

Multnomah County Attorney's 2001 - 2002 Annual Report



October 3, 2002



OFFICE OF MULTNOMAH COUNTY ATTORNEY

THOMAS SPONSLER
County Attorney

SCOTT ERIK ASPHAUG
AGNES SOWLE
Deputies

501 SE. HAWTHORNE, SUITE 500
PORTLAND, OREGON 97214

FAX 503.988.3377
503.988.3138

DAVID N. BLANKFELD
SANDRA N. DUFFY
SUSAN DUNAWAY
KATIE GAETJENS
PATRICK HENRY
GERALD H. ITKIN
JENNY M. MORF
MATTHEW O. RYAN
KATHRYN A. SHORT
JOHN S. THOMAS
JACQUELINE A. WEBER
Assistants

MEMORANDUM

TO: Board of County Commissioners
Diane Linn, Chair
Maria Rojo de Steffey, Commissioner
Serena Cruz, Commissioner
Lisa Naito, Commissioner
Lonnie Roberts, Commissioner

FROM: Thomas Sponsler

DATE: October 3, 2002

RE: 2001-2002 Annual Report

INTRODUCTION

Our office has fourteen lawyers and seven support staff. We provide legal services for all county officers and departments. This Annual Report summarizes the legal services we provided to county clients last year.

During the fiscal year 2001–2002, we provided 22,339.93 hours of direct legal services for litigation, legal consultation, legal document preparation and review, and client training.

We worked on many ordinances and resolutions for departments and the Board during the fiscal year. Twenty-three of those ordinances were adopted by the Board. Notable among these are:

- Ord. 965 (9/13/01) - complete review, edit and update of MCC Chapter 5, Elections;

- Ord. 971 (12/20/01) and 978 (3/7/02) - reorganize, list functions and name change of the new Department of Business & Community Services, MCC Chapter 7;
- Ord. 974 (1/31/02) - reorganize and list functions of the new Department of County Human Services, MCC Chapter 23;
- Ord. 975 (1/31/02) - reorganize and list functions of the new Office of School & Community Partnerships, MCC Chapter 25; and
- Ord. 981 (5/2/02) - complete review, edit and update of MCC Chapter 9, County Employment.

We spent a significant amount of time over the past year (and the two years before that) working with CPCA to completely rewrite the Public Contract Review Board Rules. This is the first comprehensive revision of the rules since they were initially adopted in 1976. Work has also been done to revise the construction contract boilerplate and to create new contracts forms for requirements purchases of goods and construction services. This office also provided advice to CPCA and Facilities on contract disputes and on bid and proposal protests.

During the fiscal year, there was an increase in the number of land use appeals. There is more development pressure in the unincorporated areas. Our jurisdiction includes the Columbia River National Scenic Area which has very strict development requirements, and, there are "watchdog" organizations and individuals who monitor and intervene in cases. Additionally, this past year the County transferred the land use administration of urban pockets of the County inside the UGB to adjoining cities. The transfers triggered a rush to obtain subdivision approvals under county rules prior to the effective date for application of city rules, January 1, 2002. These applications all had to be processed within the statutory 120 days requiring a significant amount of advisory service to the land use program.

We continued to work with the Human Resources Department to reorganize, consolidate and update the county personnel rules. They were adopted as a new Executive Rule on September 16, 2002, and are available as one compilation with Charter, Code and Resolution provisions relating to

county officers and employees. County personnel policies and practices are now much easier to find and use.

We provided advice to all County departments regarding labor and employment issues working with the Human Resources staff, supervisors and managers, and Labor Relations to resolve employment-related matters. We also responded to discrimination complaints filed with Oregon's Bureau of Labor and Industries and the Equal Employment Opportunity Commission.

DIRECT SERVICE HOURS

Graph 1 breaks down our direct services hours by department. When the two department mergers were made, we combined them in our record keeping as if they were merged for the entire year. The graph shows that the greatest amount of direct service time was devoted to Business and Community Services with 32%. That amount is the same as last year's percentages of Support Services and Sustainable Community Development added together, however. The Sheriff's Office was our greatest consumer in prior years. The total hours for the Sheriff decreased for the second year in a row. In 2000-2001 the percentage was 29%; this year it is 22%. The decrease of about 1,500 hours was due, in part, to the fact that no employment lawsuits came up during the year. The hours spent on Health Department legal matters remained constant at 10% compared to 11% the prior year. Community Justice increased from 6% in the prior year to 9% this year. The greatest increase of litigation hours was for the Department of Human Services. Hours were up by 1,705 hours from 9% to 16%. Both of these increases were due, in part, to defense of significant employment lawsuits.

