

OFFICE OF
MULTNOMAH COUNTY ATTORNEY



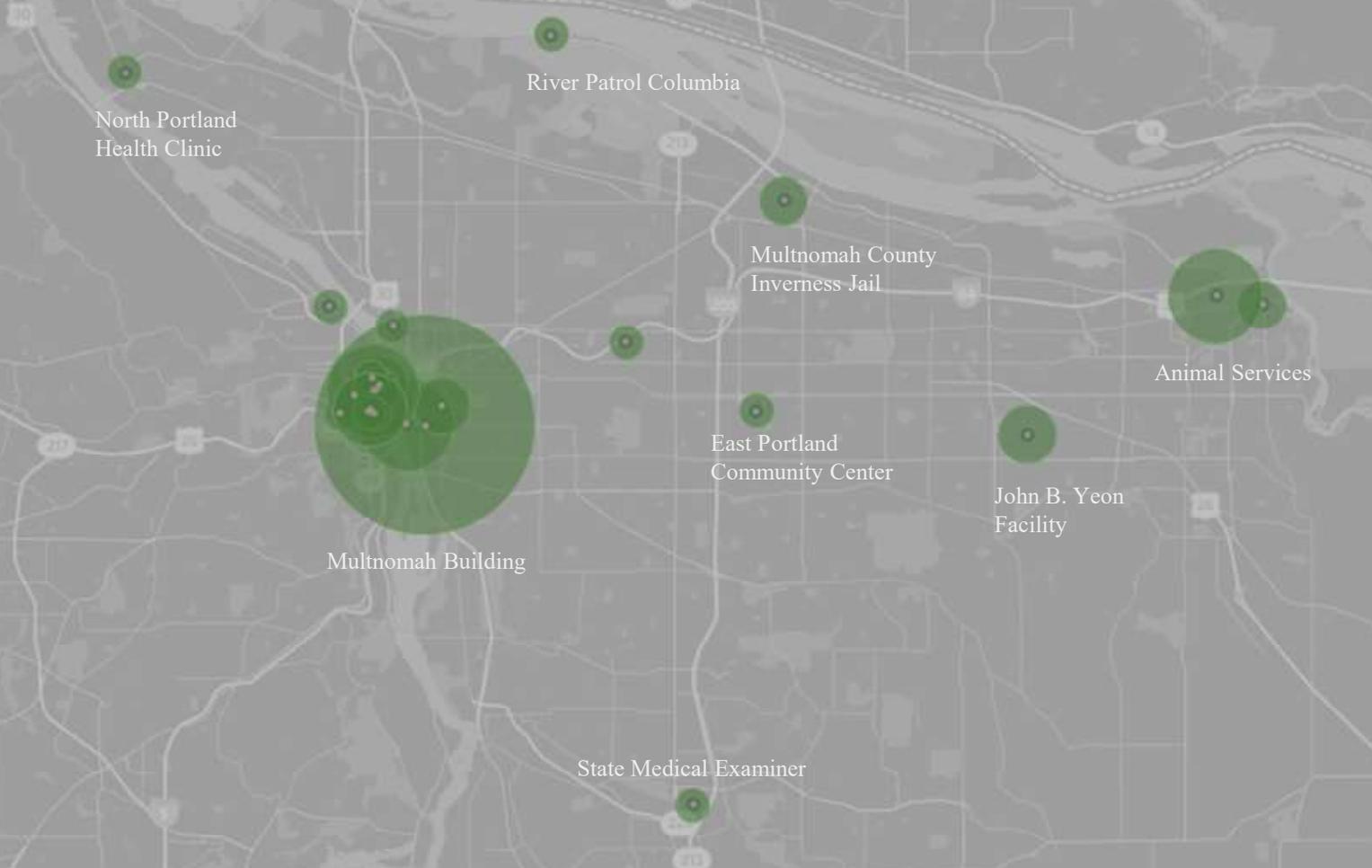
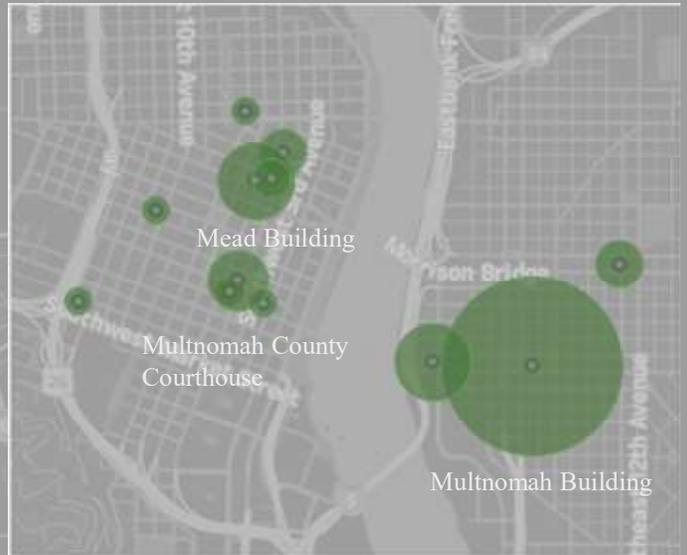
2015 – 2016 Annual Litigation Report
For the Board of County Commissioners

