



Office of Multnomah County Attorney

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2010-2011 Annual Litigation Report

Dedicated to:

Sandra Duffy, Senior Assistant County Attorney

Lauren Flaherty, Legal Assistant

*County Attorney's Litigation Report
to the Multnomah County
Board of Commissioners
December 2011*



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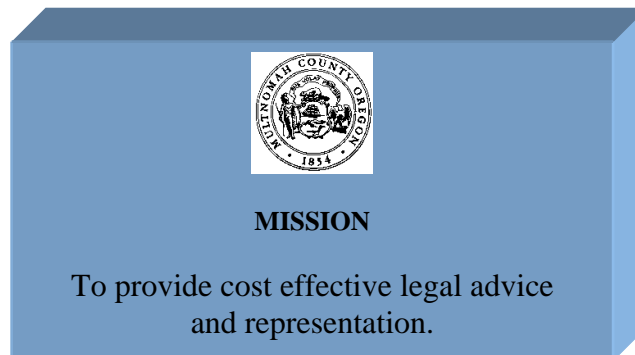
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INTRODUCTION

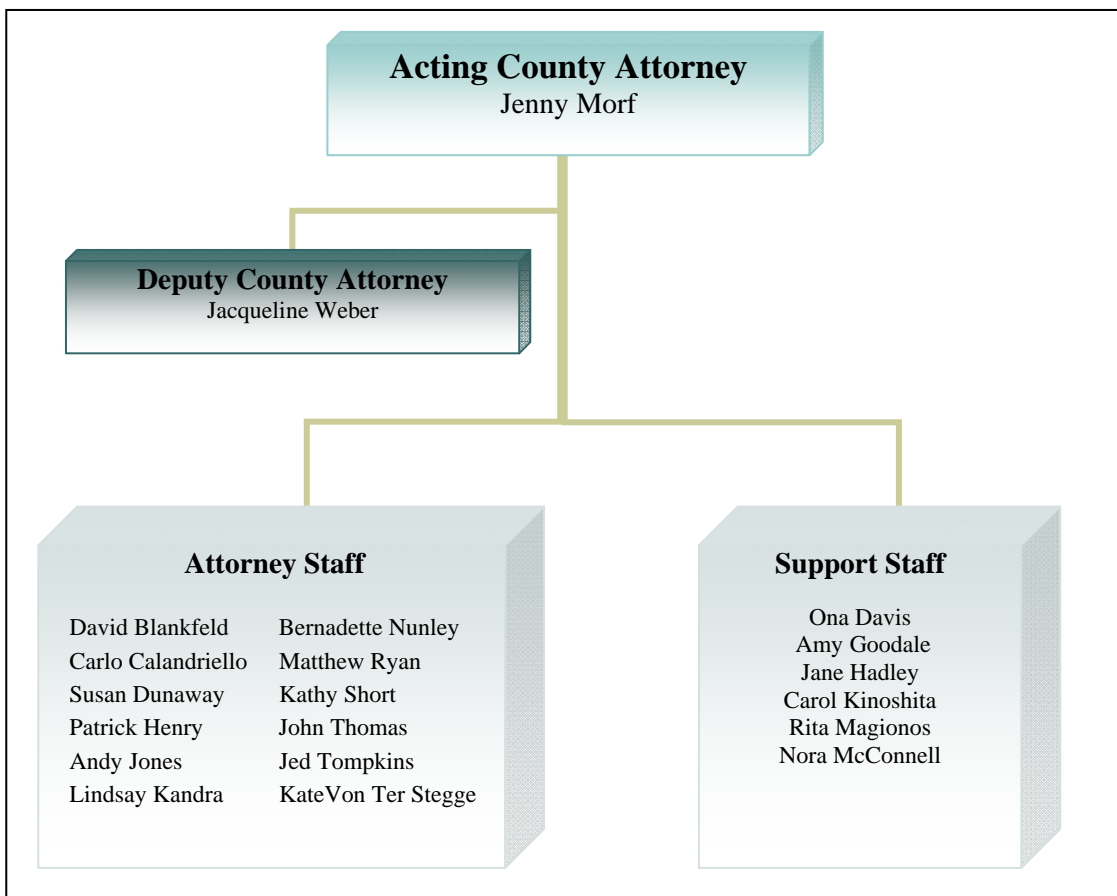
The mission of the County Attorney's office is to provide cost effective legal services for all county elected officials, officers and departments.