Graph 2 depicts direct service hours expended by the various work types. Litigation consumed 60% (up from 58%) of our time. Time spent in preparation and review of contracts and other legal documents was 15%, legal consultation was 24% of our hours, and at 1% client training remained the same.

LITIGATION

Graph 3 shows our litigation hours broken down by department. At 31% (down from 42%) of the litigation time, the Sheriff is still our biggest client, although there was a significant decrease. The greatest change was litigation for County Human Resources. It used 15% of our litigation hours, a substantial increase from the combined litigation hours of Aging and DCFS the prior year. Litigation time for Community Justice also increased from 779.1 hours to 1259.10 hours, primarily the result of several new employment cases. With the life of a lawsuit running two or three years, it is not uncommon for there to be significant fluctuation from year to year.

Graph 4 highlights the top twenty of last year's cases based on hours expended. This past year the Sheriff had 8 of the cases, the same as last year. Community Justice cases in the top 20 increased from 1 to 3. The Health Department decreased from 4 in the top 20 cases to 2. Business and Community Services decreased slightly from 4 to 3 cases. In the past fiscal year, the total top 20 cases accounted for 57% of all litigation hours, the same as last year.

LITIGATION (Cont.)

In the following commentary, we have summarized those twenty cases:

Business and Community Services

Larry Nicholas v. Multnomah County, et al. – (709.5 hours)

Nicholas, the former director of DES, sued the County, Bev Stein and Bill Farver claiming age, gender and race discrimination, retaliation, political affiliation, breach of contract, defamation, false light, and interference with economic advantage. The County filed for summary judgment, which was granted on most of the claims. The claims remaining for trial were false light, interference with economic advantage, and retaliation. Despite a fairly low risk of a jury verdict against the County, the trial was expected to last a week, and would have required several commissioners and department heads to spend time testifying at the trial, while they were in the midst of critical budget meetings. Based on the significant disruption to County operations, the County decided to settle the case for \$75,000.

Craig Calkins v. Multnomah County, et al -- (667.10 hours)

Calkins, a former manager in the Facilities Division, brought a federal lawsuit claiming retaliation for whistleblowing; retaliation for opposing age discrimination; wrongful termination; and violation of his right to free speech against the County and his former supervisor. The County's Motion for Summary Judgment was granted and the case dismissed. Calkins has given notice that he will appeal to the Ninth Circuit Court of Appeals.

Peggy Minter v. Multnomah County, et al – (424.80 hours)

Minter, a former manager in the Facilities Division, brought a federal lawsuit claiming retaliation for whistleblowing; wrongful termination; and violation of her right to free speech against the County and her former supervisor. After the County's Motion for Summary Judgment was granted in part, the only issue left for trial is the free speech claim. Trial should be set for late 2002 or early 2003.

Community Justice

Aaron McCune v. Multnomah Co. – (329.50 hours)

McCune alleged false imprisonment and negligence based on serving a 15-day jail sanction for failing to comply with his Post-Prison Supervision ("PPS"). He argued that since the judge at his probation violation hearing did not specifically indicate he was to serve a term of PPS his probation officer was without authority to request the arrest warrant which was issued and subsequently lead to his arrest and incarceration. This case was arbitrated and settled.

Cathreen Connell v. Multnomah County – (168.75)

Connell, a current employee, was terminated for insubordination. At Merit Council, she was ordered reinstated without back pay. She has brought a federal lawsuit claiming that her right to due process was violated and discrimination on the basis of her gender. Discovery is almost complete. The County contemplates filing a Motion for Summary Judgment which should be decided by the end of the year. If trial is required, it will be early to mid 2003.

