



## Office of Multnomah County Attorney

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

# 2003-2004 Annual Report

*County Attorney's Report to the  
Multnomah County  
Board of Commissioners  
October 21, 2004*



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## 2003-2004 Annual Report

*County Attorney, Agnes Sowle's Report  
to the Board of County Commissioners:*

*Diane Linn, Chair*  
*Maria Rojo de Steffey, Commissioner*  
*Serena Cruz, Commissioner*  
*Lisa Naito, Commissioner*  
*Lonnie Roberts, Commissioner*

*October 21, 2004*

### **Introduction**

Our office has fourteen lawyers and six 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 2003-2004, we provided 22,782.5 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-eight of those ordinances were adopted by the Board, and all except six of those ordinances were land use related. Notable among the ordinances and resolutions are the following:

- Ord. 1018 (10/23/2003) Amending Ordinance 1012 to update and clarify ITAX;
- Res. 03-112 (7/31/2003) Approving PUD ballot title and explanatory statement;
- Res. 03-145 (10/16/2003) Adopting administrative rules to implement ITAX;

- Res. 03-155 (11/6/2003) ITAX spending policy for schools, human services and public safety;
- Res. 03-156 (11/6/2003) Adopting administrative rules to implement ITAX
- Res. 04-053 (5/6/2004) Setting public hearing for considering Willamette Electric PUD boundaries;
- Res. 04-066 (5/20/2004) Approving Columbia River PUD Annexation ballot title and explanatory statement.

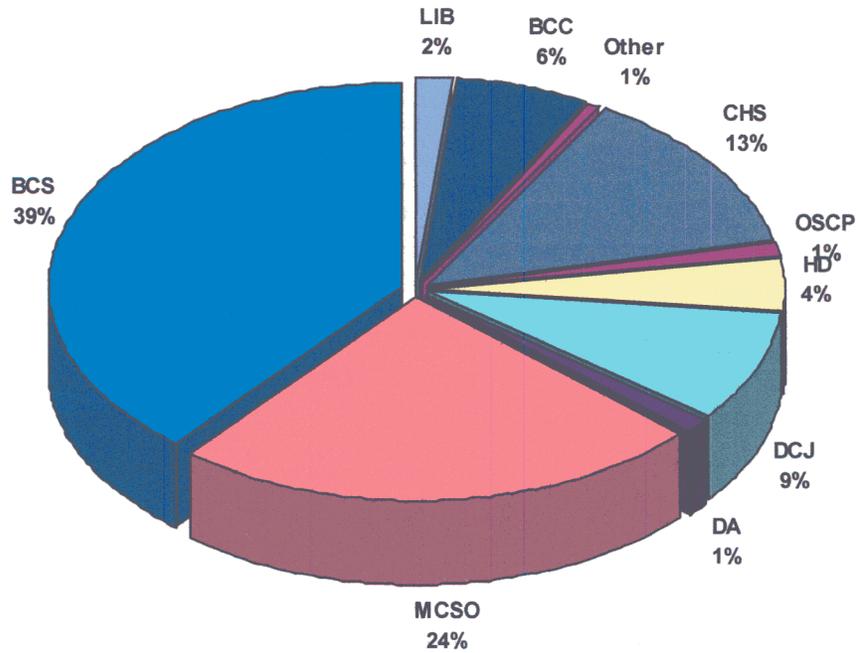
## **DIRECT SERVICE HOURS**

Graph 1 breaks down our direct services hours by department. The graph shows that the greatest amount of direct service time was devoted to Business and Community Services for the third year with 39%. The total hours for the Sheriff decreased from 28% to 24%. The hours spent on Health Department legal matters decreased for the second year to 4% from 6% last year. Community Justice increased from 6% last year to 9% this year. Services for the Board decreased slightly to 6% this year.

Graph 2 depicts direct service hours expended by the various work types. Litigation was down slightly; it consumed 52% of our time down from 54% last year and 60% the year prior. Time spent in preparation and review of contracts and other legal documents was slightly down at 12%, legal consultation was 35%, up from 31% last year, and at 1% client training remained the same.

