



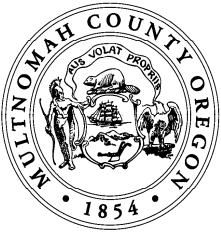
## Office of Multnomah County Attorney

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501 SE Hawthorne Blvd., Ste. 500,  
Portland, OR 97214

# 2009-2010 Annual Litigation Report

*County Attorney's Litigation Report  
to the Multnomah County  
Board of Commissioners  
September 2010*



AGNES SOWLE  
*County Attorney*

JOHN S. THOMAS  
*Deputy County Attorney*

# OFFICE OF MULTNOMAH COUNTY ATTORNEY

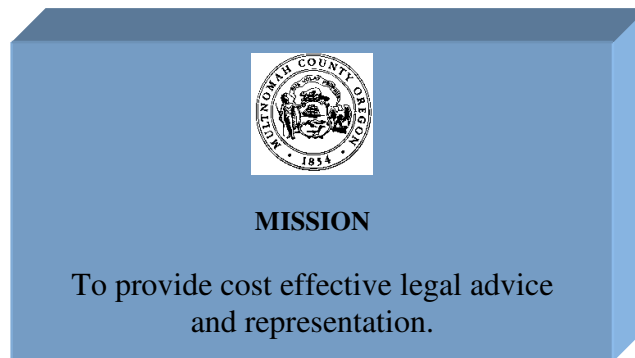
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## **INTRODUCTION**

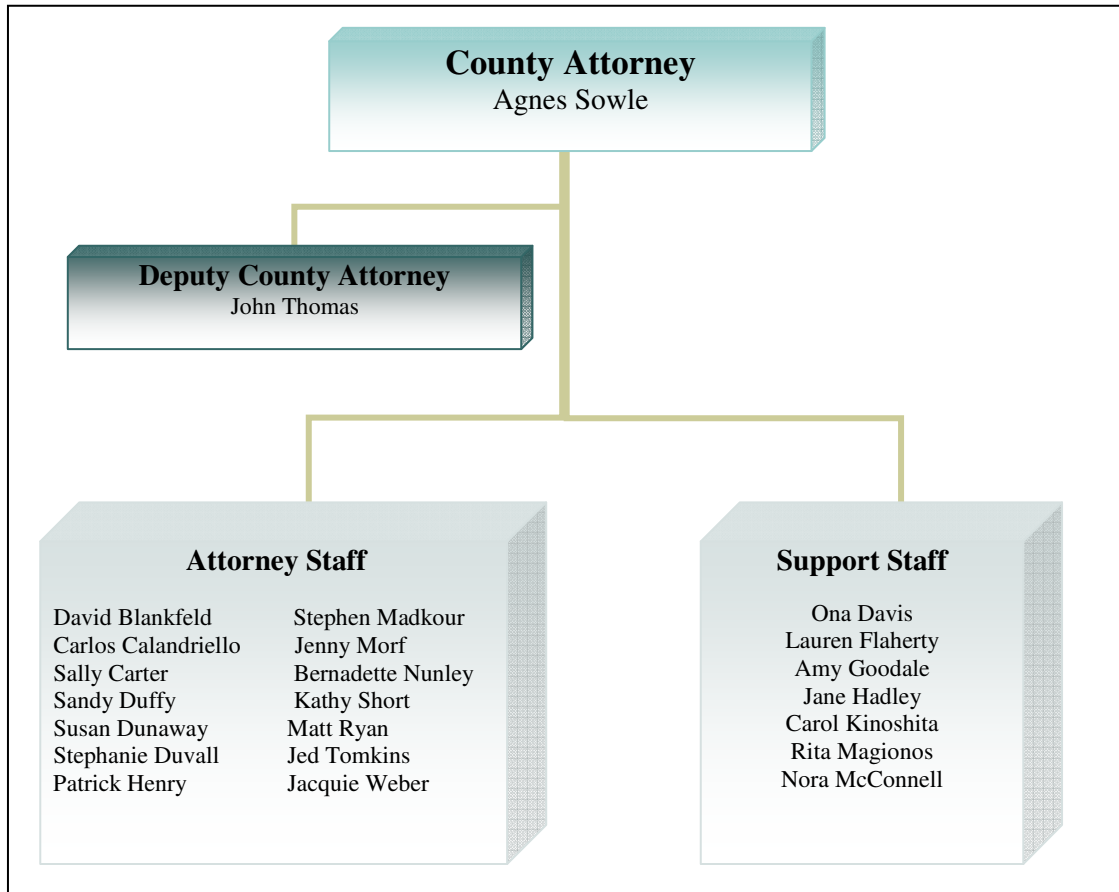
The mission of the County Attorney's office is to provide cost effective legal services for all county elected officials, officers and departments.