Acronym key and distribution of County Attorney services in FY 2015-2016 by Multnomah County service location

Department Acronym Key

- Department of Community Services – DCS
- Multnomah County Sheriff’s Office – MCSO
- Multnomah County Department of Assets – DCA
- Non-departmental – ND
- Multnomah County Management – DCM
- Multnomah County Health Department – MCHD
- Department of County Human Services – DCHS
- Board of County Commissioners – BCC
- Department of Community Justice – DCJ
- Multnomah County Library – LIB
- Multnomah County District Attorney’s Office – MCDA

 service hours by location



INTRODUCTION

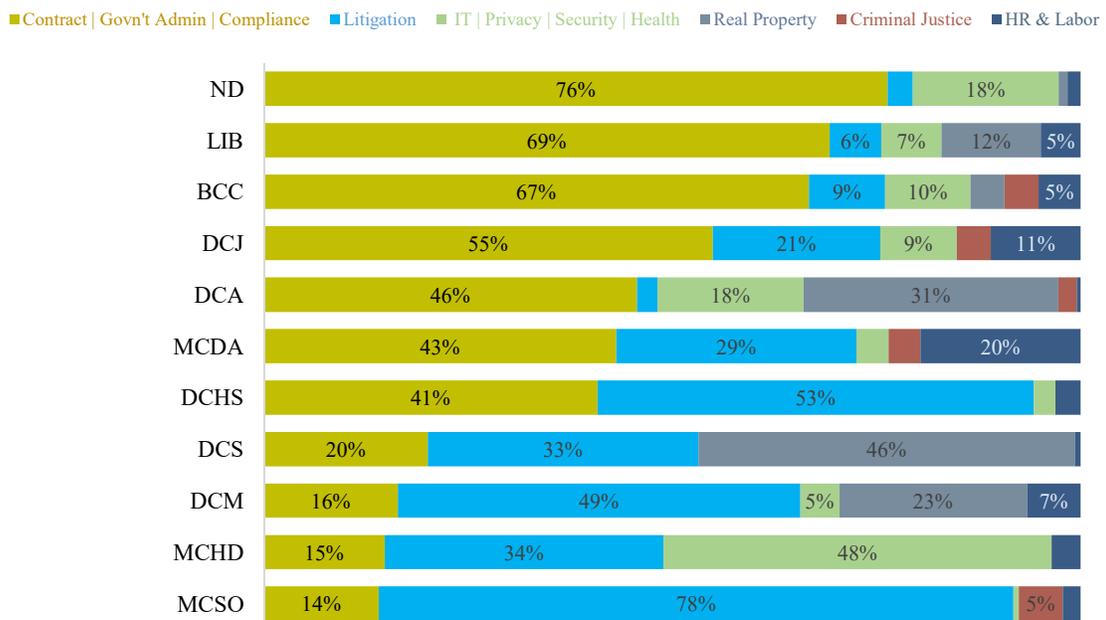
Multnomah County Code Section 25.320(I) requires the County Attorney to submit a formal annual litigation report to the Board. This Litigation Report summarizes the legal services provided to county clients from July 1, 2015, through June 30, 2016, hereinafter referred to as fiscal year 2015-2016, with a specific emphasis on litigation services.

