Commission on Judicial Fitness and Disability

Presentation to the Joint Committee on Ways & Means
Subcommittee on Public Safety

February 10, 2025

Rachel Mortimer, Executive Director
Judge Cheryl Albrecht, Commission Chair
Melanie Kebler, 2024 Commission Chair

About the Commission

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.

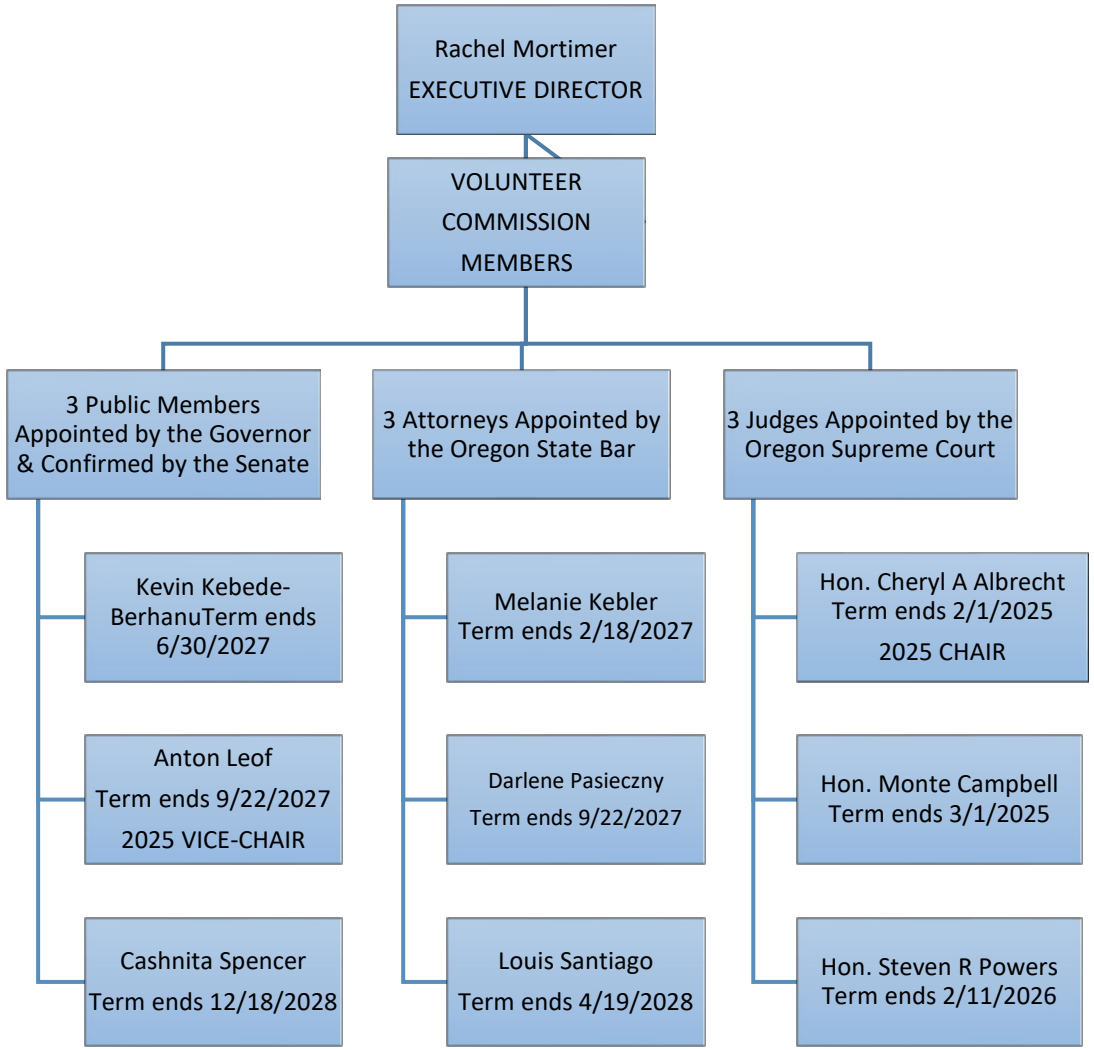
The mission of the Commission is to ensure the quality and effectiveness of the state judicial system. The Commission exists to ensure that Oregon's judges uphold the ethical standards of the Oregon Code of Judicial Conduct and the Oregon Constitution.