# Direct Service Time to Departments

7/1/03 through 6/30/04

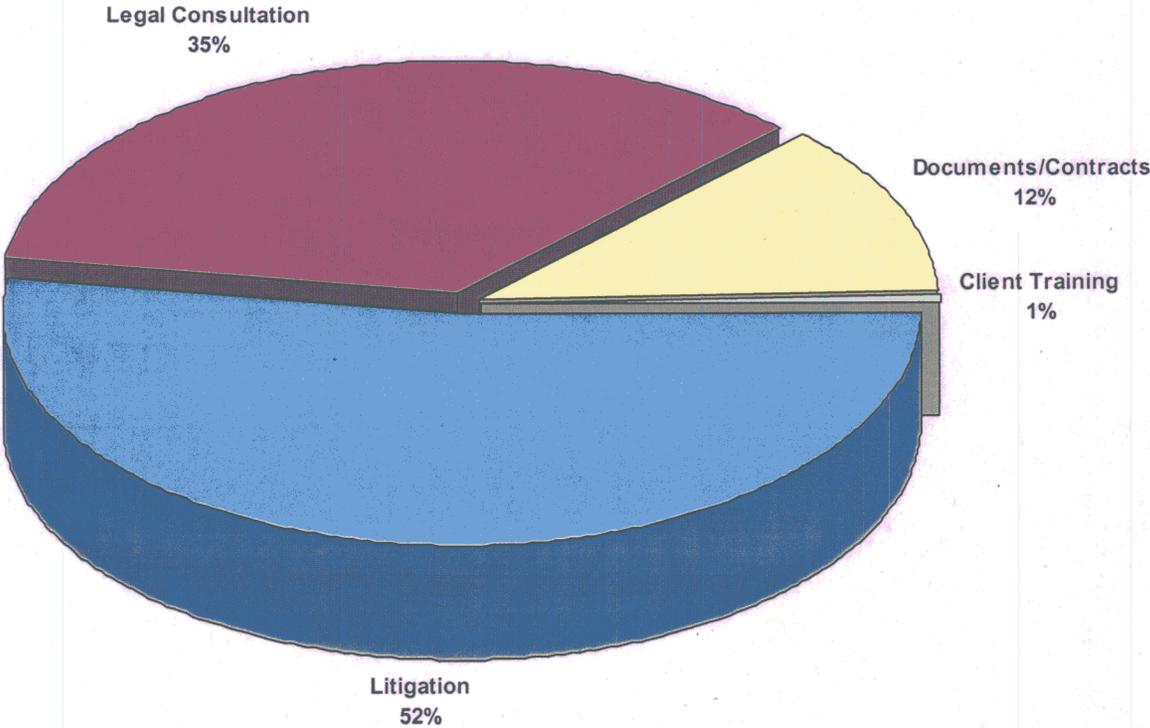


Department	Hours
Business and Community Services	8,853.90
Sheriff	5,567.44
County Human Services	2,985.75
Community Justice	2,045.86
Board of Commissioners	1,400.90
Health Department	950.15
Multnomah County Library	353.20
District Attorney	268.45
School and Community Partnerships	214.20
Other County	142.65
	<b>22,782.50</b>

Graph 1

# Direct Service Time

7/1/03 through 6/30/04



<u>Work Type</u>	<u>Hours</u>
Litigation	11,889.98
Legal Consultation	8,039.07
Documents/Contracts	2,724.35
Client Training	129.10
	<b>22,782.50</b>

Graph 2

## **LITIGATION**

Graph 3 shows our litigation hours broken down by department. The Sheriff continues to consume the most litigation hours at 35%, a significant decrease from 43% last year. County Human Services used 10% of our litigation hours, down from 17% the previous year. Litigation time for Community Justice increased from 8% to 14%.

Graph 4 highlights the top twenty of last year's cases based on hours expended. This past year the Sheriff had six of the cases, four less than last year. Business and Community Services was up from three to seven cases. Community Justice cases in the top 20 increased from one to four. County Human Services cases were down from five to three. The Health Department had no cases in the top 20. In the past fiscal year, the total top 20 cases accounted for 46.3% of all litigation hours, up slightly from 44% last year.

Brief descriptions of the top 20 cases follow graphs 3 and 4.