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.

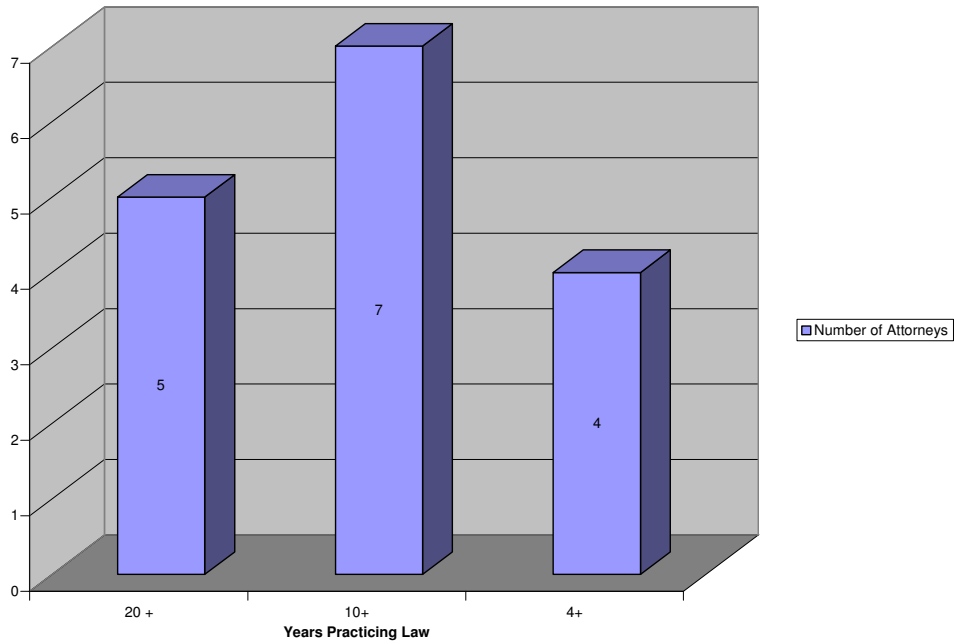
## **OFFICE STAFF**

During the 2009–2010 fiscal year, our office had sixteen attorneys and seven permanent support staff. Our legal support staff provides exemplary service and support to the litigation team.