Authority

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

Organization

- One half-time Executive Director
- Nine volunteer Commission Members
  - Three public members
  - Three attorney members
  - Three judge members
- A quorum requires at least one member of each category to be present



Commission jurisdiction

- The Commission exercises jurisdiction over approximately 452 judges, including:
  - Circuit Court judges (182)
  - Appellate judges (20)
  - Pro Tem judges (± 120)
  - Senior judges (± 55)
  - Judicial referees (± 39)
  - Justices of the Peace (32)
  - Tax Court judge & magistrates (4)
  - All judicial candidates

- No jurisdiction over municipal court judges, arbitrators, or administrative law judges

Operations of the Commission

Role of the Commission

- Review, assess merit, and make decisions on every complaint received from the public
- Direct investigations to gather further information if warranted
- Assign and supervise contracted investigators and prosecutors
- Hold public hearings and make findings of fact, conclusions of law, and disciplinary recommendations to the Supreme Court

Role of the Commission

Commission on Judicial Fitness and Disability

- Receives and investigates complaints
- Conducts hearings and finds facts
- Prepares record
- Makes recommendation

Oregon Supreme Court

- Authority to discipline
- Issues final sanction order

Role of the Commission's 0.5 FTE Executive Director

- Receive, screen, and open all complaints
- Regular contact with the public, including referrals to services
- Prepare all complaints for Commission review, including basic information gathering
- Complete additional investigative tasks such as obtaining and reviewing audio and other court records
- Track complex investigations and provide continuous reports to the Commission
- Manage and supervise contracted investigators and prosecutors
- Respond to public records requests
- All other administrative and executive tasks associated with directing a state agency
- The Commission requires the Executive Director to be a licensed attorney

How complaints are processed

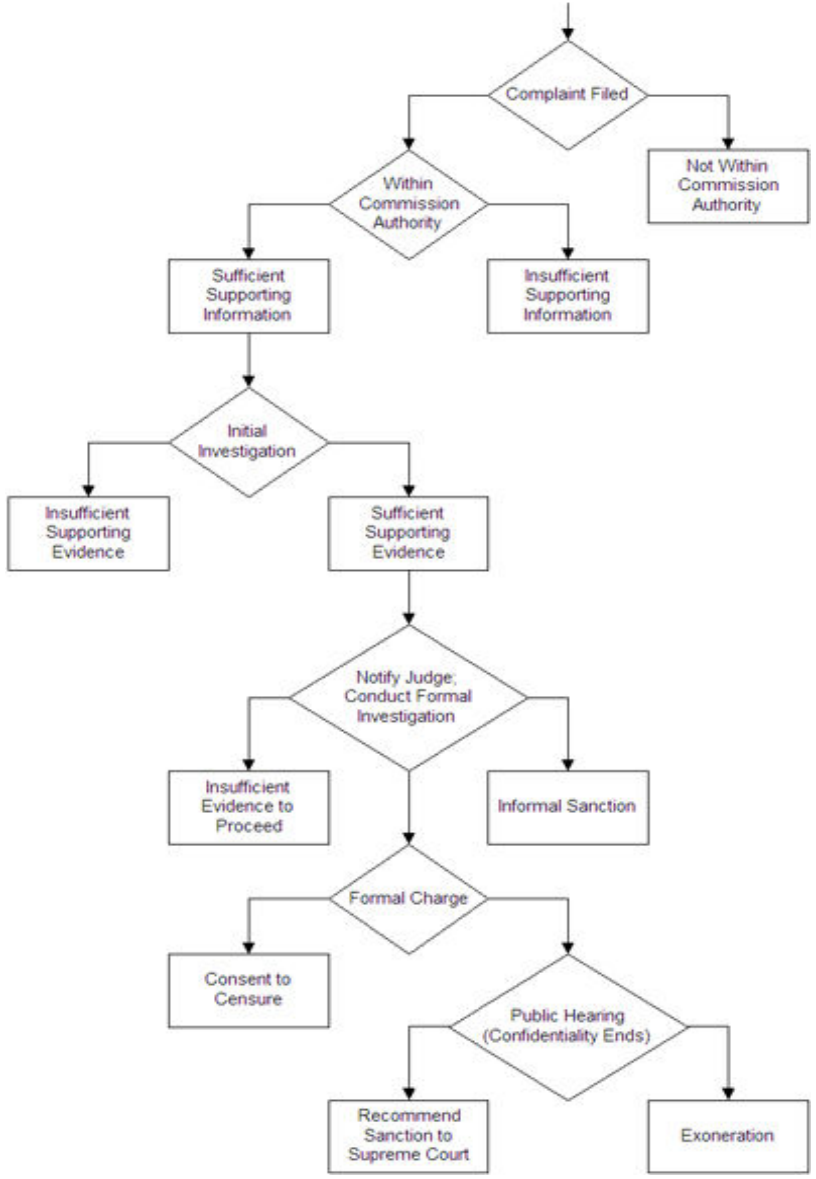
- Executive Director receives complaints, triages each one, then reviews and summarizes for Commission review
  - Necessitates frequent and sometimes repeated contact with complainants to ensure enough information is gathered for the Commission to consider
- Executive Director obtains court records and/or audio for review if implicated by the complaint
- Commission meets every other month to review each complaint, determine the merit of the complaint, and vote on next steps
  - Complaints that do not contain sufficient information indicating a violation of the Judicial Code of Conduct or Oregon Constitution, or complaints that are outside the jurisdiction of the Commission, are dismissed