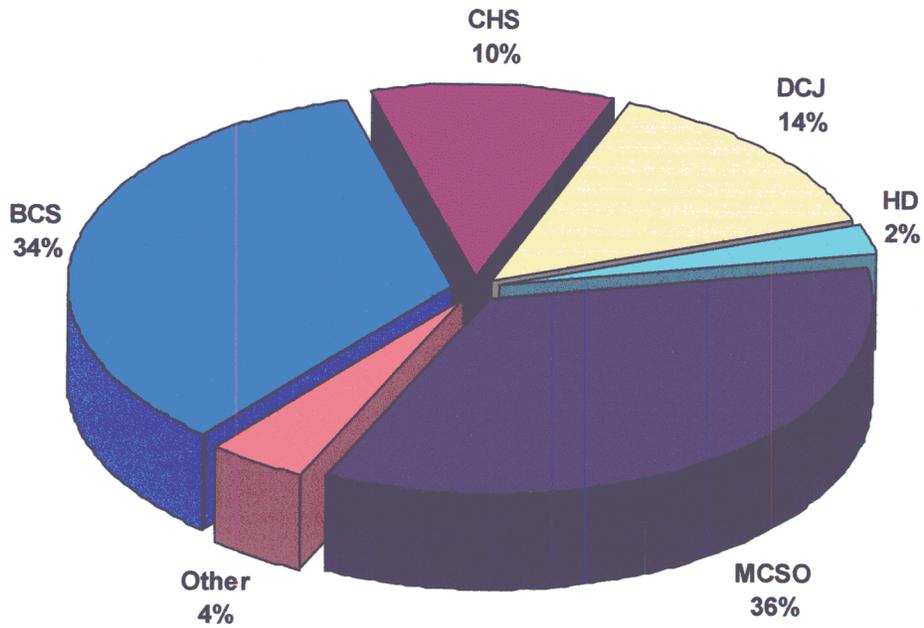
The "open booking" design change at MCDC this past year resulted in a significant reduction in claims arising out of the booking process of new inmates. There were no filed lawsuits and only one tort claim filed in the last year out of the booking area.

Four cases were filed by victims of Ladon Stephens, a parolee who repeatedly committed serious crimes while under parole supervision. Two are settled and two remain pending. In addition, the office is investigating another tort claim filed by a victim of another individual under supervision. We are working closely with DCJ to investigate and defend all of these claims in hopes of avoiding an onslaught of claims by attorneys representing crime victims.

We represent the assessor in tax court disputes concerning property valuation, exemptions and other property tax related matters. This year a significant number of older pending cases were settled involving valuation of low income housing properties and personal property owned by Fred Meyer and Columbia Sportswear. By vigorously contesting valuation appeals we have been successful in having a number of appeals dismissed.

# Litigation Time by Department

7/1/03 through 6/30/04



Department	Time
Sheriff	4,210.07
Business and Community Services	4,137.75
Community Justice	1,639.71
County Human Services	1,232.75
Health Department	297.05
County Attorney	163.70
District Attorney	156.95
Board of Commissioners	129.25
Multnomah County Library	43.30
School and Community Partnerships	18.55

Graph 3



## **BUSINESS AND COMMUNITY SERVICES**

Mary Li, et al v. Gov. Kulongoski, et al – (540.60 hours); and Defense of Marriage Coalition v. Multnomah County – (303.85 hours) (total= 844.45 hours)

After the County began issuing marriage licenses to same sex couples in March, the Defense of Marriage Coalition (DOMC) filed suit in state court seeking to have the marriage statute interpreted to constitutionally allow marriage only between one man and one woman. The State of Oregon, ACLU and individual couples intervened. Plaintiff moved for a preliminary injunction which was denied. At that point, all of the parties negotiated an agreement in order to get the constitutional issue before the Supreme Court as quickly as possible. Under the agreement, the DOMC lawsuit was dismissed and ACLU and the individuals filed as plaintiffs with the state as defendant. The County and DOMC joined as intervenors. Plaintiffs and the County moved for summary judgment, which was granted in part on the Constitutional issue. All of the parties have appealed and briefing before the Supreme Court is ongoing. This case took substantial resources (hours) because there were numerous parties and all of the briefing, both at the state court level and the appellate level, was expedited.

Lyle Block v. Multnomah County and Jan Thompson – (256.70 hours)

This is an action brought by Lyle Block, a current employee of defendant Multnomah County, against the County and his former supervisor Jan Thompson. Plaintiff alleges four violations in his Complaint: (1) gender discrimination; (2) sexual harassment/hostile work environment; (3) retaliation; and (4) First Amendment rights to free speech. The court granted summary judgment against plaintiff's Section 1983 claim based on the First Amendment. We are currently scheduled to begin trial on October 19, 2004.