Multnomah County Code Section 25.320(I) requires the County Attorney to submit a formal annual litigation report to the Board. This Annual Litigation Report summarizes the legal services provided to county clients during the last fiscal year, with a specific emphasis on litigation services.

OFFICE STAFF

During the 2010-2011 fiscal year, our office experienced significant changes in staffing and leadership. We mourned the loss of two colleagues, Sandra Duffy and Lauren Flaherty, and celebrated the retirements of Agnes Sowle, County Attorney 2004 – 9/2010, and John Thomas, Deputy County Attorney 2004 – 1/2011. John continues to work with the office part time since his retirement. In addition, 4 attorneys resigned to pursue other career opportunities. These staffing changes provided management with the opportunity to assess, reevaluate, and rethink the office structure and recruit highly qualified attorneys to join the County Attorney team.



The staff at the County Attorney's Office have significant careers in public service and are recognized as subject matter experts on issues of county concern throughout the state. We are committed to succession planning, carefully selecting new hires who have a commitment to public service, a strong legal background, and who will continue to provide the highest quality legal services to the county.

In addition to the full-time staff, the office also manages a successful law clerk program and provides work experience and mentoring to law students. We participate annually in the Lewis & Clark Law School’s externship program, through which third-year law students volunteer their services to gain valuable public sector legal experience.

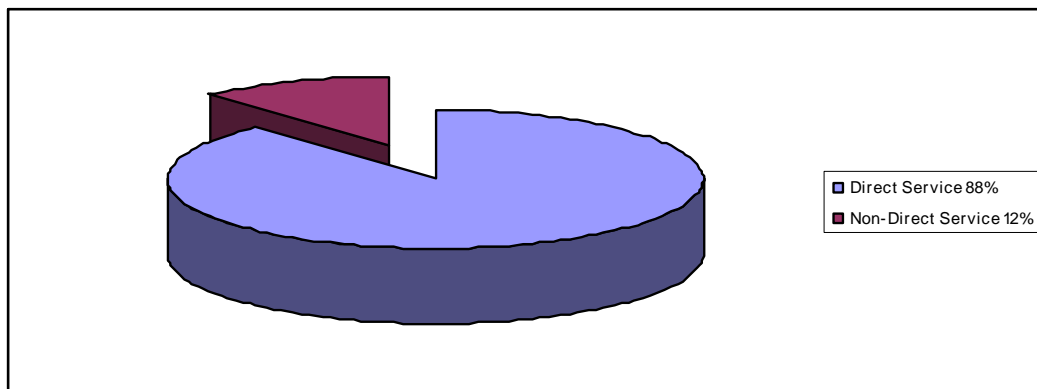
DIRECT SERVICE HOURS

Direct service hours represent attorney time dedicated to litigation, legal consultation, legal document preparation and review and client training. Direct service hours exclude time spent on professional development, administrative, clerical or office related tasks. The County Attorney utilizes a case management computer database to record direct service time as well as professional development and administrative/office related tasks. Effective May 24, 2011, we migrated to a Google compatible time/case management system, and as a result, the data for this report is based upon the first 11 months of the fiscal year.

Attorneys reported a total of 18,733.68 hours, of which 16,527.05 were direct services hours. Chart 1 demonstrates that 88% of County Attorney hours were dedicated to the provision of direct service hours.