Commission review of complaints

- When a complaint indicates a violation of the Code of Judicial Conduct or if more information is needed, the Commission conducts an initial investigation. This may include directing staff to:
  - Query the judge
  - Query the complainant
  - Obtain and review more records, including audio of court hearings
  - Hire an investigator for interviews and more information gathering
- If the investigation substantiates a violation, the Commission may issue an informal disposition letter, or proceed to formal charges and a public hearing

Complaint process

- Complaints and the Commission's response to them are confidential until the point of a formal public hearing.
- Judges are notified of a complaint only when the Commission decides to investigate and query the judge.
- Contract investigators and contract prosecutors are required for complex investigations and for the Commission to move forward with a formal hearing.
- The Commission convenes and conducts the formal hearing, makes any resulting findings of fact, and recommends sanctions to the Oregon Supreme Court.

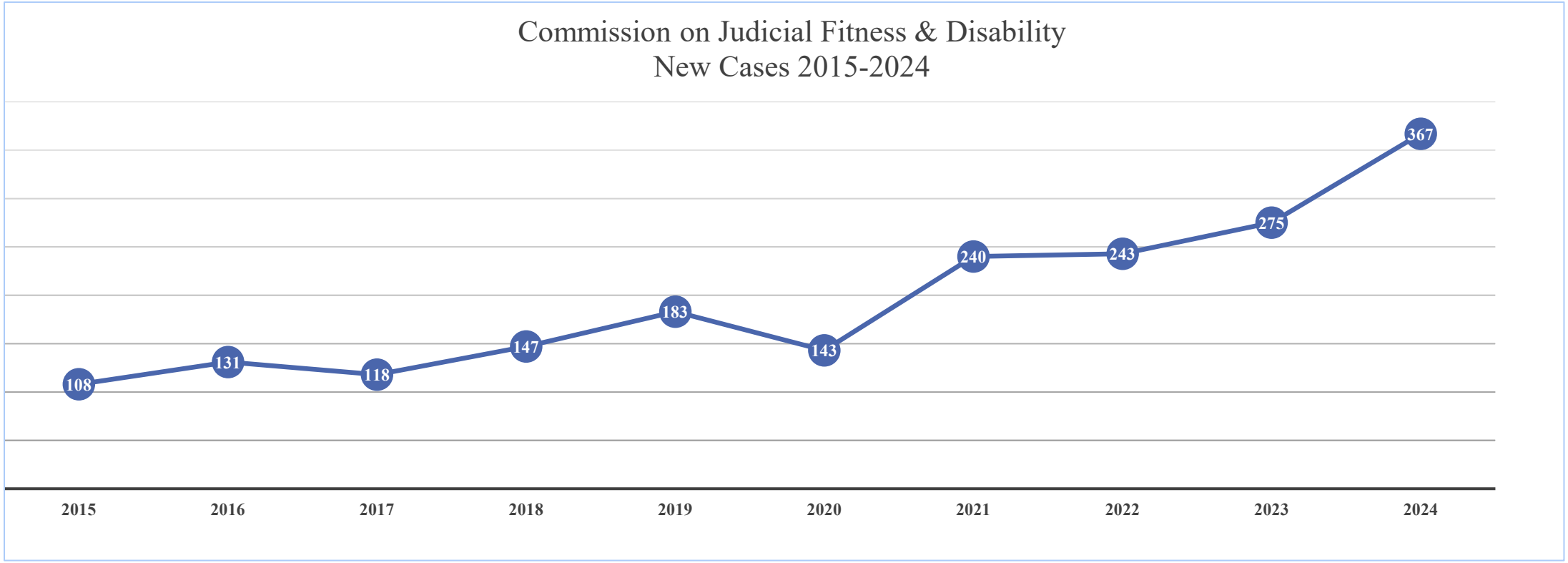


How complaints are tracked

- The Commission received funding in the 2023-25 budget for a basic matter management system.
- This was installed and implemented starting in August 2023.
- As each complaint is opened, it is assigned a case number and set for review at the next Commission meeting.
- The Commission can now track timelines, stage of case, and some basic information about the sources of the complaints.

Complaints About Judges are Increasing

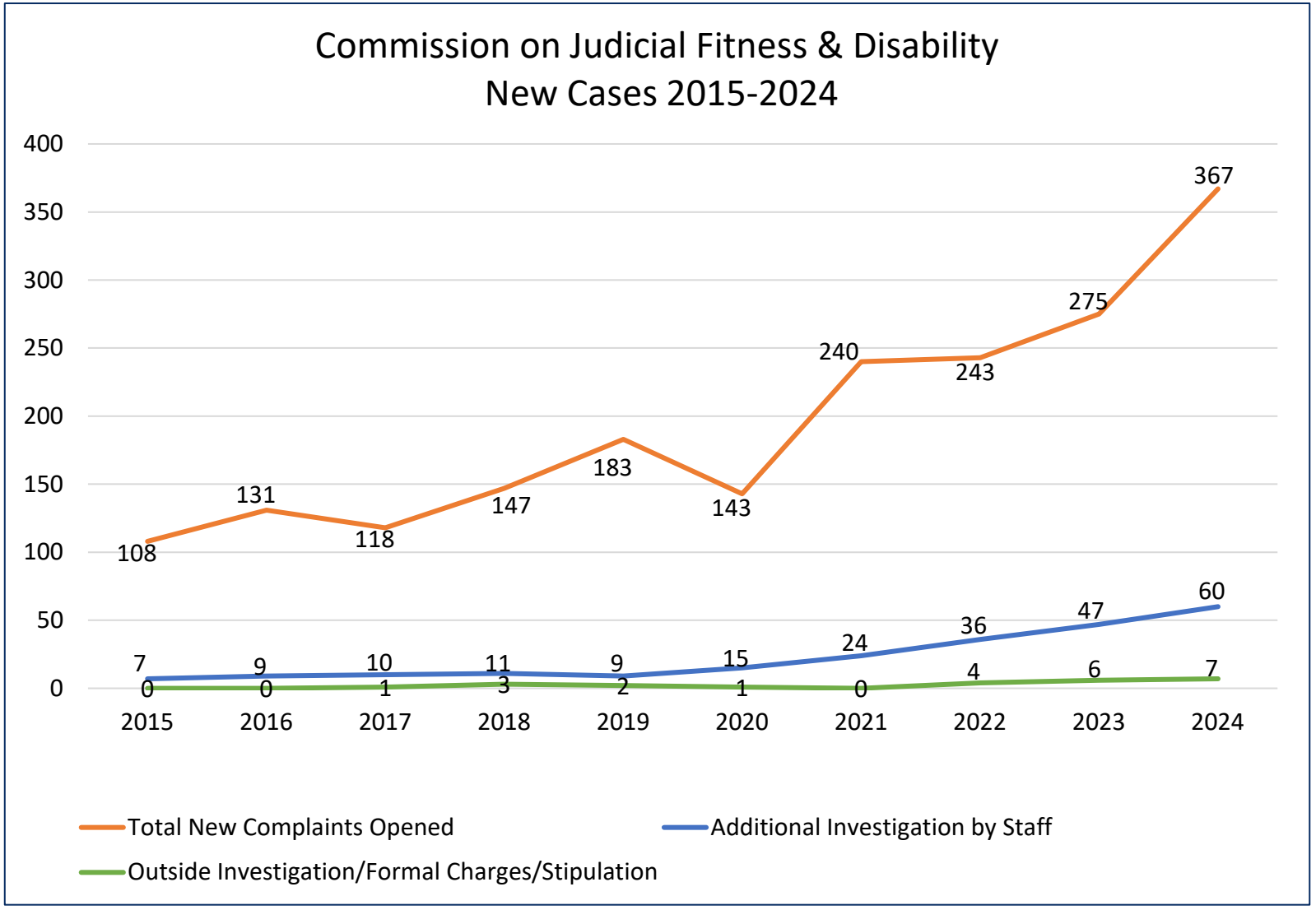
The number of complaints received by the Commission each year has more than doubled in the past five years.