Michael Schlarp v. City of Gresham, et al – (185.9 hours)

This case arises out of an automobile-pedestrian accident that occurred in 2002 in the area of 187th and Stark Street in Gresham. Although Stark Street is in Gresham it is a county road. A twelve year old boy was hit by a car while he was in a marked crosswalk on Stark at about 10:30 at night. The boy sustained serious head and knee injuries and his mother incurred substantial medical bills. Plaintiff's liability theory against the County and the other governmental defendants is that the traffic plans that resulted in marking the crosswalk on Stark constitute a negligent traffic design and created a foreseeable risk of injury to the plaintiff. Plaintiff seeks damages in the amount of \$650,000. The County intends to file a motion for summary judgment on the basis of discretionary immunity. Trial is set for Spring, 2005.

Multnomah County v. Mark and Jill Dorrrough – (180.9 hours)

This matter arises out of a land use enforcement action. The Dorrroughs live in a subdivision inside the City of Troutdale, OR and own an undeveloped lot adjacent to it, located in unincorporated Multnomah County. The City of Troutdale approved the storm water system for the subdivision but the developer failed to comply with some of the conditions. In October 2002 the Dorrrough's retained a logger to log all the trees on the county parcel. This exacerbated the erosion problem. The Dorrroughs refused to obtain a Grading and Erosion Control permit required by the County to legalize the placement of boulders in the drainage area and to arrest the erosion problem on the lot. The County filed an enforcement action in Multnomah County Circuit Court against Dorrroughs who filed a Third Party Complaint against the Developer and against the City of Troutdale. The trial judge determined that the Dorrroughs and/or the developer were required to obtain a GEC permit from the county. Post trial briefing is taking place at this time. The court will then decide the issues of liability between the Dorrroughs, the developer and the City of Troutdale. The county has no liability for damages in this case.

Multnomah County v. Multnomah County (Vincent and Zollner LUBA) – (169.1 hours)

This case is a land use planning matter in which applicant sought a partition of a 10 acre lot on land zoned for minimum 5-acre parcels. The county approved the partition with conditions which included road improvements because the roadway creates traffic conflicts and is inadequate for emergency vehicles. The applicant appealed the conditions to the Hearings Officer, who found that the County did not have the authority to impose the conditions, that the imposition of off site conditions was a "taking" and approved the application. The Planning Director appealed the HO decision to LUBA because the HO approved an application that does not meet the criteria for approval and allows an unsafe condition on the gravel roadway to exist. LUBA found that the county could not appeal its own hearings officer's decision because the county code provision is inconsistent with state law outlining LUBA jurisdiction. Based on the outcome of this case, the Planning Department has presented amendments to the land use appeals process for the county. The matter will come before the Planning Commission for final action in November.

Joan Horton and Nancy Newell v. Multnomah County and John Kauffman – (136.80 hours)

Following hearing on the petition for formation of Multnomah County People's Utility District, we filed a ballot title which included the 3% warning required by statute to be included on all ballots for local levy taxes. Plaintiff was a chief petitioner for the formation of the PUD. She filed a federal lawsuit claiming that the statute requiring the 3% warning was unconstitutional. Judge Haggarty agreed and enjoined the County from enforcing the statute in the future. He also ordered the County to take out multiple advertisements informing voters that the language on the ballots (which had already been printed and mailed to voters) was misleading. The County appealed the order to the Ninth Circuit Court of Appeals because the election was already underway and that printing a warning mid-election would harm the election

process. The Ninth Circuit agreed and stayed the order pending appeal. Once the election concluded and the formation failed, the appeals court dismissed the appeal on the grounds that it was moot, and Judge Haggarty granted the County's motion for summary judgment for the same reason.

## **COMMUNITY JUSTICE**

### Lakeside-Scott vs. Multnomah County and Jann Brown – (485.85 hours)

On February 14, 2002, Ms. Lakeside-Scott was terminated from her job in the Information Services Division of the Department of Community Justice for accessing the email and calendars of her coworkers and management, and using County time and resources to create, print, and distribute a 167-page journal. She filed a Federal lawsuit claiming that she was retaliated against in at least 12 different ways in violation of the First Amendment and violated Oregon Whistleblower laws. The Court dismissed the majority of plaintiff's claims at summary judgment and the remaining claims will go to trial in mid-November 2004.