Carrie Serrano v. Multnomah County – (161.65 hours)

This former on-call Custody Services Specialist in Juvenile Community Justice was discharged when we learned that she had married one of the youth who had been housed at Donald E. Long home and who she had supervised. The Department has a policy precluding its employees from entering into personal relationships with the youth without permission. Serrano filed a lawsuit based on freedom of association, privacy, gender discrimination, and marital status discrimination. On September 10, 2001, our Motion for Summary Judgment was granted and the case dismissed. Serrano appealed to the Ninth Circuit Court of Appeals where all briefing is completed and we await notice of oral argument.

County Human Services

Alpha Energy Savers, Inc. and Obrist v. Multnomah County et al – (785.90 hours)

An independent contractor who has performed weatherization services for the County under a non-exclusive contract has brought both state and federal claims against the County and two of its employees who work in the Weatherization department. The federal claim alleges that the County and the individual defendants retaliated against the contractor for exercising his First Amendment rights by testifying at a union hearing and by volunteering to testify in a federal case brought against the County by a former County employee. Plaintiff seeks a million dollars in damages plus attorney fees. Discovery has been extensive and burdensome upon the department involving many thousands of documents and many depositions. We will file a motion for summary judgment at the end of discovery which may dispose of some of the claims.

Wildwood Personal Initiatives, Inc. v. Multnomah County -- (405.65 hours)

This is a civil rights claim arising out of the decision by the DD Program to not renew a provider's annual contract based upon the County administrators' business judgment that the provider was wasting an unreasonable amount of County resources in administering the contract. WPI claims that the non renewal was motivated by retaliation for their protesting terms of the agreement and other related matters. The County obtained a preliminary injunction after a trial in June requiring WPI's cooperation in transitioning the clients. At the same time we successfully opposed WPI's cross motion seeking a TRO requiring the continuation of the contract. WPI is seeking extensive and burdensome discovery of documents. We will file a motion for summary judgment at the end of discovery which may dispose of some of the claims.

Claudia Vargas v. Multnomah County – (395.40 hours)

Vargas has operated an Adult Care Home since 1999. On a number of occasions in the last 2 years, she violated rules of operation by leaving her residents alone with non-English speaking caregivers who could not communicate with residents, firefighters and medical personnel in case of an emergency. After receiving fines from the ACHP, Vargas filed a lawsuit against the County alleging that the ACHP had violated her constitutional rights by harassing and retaliating against her. The county's Motion for Summary Judgment was granted by the judge, finding that "Vargas attempted to defraud the County while it was performing its administrative duties and then attempted to prevent it from obtaining evidence needed for the defense of this action." As a result, he dismissed her claims with prejudice.

Health Department

Vianey Vazquez-Vargas v. Multnomah County – (606.85)

This is a medical malpractice case in which a baby suffered serious neurological damage as a result of undiagnosed TB Meningitis. The County and one of its physicians have been sued for failing to correctly diagnose the illness along with OHSU and Emanuel. We will file motions challenging the timeliness of the tort claim notice and seeking summary judgment on the merits. Trial, if necessary, is likely to occur in 2003.

Carolina Hess v. Multnomah County, et al. – (507.70 hours)

Hess, a former employee, filed an internal complaint alleging that her supervisor discriminated against her on the basis of her race and gender. After approximately nine months, the County's internal investigator completed the investigation concluding that while no specific facts supported the employee's claim of discrimination, there was substantial evidence that the supervisor did treat her differently. The employee remained off work for an extended period of time, while the County encouraged her to return. The employee eventually returned to work for about 6 weeks, and then resigned and filed this suit against the County and her former supervisor. Although the County's position was that no discrimination occurred, the Court ruled that evidence of the County's internal investigation would be admissible at trial. Faced with that ruling, as well as the length of time it took to initially investigate her allegations, the County decided to settle the case for \$212,500, rather than risk a much higher jury award and award of attorney fees.

Library

Malicoat v. Multnomah County – (149.60 hours)

Malicoat, a senior citizen, fell while descending the front steps of the Central Library. She suffered serious injuries including broken bones and the loss of her left eye. The lawsuit alleged negligence in maintaining the steps and the County's failure to bring the steps and railings into compliance with current building codes. The County hired an expert in the area of historic architecture and building code compliance. He determined that even though the Library had been renovated, the County was under no obligation to change the original configuration due to the historical status of the building. The County also retained an expert who conducted a safety investigation of the steps and railings. He concluded they were generally safe for use by the public. Prior to trial, mediation between the parties was conducted. Our legal conclusion was that the County could defend the case factually, but that the overwhelming jury bias would be with Ms. Malicoat. With that in mind, the County agreed to settle the case for \$50,000.00.