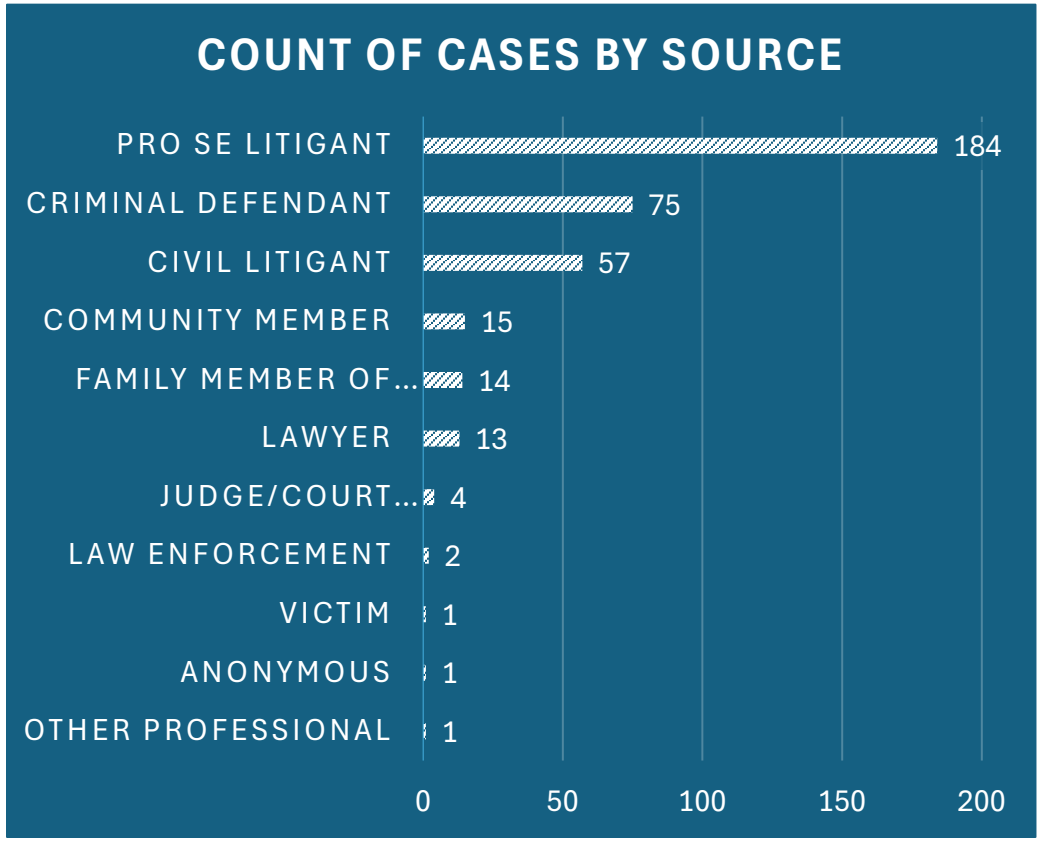
Investigations Have Also Increased

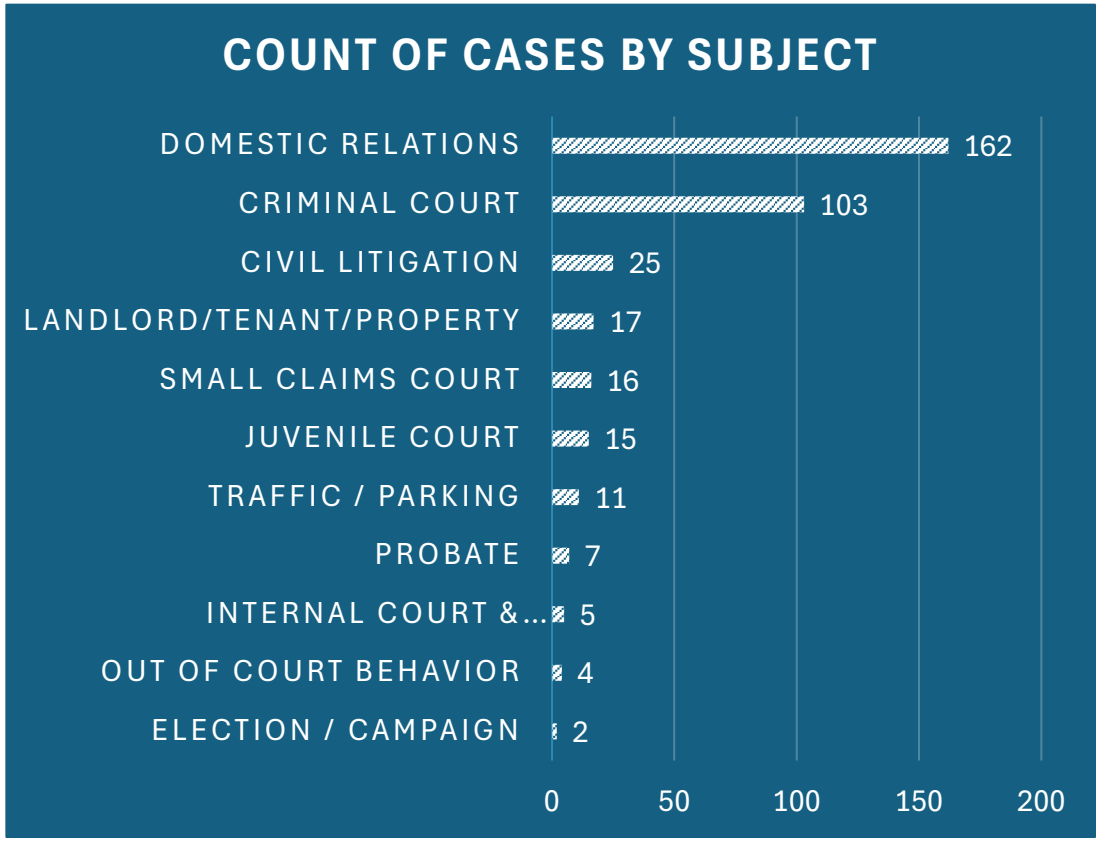
As complaints have increased, staff has been required to conduct additional investigation in an increasing number of cases.

The need to retain outside investigators and attorneys to prosecute cases have also increased.



Where Do the Complaints Come From?