The mission of the County Attorney’s Office is to provide the highest quality and most cost-effective legal services to the county by and through its elected and appointed officials. The County Attorney’s Office does not represent County officials in their private capacity or on matters of personal or political, as opposed to County, interest.

THE OFFICE OF COUNTY ATTORNEY

The Office of County Attorney provides a full range of legal services to County officials, departments, divisions and special districts. Our attorneys represent the county and its employees in federal and state courts at the trial and appellate levels. We represent the county in Tax Court, labor arbitrations, administrative hearings, and before the Land Use Board of Appeals. As shown in Chart 1, we provide daily advice on legal issues affecting the

Chart 1: Practice Area Range



county internally, as well as issues that affect county service delivery, ranging from bridges to healthcare.

Our attorneys are classified in a series of entry level, journeyman, senior, Deputy, and County Attorney. Our team of professionals works together to assure the highest quality legal work. We are recognized as subject matter experts on issues of county concern throughout the state.

We continue to experience staffing adjustments to meet client needs, develop expertise in emerging areas of law, and plan for anticipated retirements. In fiscal year 2015-2016 we added **Will, Cindy, Carlos, Katherine, Jackie and Tatyana**. Matt Ryan, who served the County loyally and with astute and thorough legal advice for over 29 years, retired in April. Patrick Henry, with us since 1999, was appointed to the Multnomah County Circuit Court bench in October. Lindsay Kandra, who joined our office in 2013, transitioned to a new role with the Department of County Management and enrolled in a masters degree program in mental health counseling. Leslie Edenhofer, a former law clerk, worked with us briefly until landing her dream job in August. By the end of this fiscal year, we had an attorney staff of eighteen and six highly-trained professional and experienced support staff.

We have organized two new legal work groups, the Property Group and the Health Law Group, to provide a coordinated response to legal issues affecting multiple layers of County services. Our Property Law Group facilitated the building, acquisition, and disposition of multiple County projects and facilities. Examples include ongoing construction of the Sellwood Bridge, Health Headquarters, and Courthouse; acquisition of real property for the Arata Road project; transfer of Library facilities from the County to the new Library District; and the opening of three homeless shelters. Our Health Law Group advises on data sharing, data privacy and security, and general health information privacy among the County's various agencies. Their work ensures legal compliance and a synchronized response across

departments. Both groups draft, negotiate, and litigate complex contracts, respond to administrative and regulatory matters, and help the County navigate the associated agency and vendor relationships.

The office also manages a successful law clerk and volunteer attorney program. The clerkship program provides opportunities for law students and new attorneys to gain practical experience, hone their legal skills, and develop relationships with a number of seasoned government attorneys. At the same time, attorneys and staff benefit from mentoring and helping clerks guide their careers while also supporting professionalism in the Bar. The clerks provide legal research and writing and contribute their unique perspectives to the county's legal challenges. The long term benefits of the clerkship program are highlighted by the fact that many of our attorneys over the years once clerked with the office, and prior clerks have moved on to successful careers in the private sector, government, and with the judiciary.

