

January 15, 2025
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Emily Cureton Cook, OPB Central Oregon Bureau Chief
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Stephanie Clark, State Archivist
Cherrill Crosby, Executive Editor, Statesman Journal

Guests

Andy Foltz, Outgoing Public Records Counsel, Department of Justice
David Pitcher, Incoming Public Records Counsel, Department of Justice
Rachel Mortimer, Executive Director of Commission on Judicial Fitness and Disability
Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item: Review/Approve Minutes

Co-Chair Smith moved to approve the minutes of the November 20, 2024 meeting. **Mr. Landauer** seconded the motion. **Co-Chair Fisher** abstained due to his absence from the meeting. **Mr. Miles, Ms. Cureton Cook, Ms. Clark and Ms. Crosby** voted for the motion.

Second Agenda Item: Discussion with Ms. Mortimer and judicial fitness and misconduct records

Co-Chair Smith introduced the committee’s guest expert, Rachel Mortimer, Executive Director of the Commission on Judicial Fitness and Disability. He said the committee was reviewing some summaries of exemptions related to disability type information and embedded in that list of exemptions were two statutes that involved judicial conduct and disability. The committee wanted information related to these kinds of investigations and what was available to the public, so he invited Ms. Mortimer to speak today.

Ms. Mortimer introduced herself as the Executive Director of the Commission on Judicial Fitness and Disability, and the only part-time employee of what she said was probably the smallest state agency. She said the mandate of the commission is to take complaints about Oregon judges. They cover about 400 judges, ranging from circuit court, appellate and justices of the peace, but they do not cover municipal or administrative law judges. The commission takes complaints from the public, judges, lawyers, or any member of the public if they submit a complaint about a judge that they have official jurisdiction over. Their complaints have risen significantly in the last couple years, from 100-150 in an average year to 367 for 2024. When complaints come in, the commission opens a complaint and may gather records. They may then conduct investigations and will sometimes hire attorneys or private investigators for more extensive investigations. Most of their cases resolve at the initial review. In the instances when it looks like the conduct is rising to the level where suspension, public censure or termination looks likely, then the commission can go to a public hearing. Up until then, for either disability or conduct cases, cases are considered fully confidential. She said there are different courses and definitions for conduct and disability cases. For a pure conduct case, once those go to hearing, any evidence at trial is public and that

recommendation is then made to the Oregon Supreme Court, which is also a public record. There are three possible forms of discipline – public censure, suspension or termination.

Co-chair Fisher asked whether it could be made public regarding such details like that the fact of an investigation is occurring or the number of investigations that have occurred.

Ms. Mortimer said the fact of an individual investigation would remain confidential. Up until last year the commission did not have a database or any way to aggregate that information but that is a project that she is now implementing for statistics such as the number of pro se complainants. One of her goals as executive director is greater transparency but they also have staffing issues because her role is only a part-time position.

Co-chair Smith asked whether unfounded investigations are confidential as well. **Ms. Mortimer** said those are confidential as well.

Ms. Mortimer said that there has only been one case ever in terms of a disability case that has gone through the entire process. **Ms. Mortimer** said that findings of wrongdoing or disability can be stipulated and the stipulation would be public because that's at the Supreme Court level, unless they resign in lieu of a case going to censure, termination or suspension, since those would have to be imposed by a public action by the Supreme Court. She said that could be motivational for judges to reach a settlement and resign.

Co-chair Fisher said he could see both sides, where a resignation could be a carrot but also someone could resign if they were engaging in behaviors that were inappropriate and the public should know about that.

Ms. Mortimer said the information would stay confidential because if the judge resigned before it reached a public hearing, the commission would lose jurisdiction over the judge and they wouldn't get the retirement benefits of serving as a senior judge or able to be a judge again in Oregon.

Mr. Miles asked if the judge is found to have engaged in actual misconduct would it likely be accompanied by a bar complaint. **Ms. Mortimer** said only if the judge was also acting as a lawyer during the course of the misconduct. **Ms. Mortimer** said the commission can only recommend censure, suspension or termination, not licensing actions.

Co-chair Fisher asked which kinds of cases would be considered misconduct and **Ms. Mortimer** said there weren't recent examples of cases that were made public.

