

**Exemption Statute and Title: [ORS 1.303](#) Disability of Judge**

**Summary:** Information received or prepared by the Chief Justice of the Supreme Court during an inquiry to determine whether a judge has a disability is not a public record.

**Relevant Text:** [ORS 1.303](#)

(2) When the Chief Justice of the Supreme Court receives a complaint as provided in [ORS 1.420](#)(2) or has reliable information that would lead a reasonable person to believe that a judge has a disability, the Chief Justice may:

- (a) Confer with the subject judge in respect to the alleged disability.
- (b) Consult with other judges of the court in which the subject judge serves and other persons who may have knowledge concerning the alleged disability.
- (c) Conduct other inquiry in respect to the alleged disability as the Chief Justice considers appropriate.

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(6) Documents filed with or prepared by the Chief Justice under subsections (2), (3) and (5) of this section shall not be public records unless received as competent evidence in the course of a hearing pursuant to [ORS 1.310](#)(4) or [1.420](#).

**Key Terms:**

“Disability” means a physical or mental condition of a judge, including but not limited to impairment derived in whole or in part from habitual or excessive use of intoxicants, drugs or controlled substances, that significantly interferes with the capacity of the judge to perform judicial duties. A disability may be permanent or temporary. ORS 1.303(1)(c).

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Cited in Court Cases, AG Opinions and/or Public Records Orders? No.**

**Exemption Statute and Title: [ORS 1.425](#) Commission Proceedings Upon Receipt of Complaint of Disability**

**Summary:** Testimony and evidence presented in a hearing of the Commission on Judicial Fitness to inquire into the alleged temporary disability of a judge is not a public record.

**Relevant Text:** [ORS 1.425](#)

- (1) Upon complaint from the Chief Justice of the Supreme Court as provided in [ORS 1.303](#), and after such investigation as the Commission on Judicial Fitness and Disability considers necessary, the commission may:
  - (a) Proceed as provided in [ORS 1.420](#); or
  - (b) If the investigation under this subsection indicates that the subject judge may have a temporary disability, hold a hearing pursuant to subsection (2) of this section to inquire into the alleged disability, or request the Supreme Court to appoint three qualified persons to act as masters, to hold a hearing pursuant to subsection (2) of this section and maintain a record on the matter referred to them and to report to the commission on the alleged disability.
- (2) When a hearing is held by the commission or by masters as authorized in subsection (1)(b) of this section, the hearing shall not be open to the public unless the subject judge requests a public hearing. The testimony and evidence given and received in the hearing shall not be public records. The subject judge shall have the right to be present at such hearing, to be represented by counsel, to present testimony and evidence and to cross-examine witnesses.

**Key Terms:**

“Disability” means a physical or mental condition of a judge, including but not limited to impairment derived in whole or in part from habitual or excessive use of intoxicants, drugs or controlled substances, that significantly interferes with the capacity of the judge to perform judicial duties. A disability may be permanent or temporary. ORS 1.303(1)(c).

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Cited in Court Cases, AG Opinions and/or Public Records Orders? No.**

**Exemption Statute and Title: [ORS 1.440](#) Status of Records of Proceedings Under ORS 1.420 or 1.425**

**Summary:** Generally provides that documents and testimony given during investigations and proceedings to inquire into the alleged disability of a judge are privileged communications and are not public records unless received as competent evidence in the course of certain hearings of the Commission on Judicial Fitness and Disability.

**Relevant Text:**

(1) Documents filed with the Commission on Judicial Fitness and Disability and the investigation conducted by the commission prior to a hearing pursuant to [ORS 1.420](#) or [1.425](#) shall not be public records unless received as competent evidence in the course of a hearing pursuant to [ORS 1.420](#). The decision of the commission after hearing or upon review of the record and report of masters under [ORS 1.420](#) shall be a public record, together with the recommendations, if any, of the commission to the Supreme Court. The decision of the commission after hearing or upon review of the record and report of masters under [ORS 1.425](#) shall not be a public record, except for a decision and recommendation to the Supreme Court under [ORS 1.425\(4\)\(b\)](#). A consent to censure, suspension or removal executed by a judge under [ORS 1.420\(1\)\(c\)](#), and a stipulation of facts entered into between the commission and a judge under [ORS 1.420\(1\)\(c\)](#), shall not be a public record until the consent and stipulation are submitted to the Supreme Court.

(2) Documents filed and testimony given in proceedings under [ORS 1.420](#) or [1.425](#) are privileged communications which may not be received in evidence in any judicial proceedings other than those directly connected with the administration of [ORS 1.410](#) to [1.480](#) unless expressly or impliedly waived by the person tendering the document to or testifying in such proceedings or except in a criminal prosecution for perjury or false swearing before the commission.

(3) Members of the commission, masters appointed pursuant to [ORS 1.420](#) or [1.425](#) and staff of the commission shall not disclose or use any investigation, testimony or documents which are not public records as defined in [ORS 1.410](#) to [1.480](#) for any purpose other than in connection with their official duties in the administration of [ORS 1.410](#) to [1.480](#). The commission may, upon the request of a judge who has been the subject of a complaint and proceedings thereon that are not public records, state the disposition of the complaint and proceedings and the reasons for its decision when the commission finds that the complaint or proceedings have been publicized and fairness requires such comment.

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Cited in Court Cases, AG Opinions and/or Public Records Orders? No.**