Agency Budget and Key Performance Measures

Key Performance Measures (KPMs)

1. Percent of Commission recommendations forwarded to the Supreme Court that are upheld by the Supreme Court. 100%
2. Percent of judges prosecuted by the Commission who are not exonerated. 100%
3. Percent of stipulated agreements unchanged and approved by the Supreme Court. 100%
4. Percent of prosecutions completed within two years of first review through date of final Commission action before the Supreme Court. 100%
5. Percent of total best practices met by the Board. 100%
6. Percent of complaints upon which the Commission makes a decision within six months of when the complaint is received in the Commission office. The target is set at 75% with the recognition that most complaints should be investigated and completed within this timeframe, but that some types of cases, including those resulting in complex investigations and prosecutions will take longer to resolve appropriately. 97%

One case, a stipulated agreement, was reviewed and approved by the Supreme Court during this time.

Commission Budget: General Fund

TWO COMPONENTS

1. Operations
   - 0.5 FTE Executive Director
   - Services and Supplies
   - Commission members are unpaid volunteers
   - Commission holds regular meetings six times a year, and other ad hoc meetings as required to respond to complex cases and prepare for budgeting needs
2. Extraordinary Expenses
   - Costs to investigate and, when pursued by the Commission, formally prosecute violations of the Judicial Code of Conduct
   - This amount is unpredictable and driven by the requirements of individual cases

Commission budget history

2023-25 Biennium – Operations - *projected* $ 373,420*
Extraordinary Expenses $ 50,408**

*Includes Additional $40,000 to Operations from E-Board September 2024 to address backlog

**Additional $50,000 requested to cover ongoing investigation expenses

2021-23 Biennium – Operations $284,164
Extraordinary Expenses $ 14,934

2019-21 Biennium – Operations $ 255,307
Extraordinary Expenses $ 13,076

2017-19 Biennium – Operations $ 222,344
Extraordinary Expenses $ 20,713

2015-17 Biennium – Operations $ 216,145
Extraordinary Expenses $ 218,513

Budget Overview – Current Service Level

CSL for 2025-27	**$393,639**
Operations	$370,315
Extraordinary Expenses	$ 23,324

Agency Requested Budget

ARB for 2025-27	$619,296
POP 101 Increase Executive Director From 0.5 to 1.0 FTE	$225,657

Agency funding request POP 101

POP 101 – Increase Staffing to 1.0 FTE

- Increase the Commission's sole staff member from .5 FTE to 1.0 FTE
- $225,657 General Fund
- Necessary to address rising numbers of complaints, increased number of investigations, and to maintain a high-level professional response to complainants
- Due to the number of complaints, the Executive Director cannot always complete her work in time for Commission meetings, causing delay in Commission response to complaints
- Executive Director spends almost 100% of her time on complaint response work and does not have time to spend on other executive functions

POP 101 – Increase Staffing to 1.0 FTE

- The Commission has maintained staffing at 0.5 FTE for most of its existence, despite growing number and complexity of cases in recent years.
- The nature of the job requires this employee be a licensed member of the Oregon State Bar.
- As complaints have increased, the Director has been obligated to prioritize opening, triaging and investigating cases.
- After facing backlogs through the first part of 2024, the Commission was granted additional funding at the September 2024 Emergency Board, which has provided an additional 10 hours per week of staff time.

Executive Director Responsibilities

- 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;
- Maintaining information and data for all complaints;
- 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.

Executive Director Role

- Due to the priority of opening and managing complaints, the Executive Director has been unable to spend time on other aspects of the Commission's work, which include:
  - Developing a feedback protocol to share complaint data and trends with the Oregon Judicial Department to improve their work
  - Developing ways to provide more information to the public while maintaining the confidentiality required in individual cases
  - Further professional development & training for both staff and Commission Members
  - Regular review and revision of correspondence, website and Rules of Procedure

Reduction Options

The Commission identified and submitted the following options:

Eliminate Extraordinary Expenses - $23,324

- 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.

Reduce Professional Services - $16,040

- Would eliminate 80% of the budget which pays for DAS computer support, outside system support and transcription services.

Questions

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