### Robert McAlpine v. Multnomah County, et al - (252.80 hours); and Judith McAlpine v. Multnomah County – (50.20 hours) (total=303)

These consolidated cases arose after both plaintiffs were assaulted by a parolee under the supervision of a Multnomah County parole officer. Robert McAlpine sustained substantial physical injuries during the assault. The Washington County trial court had dismissed these cases in 1994. Plaintiffs appealed. The Court of Appeals reversed and the County appealed to the Supreme Court. This case then spent a good amount of time in abeyance pending a decision by the Oregon Supreme Court on a State of Oregon case concerning negligent supervision of offenders. The Supreme Court decision's in the related State case was adverse to the County's interests. Due to the seriousness of the plaintiffs' injuries, adverse facts and the age of the case, the County entered mediation with the plaintiff when the case was remanded to the trial court. Prior to mediation the County filed a third party complaint against the offender who perpetrated the assault. Perhaps for this reason Plaintiffs did not pursue reimbursement for all their medical and dental bills during mediation and the County was able to settle these cases for \$212,000.

### Bittler v. Multnomah County – (164.2 hours)

Ms. Bittler was murdered by a parolee under the supervision of the Department of Community Justice. Along with its companion case, Banks v. Multnomah County, the plaintiffs argued that the County was negligent in its supervision of the parolee and that the civil rights of his victims were violated as a result. A settlement of both cases was approved by the Board on July 15, 2004.

Richard Herbert Tucker v. Clackamas County and Multnomah County – (157 hours)

Plaintiff brought this action against Multnomah and Clackamas Counties alleging false imprisonment and negligence. The claims against Multnomah County included erroneously calculating plaintiff's probation expiration date, failing to ascertain probation had expired prior to requesting a detainer warrant and inappropriate reliance on information in the Corrections Information System. Plaintiff sought monetary damages to compensate him for spending 14 days too many in custody. The case was eventually settled by the County for \$5500 after arbitration and Clackamas County settled for a slightly lesser amount for their role.

## **COUNTY HUMAN SERVICES**

Susan Strutz v. Multnomah County – (378.9 hours)

Ms. Strutz was an Operations Administrator with the Mental Health Division of the Department of Human Services. In September 2002, Strutz's position was eliminated and she accepted a position as a Clerical Unit Supervisor, in lieu of lay off. Strutz filed a federal lawsuit alleging that her position was eliminated because she took medical leave under FMLA to undergo and recover from cancer treatments. The parties settled this case with the assistance of Federal Judge Coffin in December 2003. As a part of the settlement Strutz agreed to a voluntary resignation and a full release of claims.

Alpha Energy Savers, Inc. and Obrist v. Multnomah County et al – (204.1 hours)

An independent contractor who has performed weatherization services for the County under a non-exclusive contract brought both state and federal claims against the County and two of its employees who work in the Weatherization department. The federal claim alleged that the 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. Plaintiffs seek a million dollars in damages plus attorney fees. The federal district court granted the County defendants' motion for summary judgment finding that plaintiff Obrist had not spoken out on a matter of public concern. Plaintiffs appealed and the Ninth Circuit three-judge panel reversed finding that Obrist had spoken out on a matter of public concern and that disputed issues of fact remained concerning whether or not the County defendants had taken adverse actions in retaliation for the protected speech. The County is scheduled to file a motion for hearing before the full Court in October.

Sally Wimbish (Archie) v. Multnomah County, et al, (170.8 hours)

Wimbish, who is developmentally disabled and suffers from mental health issues, received services from Multnomah County. During the time she was receiving services from Multnomah County, she moved out of the house in which she was

living with her Aunt, began living with a man, and eventually became pregnant. Wimbish filed a federal lawsuit against the County and three County employees alleging a violation of her federal constitutional right to Due Process and violations of state law related to negligence. Wimbish seeks a declaration that the County violated her constitutional rights, money damages, and attorney fees. The parties are in the process of exchanging documents, and we intend to file a motion for summary judgment that we expect will resolve this case in its entirety.

## **SHERIFF'S OFFICE**

### James E. Bryant v. Krafve and Multnomah County – (845 hours)

In this federal lawsuit, the plaintiff was arrested for murder. The charges were dismissed one year later. He alleged the County and Detective Krafve failed to provide the prosecutors with exculpatory material which would have resulted in his earlier release. After extensive pre-trial discovery practice, the County moved for dismissal, arguing that his constitutional rights were not violated, that the defendants acted in good faith and that there was probable cause to hold plaintiff throughout the entirety of his incarceration. The motion to dismiss is currently under advisement.