Chart 1

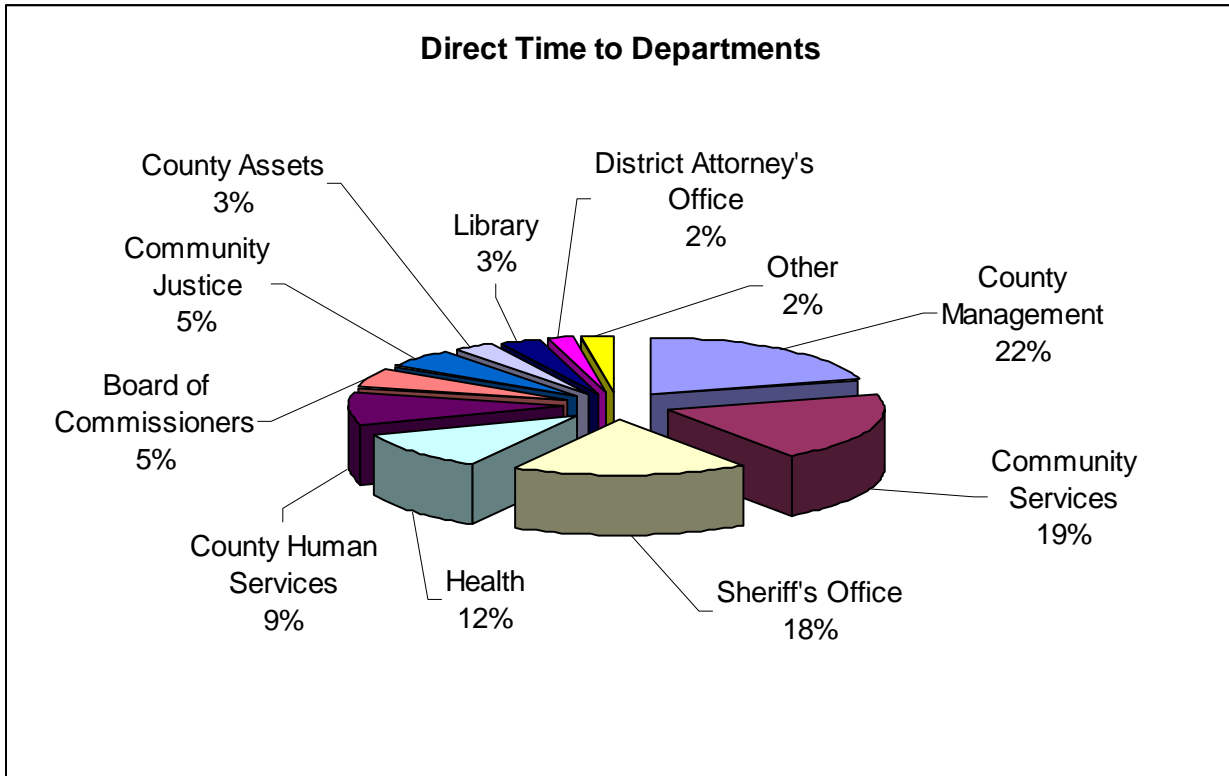
Total Hours Reported		18,733.68
Direct Service	88%	16,527.05
Non-Direct Service	12%	2,206.63
15 Attorney FTE Average Direct Service Hours		1,248.91



DIRECT SERVICE HOURS BY COUNTY DEPARTMENT

Chart 2 shows direct services hours broken down by county department. The greatest user of County Attorney time was County Management, with 22% of the hours, a 6% decrease over last year. Consistent with prior years, the Sheriff’s Department and Community Services are also major consumers of County Attorney resources.

