
Agency Action

Since its inception in 1967, the Commission on Judicial Fitness & Disability has reviewed judicial ethics complaints about Oregon Judges, including all judges within the Oregon Judicial Department, Justices of the Peace, active Senior Judges, and judicial candidates. The Commission currently has jurisdiction regarding approximately 400 judges. The Commission is made up of nine volunteer members who meet six times per year, and includes judges, attorneys and community members.

For most of its existence, the Commission has maintained staffing at 0.5 FTE despite the growing number and complexity of complaints, particularly in the last several years. The nature of the job requires the single, half-time employee be a licensed member of the Oregon State Bar in order to accomplish a long list of responsibilities, including: all correspondence and contact with the public; all work with other state agencies for administrative matters; receiving, opening and triaging all incoming complaints and supporting documentation; recruiting, retaining and training contract attorneys to perform the Commission's various investigatory and prosecutorial functions; coordinating the meetings, trials and other activities of the Commission; preparing informational reports on individual complaints, including listening to audio records of court hearings; recording and entering cases; reviewing and researching statutes and other legal requirements that guide

the Commission's work; and other administrative duties as the Executive Director of the Commission.

Complaints to the Commission have increased significantly in recent years. In July 2018, the Commission implemented an online complaint form to make the complaint process more accessible to the public. The complaints have risen each year since then, aside from 2020. In addition to the complaints that are opened, there has also been an increase in contacts requiring referral to other agencies. This calendar year is continuing the trend, with 166 new complaints opened as of June 30, 2024.



As the number of complaints has continued to increase, the Commission's half-time Executive Director has been obligated to prioritize opening, triaging and investigating cases to prepare them for the Commission's review at the following meeting at the expense of other responsibilities. This triage generally takes between one and five hours per complaint. Following each meeting, the Director performs additional tasks as assigned by the Commission. These may include writing carefully worded inquiry letters to judges or others involved in a case and obtaining and reviewing audio recordings of hearings. The above chart shows that the additional investigative work performed by the Commission's

Director has increased as the number of cases has increased. This additional investigation usually takes 2 to 4 hours, but several times per year there are more time-consuming cases, requiring extensive review of trial records. As of June 30, 2024, the Director had done additional investigation in 27 cases this year, which is more than any entire year prior to 2021.

The Commission may also ask the Director to retain an attorney or investigator to conduct further investigation or compile a formal complaint against a judge. In these instances, the Director is required to provide initial training and detailed direction for those contracted by the Commission. In 2024, the Commission has launched three formal complaints against judges, as of June 30, 2024. One was resolved by resignation, one by a stipulated public censure by the Supreme Court, and one is still outstanding. As of June 30, 2024, the Commission had outside investigators/attorneys retained on five separate cases and had recently closed two long-running complex cases.

In response to the increasing number of complaints, the Commission has worked to add efficiencies. The Commission has recently implemented a new matter management system, which has increased efficiency in staff time and in tracking cases. This management system was funded with a policy package for the 2023-2025 biennium and was implemented on time, in scope, and under budget, in August 2023. The Commission also requested an increase of 0.25 FTE for the current biennium, as it was becoming increasingly difficult to keep up with increasing case numbers and complexity, though it had not reached current levels of urgency.

Over the course of the current calendar year, the Commission has fallen behind as the Director has not had enough time to manage pending cases and triage all new cases prior to the next meeting, requiring a significant number of cases to be pushed to the next meeting for initial review. As of June 30, 2024, the Commission had opened 166 new complaints for the calendar year. Of these, 27 were delayed at least two months due to the Director not having time to triage the case prior to the next scheduled case review meeting. She must then triage those cases as well as new incoming cases before the next meeting, causing further delay and backlog. The lack of staff time to respond timely to incoming complaints has reached emergency stage and will get much worse if not addressed in the near future. The Commission members believe that, without taking steps now to catch up and stay on top of cases as they come in, this emergency will become a full-blown crisis.

For the 2023-2025 biennium, the Commission's legislatively approved budget was \$311,257 for administration and \$21,839 for extraordinary expenses. Carryover funds from the prior biennium, in the amount of \$31,401 were rolled into the extraordinary fund. The Commission has one 0.50 FTE authorized position. The Commission uses the extraordinary fund to retain outside counsel and investigators for investigations and prosecutions. The Commission spends its limited operations budget carefully and aside from this request, will remain within the legislatively approved 2023-2025 budget. The Commission has

identified that by foregoing some other spending in areas such as professional services and travel, it can support approximately 10 additional hours of staff-time per week (a 0.25 FTE increase) through mid-October 2024. The Commission is requesting funding to support ten hours per week of additional staff time, which is an increase of 0.25 FTE, from the time the funds run out in October for the remainder of the fiscal year.

This funding will cover the basic work of new complaint intake and triage, and the initial directions from the Commission. This funding does not address the broader work of the Commission, including the other duties of the Executive Director that she has routinely set aside to be able to respond to the incoming flow of complaints. The Commission believes that this increase will allow the Director to catch up on the backlog of cases and, depending on the number and complexity of incoming cases during this time, maintain a minimal or non-existent backlog.

The Commission is working on a 2025-2027 policy option package to increase staffing for the Commission to 1 FTE.

Action Requested

Allocate \$40,000 General Fund, on a one-time basis, and authorize an increase of 0.25 full-time equivalents for Administration and to address a caseload backlog.

Legislation Affected

Chapter 381, OR Laws Section 1 (1)

Thank you for your time and attention to this matter.

Very truly yours,

COMMISSION ON JUDICIAL FITNESS AND DISABILITY



Melanie Kebler
Chair



Rachel L. Mortimer
Executive Director