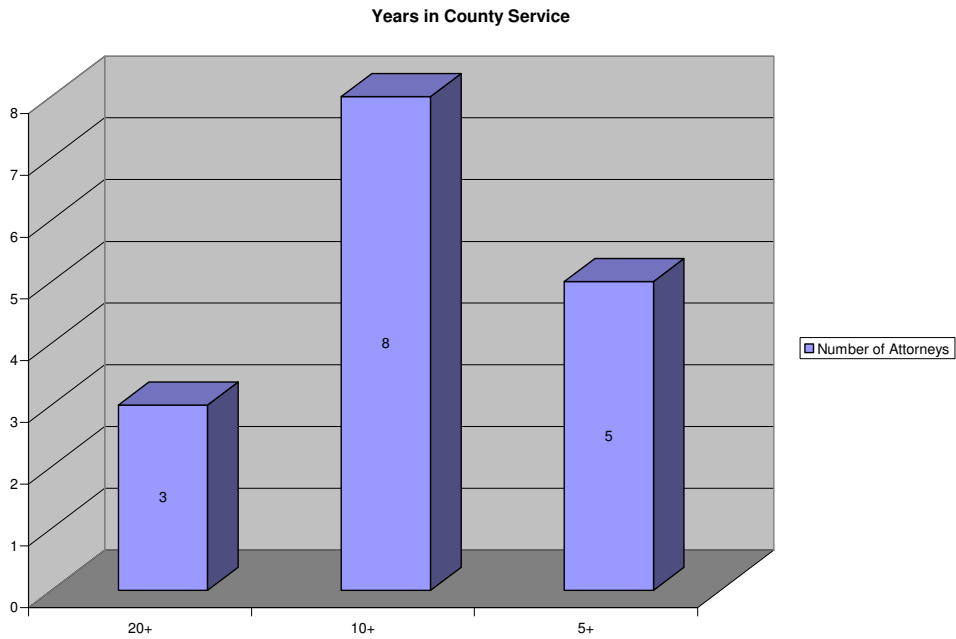


In addition to the full-time staff, the office also manages a successful law clerk program and provides work experience and mentoring to law students. We are also annual participants in the Lewis & Clark Law School's externship program, which allows third-year law students an opportunity to volunteer their services to gain valuable public-sector legal experience. In the 2009-2010 fiscal year we provided work experience to two volunteer clerks, three legal externs, and one paid law clerk. These six students provided over 2,346 hours of legal research and writing, for a total cost of \$7,110.00 to the County.

Of the sixteen attorneys, five have 20 or more years of general legal experience, seven have more than 10 years of experience, and four have between 4 and 6 years of experience.



Our attorneys also have long tenures in public service and are subject matter experts on issues of County concern. We have three attorneys with more than 20 years of County service, eight attorneys with more than 10 years, and five attorneys with 5 or less years of County service.



**DIRECT SERVICE HOURS**

The County Attorney utilizes a case management computer database to record time dedicated to cases, clients and matters. During the 2009-2010 fiscal year, attorneys reported a total of 26,980 hours. Of those hours, 25,310.41 hours provided direct legal services. 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. Chart 1 demonstrates that 94% of County Attorney hours were dedicated to the provision of direct service hours.

**Chart 1**

Total Hours Reported		26980.00
Direct Service	94%	25310.00
Non-Direct Service	6%	1670.00
<b>16 Attorney FTE Average Direct Service Hours</b>		1581.88

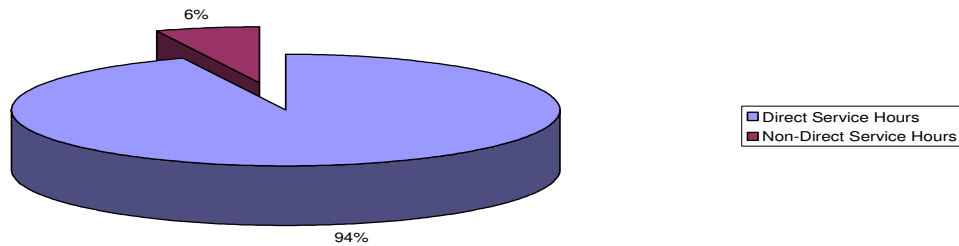
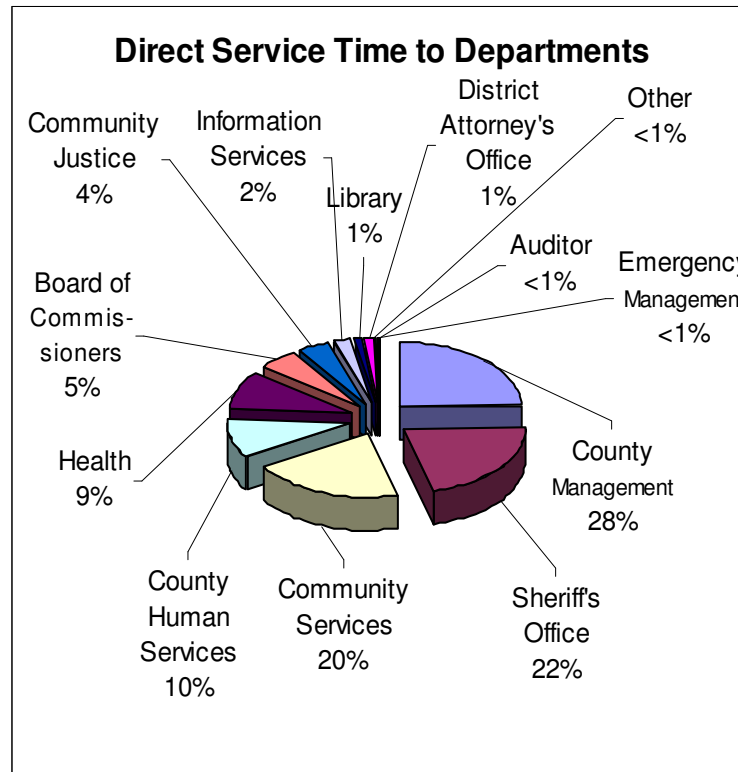


Chart 2 shows direct services hours broken down by county department. The greatest user of County Attorney time was County Management, with 28% of the hours, a 3% increase over last year. This increase is likely due to significant tax litigation and an employment suit in the Department. The Sheriff's Office is also a major consumer of our office's resources, utilizing 22% of attorney direct service hours last fiscal year. The Health Department and County Human Services also increased their use of County Attorney time over last year.