Chart 2



County Management	3452.40
Community Services	3217.85
Sheriff's Office	2905.85
Health	1922.10
County Human Services	1489.85
Board of Commissioners	895.65
Community Justice	884.30
County Assets	521.85
Library	500.20
District Attorney's Office	338.90
Other	398.10
TOTAL	16527.05

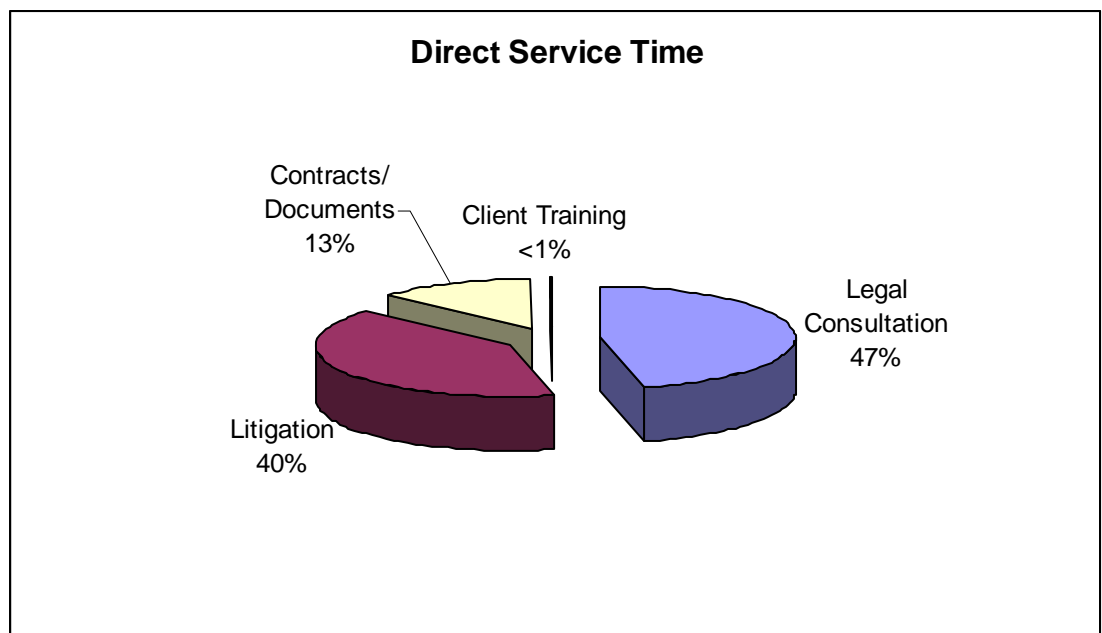
LITIGATION

Our litigation team defends against all claims brought against the County, its employees, and elected officials. We represent the County in all aspects of litigation and in all venues. We appeared in small claims court, before administrative tribunals and labor arbitrators, County Circuit Courts, Tax Court, Land Use Board of Appeals, Oregon Court of Appeals, Oregon Supreme Court, United States Federal District Court, and the Court of Appeals for the Ninth Circuit.

Litigation takes many forms and includes lawsuits alleging civil rights violations, medical malpractice, tax appeals and employment discrimination. We also represent the County in matters arising out of County operations and legal duties. These cases include land use matters, guardianship proceedings, Animal Service enforcement actions, Adult Care Home Program regulatory proceedings, Sheriff's Office hand gun permitting and civil forfeiture actions.

Chart 3 depicts direct service hours expended by the various work types. Litigation represents 40% of our direct service attorney hours, and our attorneys dedicated over 6,630 hours defending the County. These numbers vary slightly year to year. However, litigation consistently represents upwards of 40% of direct service hours.