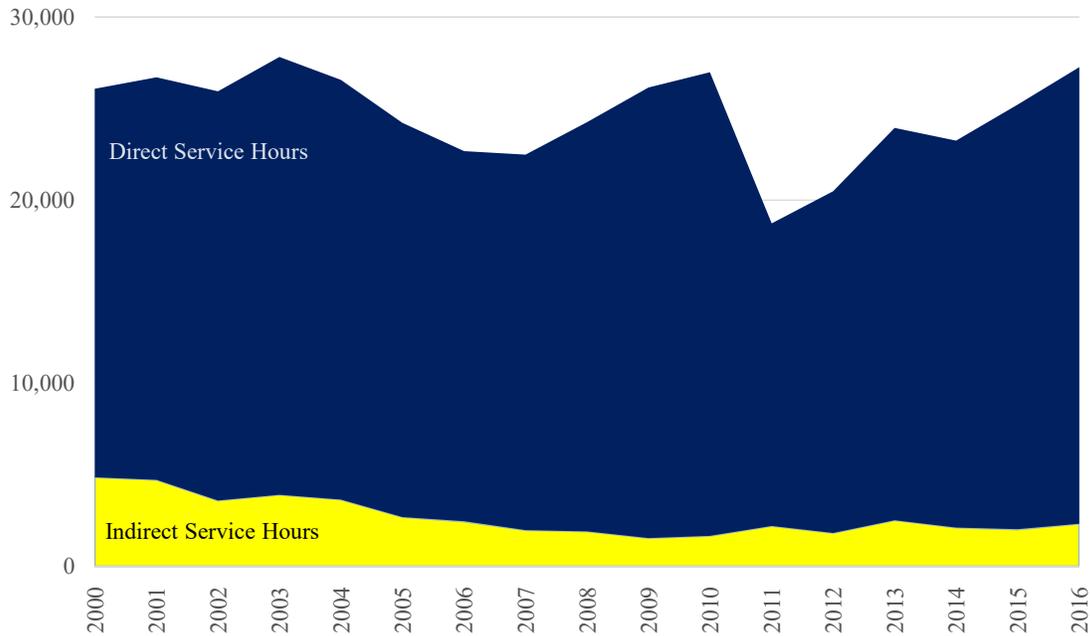
DIRECT SERVICE HOURS

The County Attorney tracks time dedicated to client services, professional development, and administrative and office related tasks. Departments pay for County Attorney services as an "internal service" cost and are not billed hourly. This funding relationship encourages Departments to contact our office early and often, without concerns about paying an hourly rate.

For reporting purposes, we focus on the hours our attorneys track and categorize their time as either "Direct" and "Indirect" service hours. Direct service hours represent attorney time dedicated to litigation, legal consultation, preparation and review of contracts and other legal documents, and client training. Indirect service hours track time spent on professional

development, administrative work, clerical, and office related tasks. As shown in Chart 2, 91% of service hours tracked in fiscal year 2015-2016 were direct service hours.

Chart 2: Service Hours

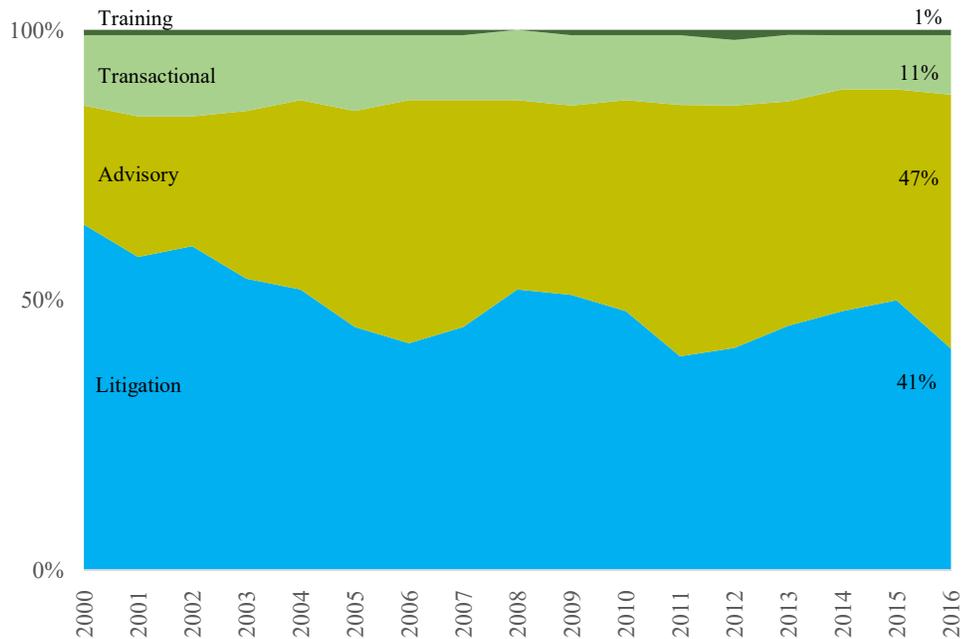


Below is a breakdown of the service hours reported in fiscal year 2015-2016.

Direct Service Hours		
Total Hours Reported		27,261
Direct Service	91%	24,933
Indirect Service	9%	2,328
18 Attorney FTE Average Direct Service Hours		1,385

As reflected in Chart 3, 47% of our direct service time in fiscal year 2015-2016 was dedicated to advisory matters, such as general legal consultation; 41% was spent on litigation matters; 11% of direct service time was spent on transactional matters, such as reviewing documents and contracts. While client training reflects only 1% of attorney time, that figure reflects 132 hours of formal training hours. In addition to formal training, our advisory services have elements of counseling, guidance, and training.