Sheriff

Lowell Biberdorf v. Multnomah County, et al. – (670.65 hours)

Plaintiff brought a 42 USC Section 1983 action as well as state claims in Federal Court alleging that the Sheriff's Office and an individual defendant (Robert Vanderbeck, corrections counselor) violated the plaintiff's rights by failing to give plaintiff three and a half months of credit for time served. The county has brought a third-party complaint against the criminal defense attorneys who represented Biberdorf in his criminal cases seeking indemnification/contribution on the theory that the criminal defense attorneys were negligent in failing to apprise the judge of all information concerning the plaintiff, which resulted in an inaccurate judgment of conviction

being forwarded to the County. After the County filed its first summary judgment, the federal judge allowed the plaintiff to file an amended complaint. All involved parties have filed summary judgment motions both on the amended complaint and the third-party complaint. Oral argument on these motions is scheduled for the beginning of November.

Jon Beckel v. Multnomah County – (440.75 hours)

Jon Beckel died approximately twelve hours after falling in downtown Portland and suffering an undiagnosed cerebral bleed. At the time of his fall, Mr. Beckel was heavily intoxicated. Portland Police responded and took him to Good Samaritan Hospital. While being sutured, the police found an arrest warrant in his name and after discharge from the hospital brought him to the Justice Center. At booking, Mr. Beckel was uncooperative, requiring a use of force by the booking deputies. Hours after being admitted, Mr. Beckel collapsed and was rushed to OHSU where he died following brain surgery. The lawsuit, brought against Good Samaritan and the County alleged medical negligence and unlawful use of force. The County conducted an extensive investigation into the use of force and the medical services provided to Mr. Beckel. Through negotiations, the County convinced the plaintiff that there was no medical negligence attributable to the County but agreed to a \$15,000.00 settlement to avoid trial on the use of force and medical treatment issues.

Harold Clark v. Multnomah County – (345.80 hours)

Harold Clark brought a class action against the Multnomah County Sheriff's Office alleging that the Sheriff's Office practice of checking for outstanding warrants, after an inmate's sentence has expired, is an unconstitutional practice. In fact, the Sheriff's Office practice is to check local warrants against inmates in custody on a regular basis and to check for non-local warrants two days before a sentenced inmate is scheduled for release. However, it was discovered during the course of this litigation that the reason why Mr. Clark was held past the time that a judge ordered him to be released on his domestic relations case was due to a practice used by the courts and the County of allowing two or more warrants to be in the system at the same time on domestic relations cases. This practice has ceased as a result of this litigation. This case was mediated, the plaintiff received \$5,000 in damages, and after the County posted appropriate notices regarding the settlement of this class action, the court order the case dismissed.

Michael Roelle v. Multnomah County – (190.05 hours) In September of 1996, LeAnne Roelle was killed in a single car crash in Clackamas County. On the last day of the statute of limitations, her father filed a products liability lawsuit in Multnomah County against Honda Inc. That lawsuit alleged that the vehicle was defective and caused his daughter's death. The Civil Division of the Sheriff's office failed to serve the summons and complaint on Honda within the time required by statute. As a result, the lawsuit against Honda was dismissed. Plaintiff then sued the County alleging that the County's failure to serve the summons denied plaintiff his right to sue Honda and collect substantial damages. The lawsuit required the County to step into the shoes of Honda and defend the vehicle on the original products liability claims. The County hired numerous experts in the areas of accident reconstruction, biokinematics, forensic medicine and economic damages. Prior to trial, the plaintiffs offered to settle the case for significantly less than the cost to proceed to trial. Based on that factor, the County agreed to a settlement of \$15,000.00.