Chart 3

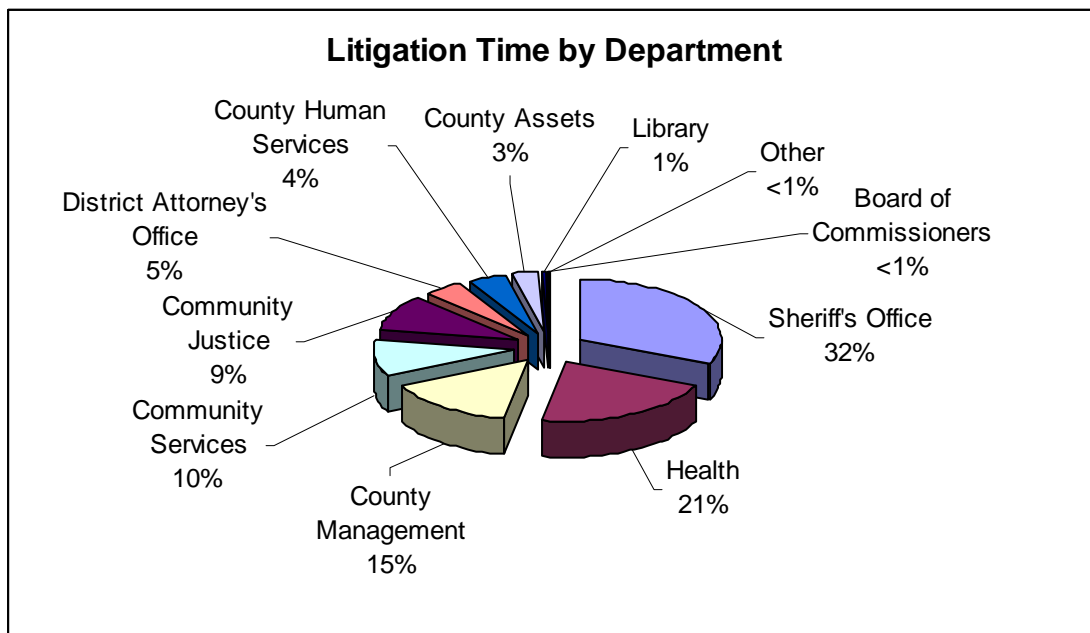


LITIGATION TIME BY DEPARTMENT

Chart 4 shows the percentage of direct service hours spent on litigation matters for each County department. Just one or two cases can substantially change the percentage of litigation hours attributed to each department from year to year.

As in prior years, the largest percentage of attorney time spent on litigation involves the Sheriff's Office. Most of the Sheriff's Office litigation involves the jail operations and lawsuits by current or former inmates (many representing themselves). Claims include excessive force, religious discrimination, and various other civil rights claims. In addition we represent the Sheriff's Office in civil forfeiture cases and concealed handgun license appeals.