Ms. Crosby had a concern about the lack of transparency if the conduct wasn't criminal and how the public would know about the checks and balances of the commission.

Ms. Mortimer said this was frustrating to the commission as well, but that by statute that information is not something they can share until it reaches the public hearing process.

Co-chair Fisher talked of the balance between the need for privacy and public accountability and asked if Ms. Mortimer could envision a different way of doing things.

Ms. Mortimer said she doesn't have a specific recommendation but said that the public records piece does work as an incentive for judges who don't want their information to be public. She said for more changes than that she would have to sit down with stakeholders and have more discussions, as well as needed more staff resources to implement any changes.

Commission members then talked of the public interest balancing test for similar records for public employees. **Ms. Crosby** expressed concern for different standards for teachers and police officers versus judges, who were also public employees, if elected or appointed.

Co-chair Smith said the distinction would be the high level of authority that the judge has with a lot of public scrutiny.

Ms. Mortimer also described the makeup of the commission; it has nine members, three judges appointed by the chief justice, three attorneys appointed by the Oregon State Bar and three community members who are appointed by the governor and confirmed by the Senate.

Ms. Cureton Cook said she found it concerning to hear that the threat of public exposure of records is a tool to weed out judges from misconduct.

Co-Chair Smith agreed, and also recognized the utility of that tool as a bargaining chip. Commission members then talked about hypothetical situations in which it would be useful to know about a judge's misconduct.

Co-Chair Fisher agreed that he thought a recommendation for greater transparency was a good idea and called for a subcommittee to look at the issue.

Members agreed to have a smaller group look at the issue. **Co-chair Smith** agreed to chair the subcommittee and **Ms. Cureton Cook** agreed to be a member. In need of a third member for the subcommittee, committee members decided to wait until the AG's appointment to fill the vacancy left by Michael Kron.

They agreed to table issue to the following meeting's agenda.

Third Agenda Item – Committee Vacancies

Mr. Folz said there is a vacancy left by **Mr. Kron** and also one for a representative from small local government vacated by Ms. Johnson. **Mr. Folz** asked committee members to give him suggestions for the future. **Ms. Clark** said she'd reach out to her contacts within the association of municipal recorders.

Mr. Folz then introduced his replacement, **David Pitcher**, who has had 11 years of experience as a criminal prosecutor and also handled public records for the Washington County DA's office for the last five years.

Fourth Agenda Item – Process during legislative session

Co-chair Fisher said he would be willing to chair a legislative review subcommittee to review the bills coming up that include government impact statements. **Mr. Landauer** said as he is also the chair of the public records advisory council, he didn't think it was a good idea for him to participate in that process. **Ms. Cureton Cook** asked if there was a way to streamline the process. **Co-Chair Fisher** said that they just reviewed most bills that had government impact statements, as that indicated they dealt with public records law. **Ms. Cureton Cook** agreed to be part of the legislative review subcommittee, as did **Co-Chair Smith**.

Co-chair Fisher said the motion on the table was that the legislative review subcommittee "is empowered to make recommendations on its own on behalf of the Oregon Sunshine Committee as long as those recommendations are based on previous recommendations of the full committee." **Mr. Landauer** so moved. **Ms. Cureton Cook** seconded the motion. **Co-Chair Fisher**, **Co-Chair Smith**, **Ms. Crosby**, **Mr. Miles**, and **Ms. Clark** voted in favor. The motion passed unanimously.

Fifth Agenda Item – Senate Bill 890 discussion

Co-Chair Fisher gave an update on the bill submitted for them by Senator Thatcher. It's not public yet because it wasn't pre-session filed but it has been filed as of now and they have a bill number, Senate Bill 890. It changes the committee that the Sunshine Committee reports to as to the Judiciary Committee, changes the due date of the report to May 1, and extends the date by which they need to finish their work.

Sixth Agenda Item – Next meeting date and future topics

Mr. Miles suggested that the minutes should name who voted for motions instead of saying they unanimously passed in the event of members not all being present for a vote. **Co-Chair Smith** said the next topic on the list of exemptions touches on education records.

Adjournment

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