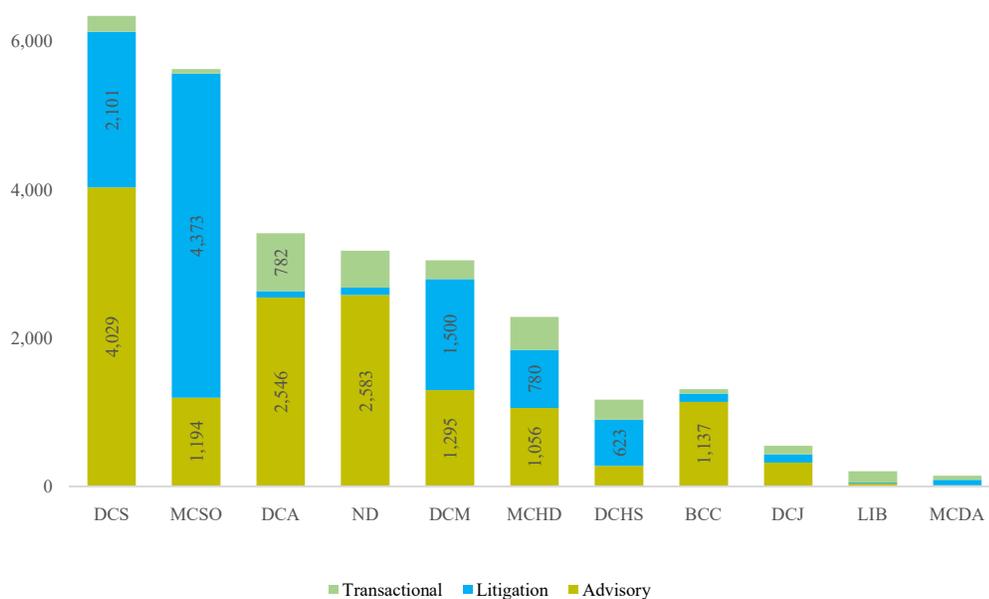
Chart 3: Service Hour Allocation



DIRECT SERVICE HOURS TO COUNTY DEPARTMENTS

Chart 4 shows direct services hours broken down by department and the type of direct service (i.e., advisory, litigation, transactional). This pattern is consistent with prior years, and is directly affected by active litigation in the departments.

Chart 4: Service Hours by Client



In Table 1, below, is a breakdown of the service hours shown in Chart 4.

Table 1: Direct Service Hours by Department		
DCS	6,341	23%
MCSO	5,627	21%
DCHS	1,166	4%
DCM	3,046	11%
DCA	3,413	13%
MCHD	2,286	8%
DCJ	546	2%
BCC	1,199	4%
ND	3,177	12%
LIB	205	1%
MCDA	255	1%
TOTAL	27,261	