Chart 4

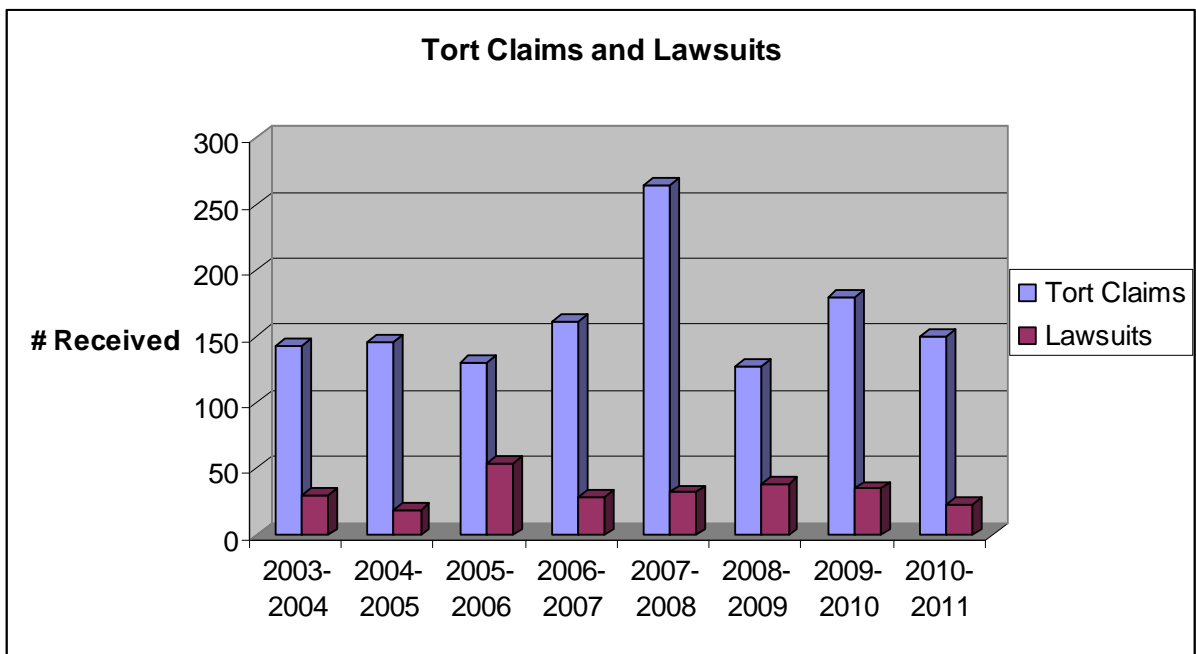


The Health Department experienced an 11% increase in time devoted to litigation, which represents one medical negligence claim out of Corrections Health.

CLAIMS PROCESSING

New matters are evaluated upon intake, and a litigation strategy is developed by the lead attorney and litigation leads. Although we pursue prompt resolutions, civil lawsuits typically extend over two or more years.

During the 2010-2011 fiscal year, we received 150 new tort claims. A tort claim is a notice of intent to bring a lawsuit for damages against the County or its employees. Tort claims are initially evaluated and handled by the County's Third Party Administrator, Farrell and Associates, with oversight by the County Attorney. The County was served with 23 lawsuits. The graph below shows the number of tort claim notices and lawsuits received by the County over the past eight fiscal years. The number of tort claims received typically far exceeds the number of lawsuits filed.



A large portion of the tort claims and lawsuits received were filed by people representing themselves in a *pro se* capacity. Litigating *pro se* cases can be particularly challenging and time consuming. The majority of the *pro se* claims were filed by Multnomah County Sheriff's Office inmates and were related to their incarceration, or the medical treatment provided by Corrections Health. Of the 150 tort claims received last year, 60% of them were filed *pro se*.

The County was also served with 23 lawsuits in fiscal year 2010-1011. Of the lawsuits filed, 14 were filed *pro se* and 9 were represented by counsel. Of the new lawsuits 10 were general torts, 1 was employment related, 7 were civil rights actions, and 5 were miscellaneous civil actions.

ACCOMPLISHMENTS AND RESOLUTIONS

Our litigation team is very successful in obtaining dismissals and favorable resolutions of complex litigation. Although most cases extend over a period of years, a snap shot of last fiscal year reveals that the number of cases resolved far exceeds the number of new lawsuits filed. We obtained orders of dismissal in at least 42 cases at the trial and appellate levels, defended two jury trials in federal court, one court sanctioned arbitration, four small claims matters and three writs of habeas corpus. Following arbitration we also recovered \$75,000 in reimbursement of costs incurred during the Chasse litigation from the County's excess liability insurance carrier.

In addition, this office defended eight labor arbitrations, sixteen guardianship proceedings, five BOLI/EEOC complaints, twenty Animal Services enforcement actions, four land use matters, one stalking protective order and one writ of review. We defended 22 firearms cases for the Sheriff's Office, most of which concerned concealed hand gun license cases, a marked increase from previous years because of changes to state law. Finally, the County Attorney's Office processed 56 civil forfeiture claims, and secured over \$68,800.00 in cash and property.