**Chart 2**



Department	Time
County Management	6,289.90
Sheriff's Office	5,356.86
Community Services	5,085.65
County Human Services	2,562.10
Health	2,350.05
Board of Commissioners	1,363.00
Community Justice	1,036.10
Information Technology	548.60
Library	327.75
District Attorney's Office	230.00
Other	101.20
Emergency Management	45.10
Auditor	14.10
<b>Total</b>	<b>25,310.41</b>

## 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, community court, before administrative tribunals and arbitrators, County Circuit Courts, Tax Court, Land Use Board of Appeals, Oregon Court of Appeals, Oregon Supreme Court, United States Federal District Court, Court of Appeals for the Ninth Circuit and the Supreme Court of the United States of America.

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 48% of our direct service attorney hours, and office attorneys dedicated over 12,300 hours defending the County. These numbers vary slightly each year but have remained fairly consistent over a number of years.

**Chart 3**

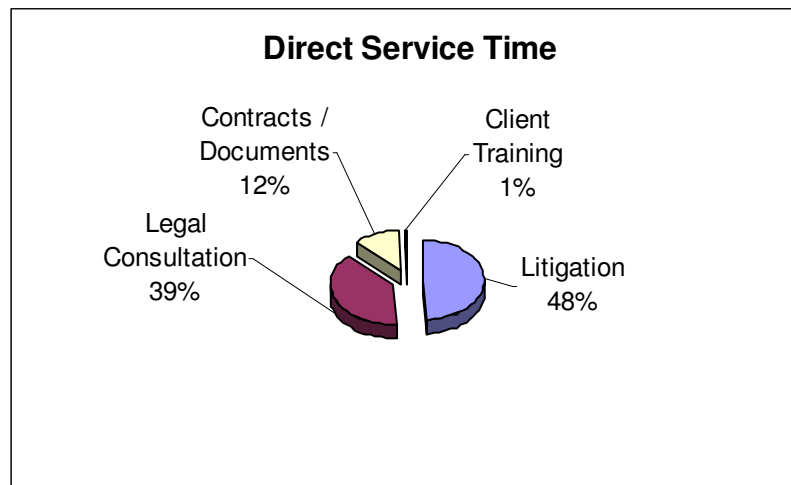


Chart 4 shows our direct service litigation hours broken down by department. As demonstrated by Chart 4, the largest percentage of the office's time spent on litigation involves the Sheriff's Office. Attorneys reported 33% of litigation (4,092 hours) dedicated to the Sheriff's Office last fiscal year. The Sheriff's Office had one federal jury trial, 56 civil forfeiture cases, 22 concealed handgun appeals, and at least five other major pieces of litigation last fiscal year. Most of the Sheriff's Office litigation involves jail operations and lawsuits brought by current or former inmates (many representing themselves) and include claims of excessive use of force, religious discrimination, violation of ADA and other various civil rights claims.