Multnomah County Deputy Sheriffs Association v. Multnomah County and Multnomah County Employee's Union, Local 88. AFSCME, AFL-CIO -- (182.90 hours)

The Multnomah County Civil Deputy Sheriffs petitioned to transfer representation from Local 88 to the Multnomah County Deputy Sheriff's Association. The County objected and a full evidentiary hearing was held before an Administrative Law Judge. The ALJ made findings in favor of the County; that the Civil Deputies were more appropriately represented by Local 88. That decision was appealed to the Employment Relations Board. The ERB heard argument in Salem and reversed the decision of the ALJ holding that the Civil Deputies should be represented by the MCDSA.

Tyson v. Bell – 0437-97 (156.11 hours)

In consolidated cases, the plaintiff alleged numerous constitutional claims regarding his conditions of confinement including excessive use of force, denial of law library privileges, and denial of due process during disciplinary hearings. We filed a motion for summary judgment on all claims. The magistrate judge recommended granted partial summary judgment and, because of a recent change in the law, invited the County to file another motion for summary judgment on the remaining claim. We will file this motion as soon as the Article III judge reviews and approves the magistrate's findings and recommendations.

Christopher Williams v. Raymond Sevilla (151.9 hours)

Mr. Williams is a litigious inmate in the Multnomah County Jail system. He filed this pro se federal lawsuit last year alleging all manner of discrimination. The case is not complex and his claims border on frivolous. Unfortunately, this is what has become one of a number of routine inmate case that takes extensive attorney time away from more meaningful cases and will continue to do so until the Court closes discovery, rules on motions, and the parties proceed to trial.

Rodger Cross v. Multnomah County – (145.15 hours)

Cross and three other corrections deputies were terminated as the result of their conduct with an inmate, Dennis Poe, and the following investigation. Cross brought this federal lawsuit claiming that he was denied due process and equal protection, that he was libeled and slandered among others. Two of the other deputies have also sued and discovery and trial will be conducted on all three together. We are in the process of discovery and intend to file motions for summary judgment on all three claims in January.

The County continued to limit liability losses in the past fiscal year. However, given the serious nature of current cases pending and the uncertain future of the Oregon Tort Claims Law, it may be difficult to maintain our record. A graph containing the current employment lawsuits we are defending is attached at the back of this report.

EFFECTIVE RATE

The effective rate paid for each hour of direct legal service was \$97.07. This rate saved the County and taxpayers a significant amount of money from rates charged by private law firms. Legal fees charged by Portland firms for representing government clients now exceeds \$225 per hour. Our rate is also less than that charged by other government law firms.

The increase in our effective rate from 2000-2001 (\$87.68) is \$9.39

Of all hours reported by County Attorneys 86.1% went to direct client legal services. This means we have reduced the percentage of our office time devoted to administrative and professional development services 4% from the prior year. In addition, the average number of direct legal service hours provided during the fiscal year by each lawyer increased from 1,565.33 to 1,595.67. The following chart summarizes the effective hourly rate computation:

Total Hours Reported		25,937.48
Direct Service	(86.1%)	22,339.53
Non-Direct Service	(13.9%)	3,597.95
Administrative	(9.2%)	2,398.15
Professional	(04.7%)	1,199.80
14 Lawyer FTE Average Hours		1,595.68
Office Actual Budget Expenditures		\$2,218,313.54
Less Professional Services		\$49,846.10
Net		\$2,168,467.44
Divided by Direct Service Hours		22,339.53
Effective Hourly Rate		\$97.07

CONCLUSION

We have now compiled four years of reliable legal service data permitting us to quantify the hours of legal services, the nature of the services and the clients that receive services. The data allows us to more efficiently manage, monitor and deploy county legal assets.

Three statistics that particularly show the efficiency of the County Attorney Office are:

- (1) Over 86% of lawyer office hours go to direct legal services;
- (2) Each lawyer averages 1,596 direct service hours per year; and
- (3) The cost of each direct service hour is \$97.07.

Our challenge is to continue to provide efficient and effective legal services and increase appropriate non-litigation use of our resources. We also must meet the increasing demands of more complex and serious litigation. We continue to work closely with the Sheriff and Sheriff-elect, the department that uses the largest share of our resources. We continue to seek opportunities to effectively use County legal resources and look for ways to improve our services to best meet the County's legal needs. Our mission is to provide high quality, customer-focused service and good value for the tax dollar. We believe we perform that mission well.