2010-2011 LITIGATION HIGHLIGHTS

- * 2 Federal Jury Trials
- * 42 Orders of Dismissal
- * 22 Concealed Hand Gun Permit Cases
- * 56 Civil Forfeiture Cases
- * 3 Writs of Habeas Corpus
- * 16 Adult Protective Services Hearing and Guardianship matters
- * 8 Labor Arbitrations
- * 20 Animal Services Administrative Hearings
- * 4 Land Use Cases

Over the past several years we have witnessed increases in the costs associated with tort litigation and settlement. In fiscal year 2010-2011 the County paid a total of \$1,846,057.00 in awards, settlement, attorney fees and for expert services and other litigation expenses. Two cases, one a significant employment case and the other a medical malpractice case arising from a death in the jail, account for approximately 70% of these costs, the cases settling for \$977,151.45 and \$304, 226.52, respectively.

In addition to tort litigation expenses, fiscal year 2010-2011 saw a one-time cost as the result of the Dorothy English Measure 37 litigation. Following extensive litigation, including the appellate courts, the County paid Ms. English \$1,150,000, and had to pay her attorneys \$1,150,000.

CLIENT SATISFACTION

In order to gauge client satisfaction we seek input from clients on an annual basis. We requested input from 264 County employees and elected officials. Of the responders, 92% rated their overall satisfaction with County Attorney services as “satisfied” to “very satisfied”.

CLIENT SATISFACTION SURVEY HIGHLIGHTS

	Very Dissatisfied	Dissatisfied	Satisfied	Very Satisfied
Overall satisfaction rating	3%	0%	30%	62%
The attorneys respond in a timely manner	3%	3%	30%	57%
The attorneys have high standards of ethics and integrity	3%	0%	16%	73%
The attorneys treat me with respect	2%	0%	19%	76%
The County Attorney’s Office provides me all the legal services I need	3%	5%	25%	60%

EFFECTIVE RATE

The significant changes in staffing described at the beginning of this report have had a predictable effect on the Effective Hourly Rate for direct legal services. During this fiscal year we have experienced significant changes in attorney staffing, which resulted in a decrease in direct services hours as the senior attorney staff took on more administrative duties, including recruiting, training and mentoring new hires. A few attorneys experienced long absences from work due to personal reasons, and new attorneys hired necessarily spend significant time adjusting to new duties and educating themselves in public sector law. While salaries and other operating costs either remained the same or increased, direct services hours necessarily decreased.

The effective rate paid for each hour of direct legal service was \$180.96, an increase from last year's \$130.96. The rate is calculated by dividing the actual expenditures of the office, including payroll for attorneys and staff, rent, supplies, professional dues and the like, by the hours of direct service provided by the attorneys. The rate has been calculated by using direct service hours only and does not take into account the hours spent on office administration and continuing legal education activities.

Despite the increase, this rate continues to be significantly lower than the rates charged by comparable private law firms. The most recent Oregon State Bar Attorney Salary survey from four years ago states that a civil litigator in private practice in the Portland area bills an average rate of \$245.00 per hour, and practitioners at the highest levels bill at \$396.00 per hour. It is likely that those have increased in the last four years.

OREGON STATE BAR 2007 ECONOMIC SURVEY		
Civil Litigation	Average	\$245
	Median	\$232
	25 th Percentile	\$190
	75 th Percentile	\$282
	95 th Percentile	\$396

With an effective rate of \$180.96 per hour this past fiscal year, the County Attorney continues to provide quality legal services at a significantly lower rate than those charged by private law firms.

CONCLUSION

We have compiled twelve years of legal service data, permitting us to quantify the hours of legal services, the nature of the services and the clients that receive our services. The data allows us to more efficiently manage, monitor and deploy the county's legal assets. We continue to work to improve the accuracy of our data.

Our challenge is to provide efficient and effective legal services while meeting the demands of increasingly more complex litigation. We continue to work closely with Risk Management and with the departments that utilize our litigation resources to alert them to systemic issues we identify that result in claims, and work with them to appropriately address any such issues. We believe that we best serve the County's legal needs by providing sound legal advice to decrease claims, as well as being strong legal advocates in our role as litigators. Our mission is to provide the highest quality, customer-focused service and good value for the tax dollar. We believe we perform that mission well.