**Chart 4**

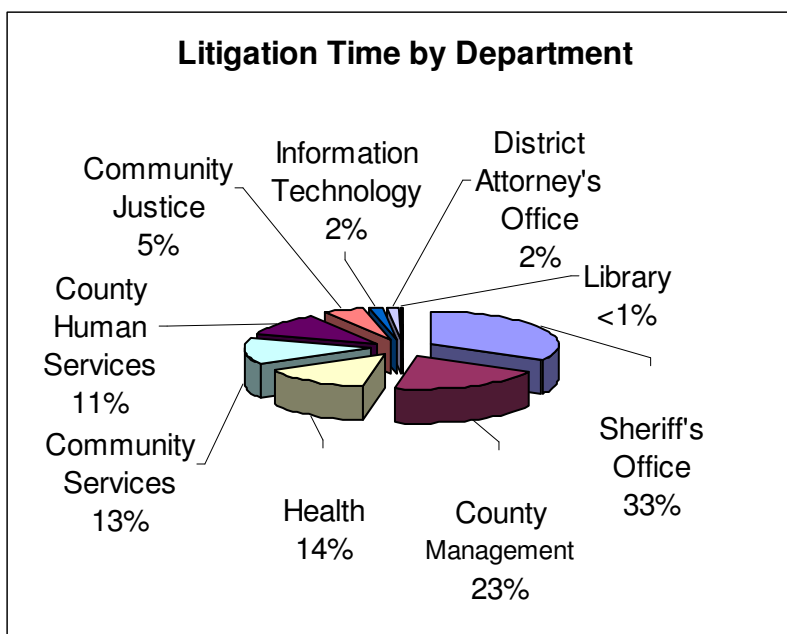


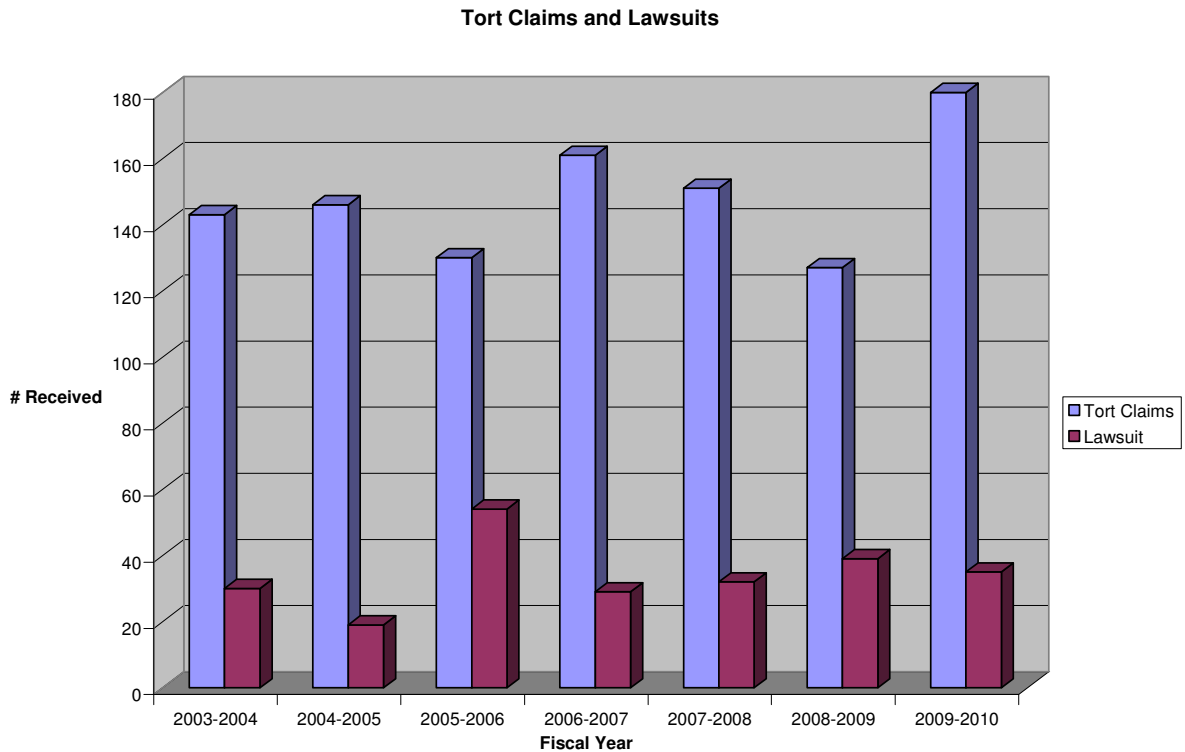
Chart 4 also reveals increases of 10% in litigation hours dedicated to the Health Department and County Human Services over previous years. These increases are attributed to a federal court jury trial and complex lawsuits filed in those Departments. Community Services had one federal jury trial that resulted in a full defense verdict and an award of costs. The Health Department has several major pieces of litigation regarding the provision of medical care in the jails. It only takes one or two cases to change the numbers substantially from year to year.