### Scott Evans v. Multnomah County – (304.35 hours)

Mr. Evans was terminated from employment as a Corrections Officer in 1999 because he was no longer able to have contact with inmates. The County was granted summary judgment at the trial court. Evans appealed and the Oregon Court of Appeals reversed and remanded the matter to the trial court to determine if Evans was able to perform the essential functions of a Corrections Officer with no inmate contact. The parties agreed to mediation and ultimately settled the case for \$125,000.

### Rod Edwards v. MCSO – (293.45 hours)

Edwards, a deputy sheriff, was not selected for a sergeant position during the last MCSO promotional process. He complained that the Sheriff and command staff discriminated against him because he applied for and received preference points because of his status as a disabled veteran. Edwards pursued this complaint with the Merit Council, which ruled in the County's favor on Edwards' claim of discrimination. Edwards filed a Writ of Review challenging the Merit Council decision, and at the same time filed this action, a state lawsuit alleging the County retaliated against him because he filed a civil proceeding (the Merit Council appeal) and because he disclosed to the Sheriff and command staff that they were violating state law (related to the veteran preference points). The parties have completed discovery, including substantial document exchange and numerous depositions, and we have filed a motion for summary judgment asking the Court to dismiss Edwards'

claims. We also prevailed on our motion to postpone the trial in this action pending resolution of the Writ of Review.

Karboau v. Anderson – (171.72 hours)

Inmate brought claims in federal court against corrections deputy and corrections technician alleging various violations of his constitutional rights related to religious rights and access to the courts. County defendants filed a motion of summary judgment which was granted in its entirety by the federal court. The County is still waiting to see if plaintiff files an appeal with Ninth Circuit.

Lance Fleming v. Multnomah County – (167.9 hours)

Fleming, an inmate at MCDC, was on his way to the MCDC law library when a corrections officer, who was returning Fleming's legal papers to him, slapped him in the chest with the documents. He filed a federal lawsuit alleging that the County violated his constitutional right to be free from cruel and unusual punishment and that the County was negligent under state law. We filed a motion for summary judgment against these claims. The Court granted the motion against the federal constitutional claim, but declined to rule on the state law claim and instead directed plaintiff to pursue this claim in state court. As of the date of this writing, plaintiff has not pursued his negligence claim in state court.

Holiday and Ramsey v. Giusto, et al. – (134.5 hours)

Inmates filed claims against the Sheriff and a Sheriff's Office chaplain alleging violation of their religious rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act. The inmate's claims that they were entitled to pre-packaged Halal meals or certification as a Halal meal service provider and to a permanent full-time Muslim chaplain. They also claim that the defendants' had unconstitutionally and unlawfully interfered with their ability to pray as a group. The federal magistrate judge granted summary judgment on most of the plaintiffs' claims but denied summary judgment on a policy claim concerning the right to pray in groups on the basis that the facts are in dispute. The defendants have filed Objections to the magistrate's Findings and Recommendations and a ruling on those Objections is pending.

## **ADVISORY WORK**

We continue to look for opportunities to provide high quality legal advice to our clients. This year we have again faced unique issues which required substantial attorney time. Issues regarding and surrounding the issuance of marriage licenses presented legal analysis and response never before required by our office. Elections issues continued to present new issues: Petitions for repeal of commissioners, for repeal of the personal income tax, and for another People's Utility District were also challenging. Finally this was a year in which a Charter Review Committee was convened, and our office staffed the committee's meetings, answered members' legal questions about the Charter and provided the drafting of their report and ballot titles. Here are brief descriptions of noteworthy matters handled by our advisory attorneys this past year:

## **BUSINESS AND COMMUNITY SERVICES**

### **Facilities**

This office represented facilities in negotiating a contract with Hoffman Construction to complete the Hillsdale Library and in matters related to property disposition. We advised the auditor and FM on issues relating to the audit of county leases and we have worked closely with FM to implement improvements to the lease process recommended in the audit. We also negotiated settlements related to early termination of two leases required by cuts in state funding. We continue to work with FM on the adoption of new contract forms for construction and for architectural and engineering services. We have also advised FM and others on matters related to increasing minority, women and emerging small business participation in county contracts.

### **Contracts**

We initiated a program to provide for electronic review of contracts by this office. This replaces a system where hard copies of contracts were circulated for attorney signature in interoffice mail. If changes had to be made, the hard copies had to be returned to the department for revision and then circulated again. Electronic review has substantially reduced the time required to process contracts and has reduced staff frustration with the review process.

### **Transportation**

All of the property acquisitions required for the 257<sup>th</sup> Avenue/Orient Drive road improvements were completed. Condemnation was required for acquisition of four of the properties but two of the cases were settled in mediation, a third settled without mediation and the fourth case was resolved after a very abbreviated hearing

to the court. A long-standing dispute with a property owner arising out of construction required by the 1996 floods was also resolved in mediation.

## **Labor Relations**

The County attorney's office has started handling all labor arbitrations. Previously the County contracted out for these services, at significant expense to the County. Our office responds to complaints filed with Oregon's Bureau of Labor and Industries and the Equal Employment Opportunity Commission, as well as the Employment Relations Board. We've continued to provide labor and employment advice to all of the County's departments on a variety of issues including FMLA, ADA, FLSA and comp time, USERRA, fitness for duty, harassment, investigations, discipline and discharge, criminal records checks, personnel rules, recruitment, benefits as well as responding to public records requests and request for personnel records and responding to tort claim notices. We also conducted FMLA trainings for supervisors and managers in the Department of County Human Services, as well as Personnel Training for managers in Department of Community Justice.

## **SHERIFF'S OFFICE**

In addition to the day-to-day advisory services, the following are a few of the projects undertaken:

- Updating the Multnomah County Alarm Permit Ordinance and the Intergovernmental Agreements pertaining to the administration of alarm permits that the County has with the East County municipalities;
- Updating the the Jail Management Plan;
- Updating corrections policies in response to the Religious Land Use and Institutionalized Persons Act (RLUIPA); and
- Updating the Extradition and California Shuttle procedures in conjunction with the Governor's Office.

## **COUNTY HUMAN SERVICES**

Our office has taken in lead in negotiating with the state to improve the intergovernmental agreements between the State Department of Human Services and Multnomah County. Over the last several years, the state has imposed a disproportionate share of the burdens associated with the delivery of human services on the County. Last year we have spent hundreds of hours collaborating with the Association of Oregon Counties and other County Counsel offices from around the state to develop a coherent and organized response to the state's new

aggressive approach to its relationship with the counties. We have seen some improvements but hope that we will see more significant changes as policymakers begin to address these problems and begin to insist that the state return to its former collaborative relationship with the County.

### **Library**

This office aided the Library in assessing the legal requirements of the Children's Internet Protection Act (CIPA) so that an informed decision about applying for E-Rate and LSCA funds could be made. We also provided analysis of the many innovative suggestions that were proposed by the Library Access Committee to deliver quality Internet service with a policy respectful of our community's values.

### **Administrative Agencies**

Due to budget restrictions that necessitated the elimination of certain jobs within the County's administrative agencies, some clients lost individuals who served as compliance specialists. This office has reached out to those clients to offer additional advisory service to minimize the impact of those losses. One such example has been with the Adult Care Home Program to whom we provide advice on proper enforcement of Multnomah County Administrative Rules and represent in administrative hearings.

## EFFECTIVE RATE

The effective rate paid for each hour of direct legal service was \$98.38. 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 and, in some cases, is as high as \$250 per hour. Our rate is also less than that charged by other government law firms.

Of all hours reported by County Attorneys 86% went to direct client legal services; the percentage of our hours devoted to administrative and professional development services is only 14%, the same as last year. In addition, the average number of direct legal service hours provided during the fiscal year by each lawyer was 1,637.26, about the same as last year. The following chart summarizes the effective hourly rate computation:

Total Hours Reported		26,564.42
Direct Service	(86.28%)	22,921.60
Non-Direct Service	(13.71%)	3,642.82
Administrative	(9.65%)	2,564.72
Professional	(4.06%)	1,078.10
14 Lawyer FTE Average Direct Service Hours*		1,637.26
Office Actual Budget Expenditures		\$2,254,985.00
Divided by Direct Service Hours		22,921.60
Effective Hourly Rate		\$98.38

## **CONCLUSION**

We have now compiled six 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) About 86% of lawyer office hours go to direct legal services;
- (2) Each lawyer averages 1,637 direct service hours per year; and
- (3) The cost of each direct service hour is \$98.38.

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, 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.