## CLAIMS PROCESSING

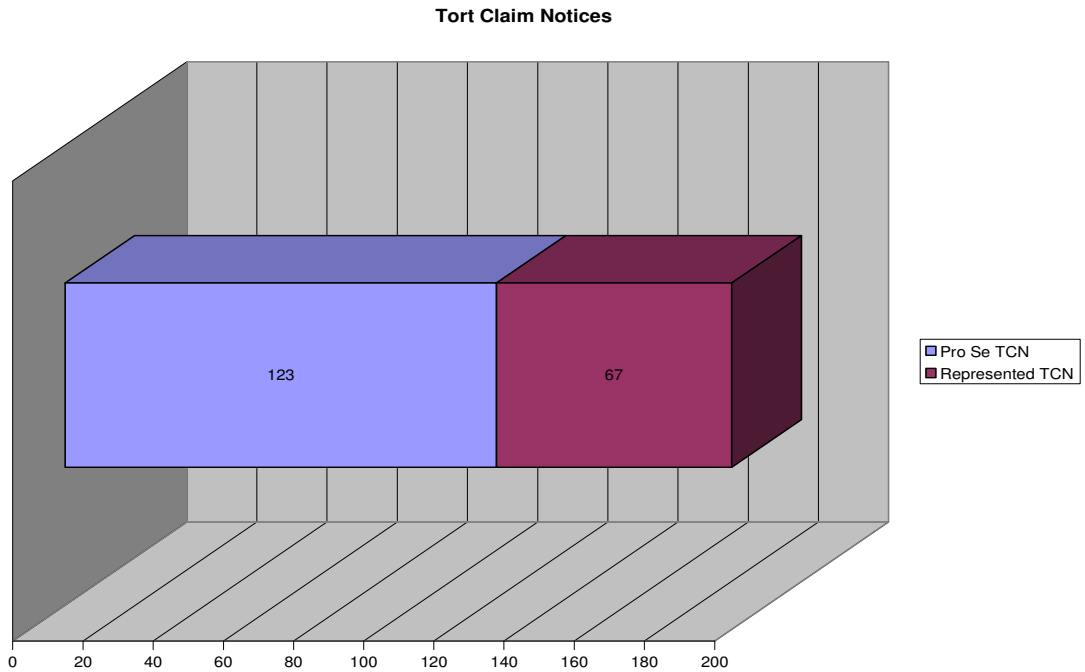
New matters are evaluated upon intake, and a litigation strategy is developed by the lead attorney and litigation leads. Although we pursue prompt resolutions, civil lawsuits typically extend over two or more years. For example, a civil matter that began in 2001 was resolved in 2010 after being appealed up through the United States Supreme Court.

During the 2009-2010 fiscal year, we received 180 new tort claims. A tort claim is a notice of intent to bring a lawsuit for damages against the County or its employees. The County was also served with thirty-five lawsuits last year. The graph below shows the number of tort claim notices and lawsuits received by the County over the past seven fiscal years.

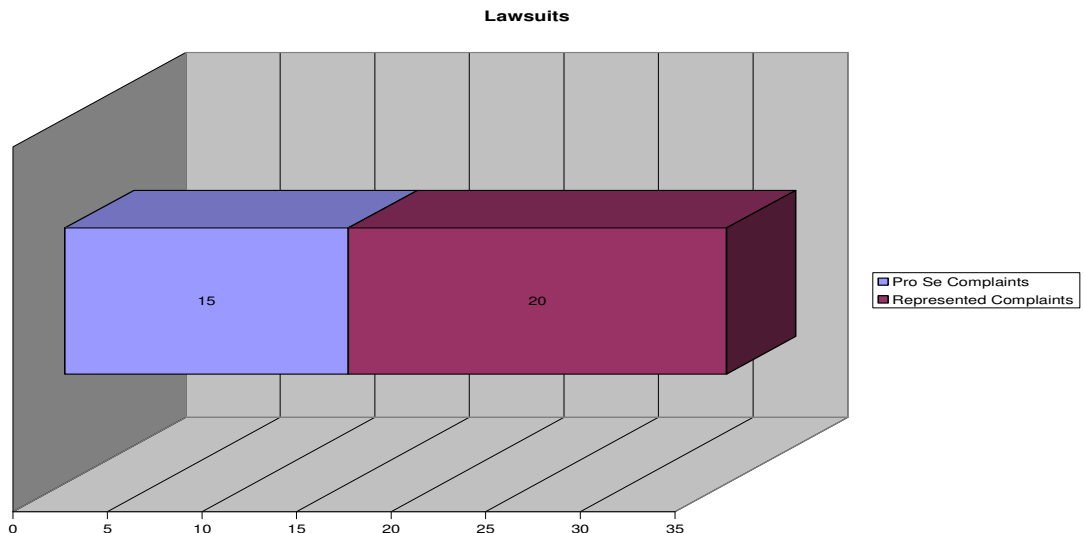


As evidenced by the graph above, the number of tort claims received far exceeds the number of lawsuits filed. To illustrate, in the 2008-2009 fiscal year we received 127 tort claims, however, those claims resulted in only thirty-five lawsuits this fiscal year.

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 medical treatment provided by Corrections Health. Of the 180 tort claims received last year, 123 or 68% of them were filed *pro se*.



The County was also served with 35 lawsuits in fiscal year 2009-2010. Of the lawsuits filed, 15 were filed *pro se* and 20 were represented by counsel.



## **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.

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 concealed hand gun permit cases for the Sheriff's Office; a marked increase from previous years because of changes to state law. Finally, the County Attorney's Office created and implemented a civil forfeiture process that has processed 56 claims, and secured over \$68,800.00 in cash and property.

### **2009-2010 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

The majority of cases are resolved through litigation or settlement. However, some cases require legislative remedies to resolve disputes or provide direction for future County action. For example, we resolved twelve Tax Court cases by seeking a legislative remedy from the Oregon legislature in cooperation with the City of Portland.

Over the past several years we have witnessed increases in the costs associated with litigation and settlement. Claims are paid out through the County’s third-party administrator, negotiated settlements or mediated settlements. In fiscal year 2007-2008, we paid out \$724,346 for claims. In fiscal year 2008-2009, the County paid out \$1,101,873.61 for claims. In fiscal year 2009-2010, the County paid \$1,389,712.94 for claims. Significantly, \$925,000.00 of that was associated with the settlement of one lawsuit, and the County is seeking reimbursement of approximately \$290,000.00 in associated litigation expenses from the excess insurance carrier.

**CLIENT SATISFACTION**

In order to gauge client satisfaction we seek input from clients on an annual basis. We requested input from about 220 County employees and elected officials. Of the responders, 96% rated their overall satisfaction with County Attorney services as “satisfied” to “very satisfied”.

<b>CLIENT SATISFACTION SURVEY HIGHLIGHTS</b>				
	<b>Very Dissatisfied</b>	<b>Dissatisfied</b>	<b>Satisfied</b>	<b>Very Satisfied</b>
Overall satisfaction rating	1%	2%	28%	68%
The attorneys respond in a timely manner	1%	2%	30%	66%
The attorneys have high standards of ethics and integrity	1%	0%	7%	90%
The attorneys treat me with respect	1%	1%	10%	88%
The County Attorney’s Office provides me all the legal services I need	1%	2%	33%	62%

**EFFECTIVE RATE**

The effective rate paid for each hour of direct legal service was \$130.96, down from last year’s \$132.32. 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 1670 hours spent on office administration and continuing legal education activities.

Of all hours reported by county attorneys, 94% went to direct client legal services. Attorneys reported 6% of hours devoted to administrative and professional development services. Those hours include management of the office, staff meetings, litigation meetings, library maintenance, and professional development, including the hours attorneys attend Mandatory Continuing Legal Education.

Effective Hourly Rate		
Total Hours Reported		26,980.00
Direct Service	94%	25,310.00
Non-Direct Service	6%	1,670.00
<b>16 Attorney FTE Average Direct Service Hours</b>		1,581.88
Office Actual Expenditures 2009-10		3,314,497.00
Divided by Direct Service Hours		25,310.00
<b>Effective Hourly Rate</b>		<b>130.96</b>

This rate is significantly lower than the rates charged by comparable private law firms. The Oregon State Bar Attorney Salary survey 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 billed at \$396.00 per hour.

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

With an effective rate of \$130.96 per hour, the County Attorney provides quality legal services at a greatly discounted rate from rates charged by private law firms.

**CONCLUSION**

We have compiled eleven 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 and to increase appropriate non-litigation use of our resources. We also must meet the increasing demands of more complex litigation. We continue to work closely with Risk Management and with the Sheriff’s Office, the department that uses a large share of our resources. We 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 the highest quality, customer-focused service and good value for the tax dollar. We believe we perform that mission well.