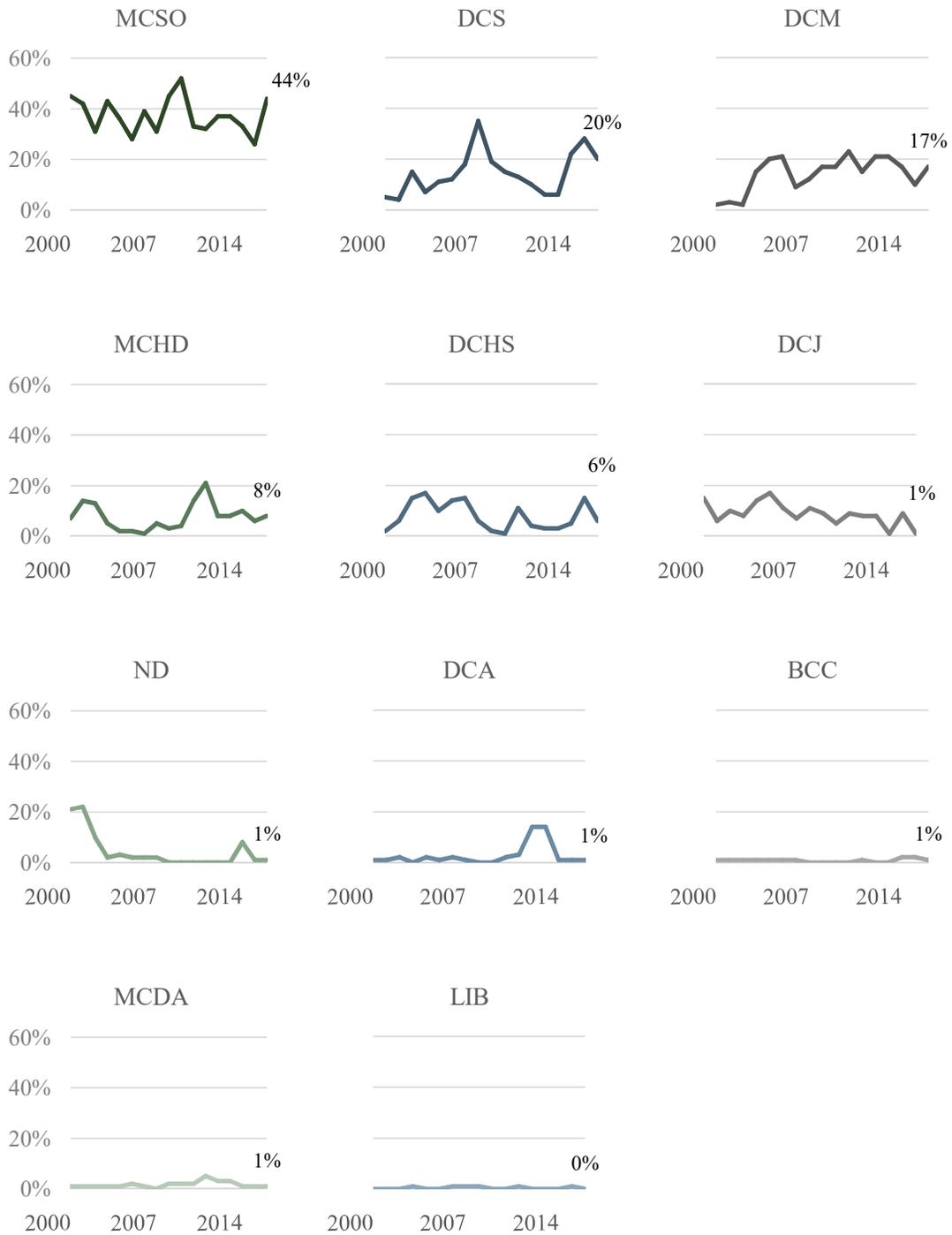
LITIGATION

Our litigation team defends against civil claims brought against the county, its employees, and elected officials. We represent the county in all aspects of litigation and in all venues. In fiscal year 2015-2016, 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 United States Court of Appeals for the Ninth Circuit.

Litigation takes many forms and includes lawsuits alleging personal injury, civil rights violations, medical malpractice, and employment discrimination. We also represent the county in matters arising out of county operations and legal duties. These cases include tax appeals, elections cases, land use matters, construction and real property disputes, guardianship proceedings, regulatory enforcement proceedings, firearms permitting, and civil forfeiture actions.



Chart 5: Litigation Year-Over-Year



LITIGATION HOURS BY DEPARTMENT

The county's litigation needs vary every year, as reflected in Chart 5 above, which shows the percentage of direct service hours spent on litigation matters for each county department since 2000. We continually review and assess service levels and make adjustments as necessary to respond to these changing needs. Just one or two cases can substantially change the percentage of litigation hours attributed to each department from year to year. The litigation team continued to realize significant success in obtaining dismissals of cases through motions practice. These dismissals resulted in cost savings, time savings, and avoided the uncertainties of trial.

As in prior years, the Sheriff's Office represents a large percentage of litigation hours, totaling 44% of the litigation-related direct service hours. The majority of the Sheriff's Office litigation involves the jail operations and inmate claims. Claims include issues related to medical care, religious discrimination, various other civil rights and property claims. In addition to inmate claims, we routinely litigate civil forfeiture actions, habeas corpus, and concealed firearms license appeals.

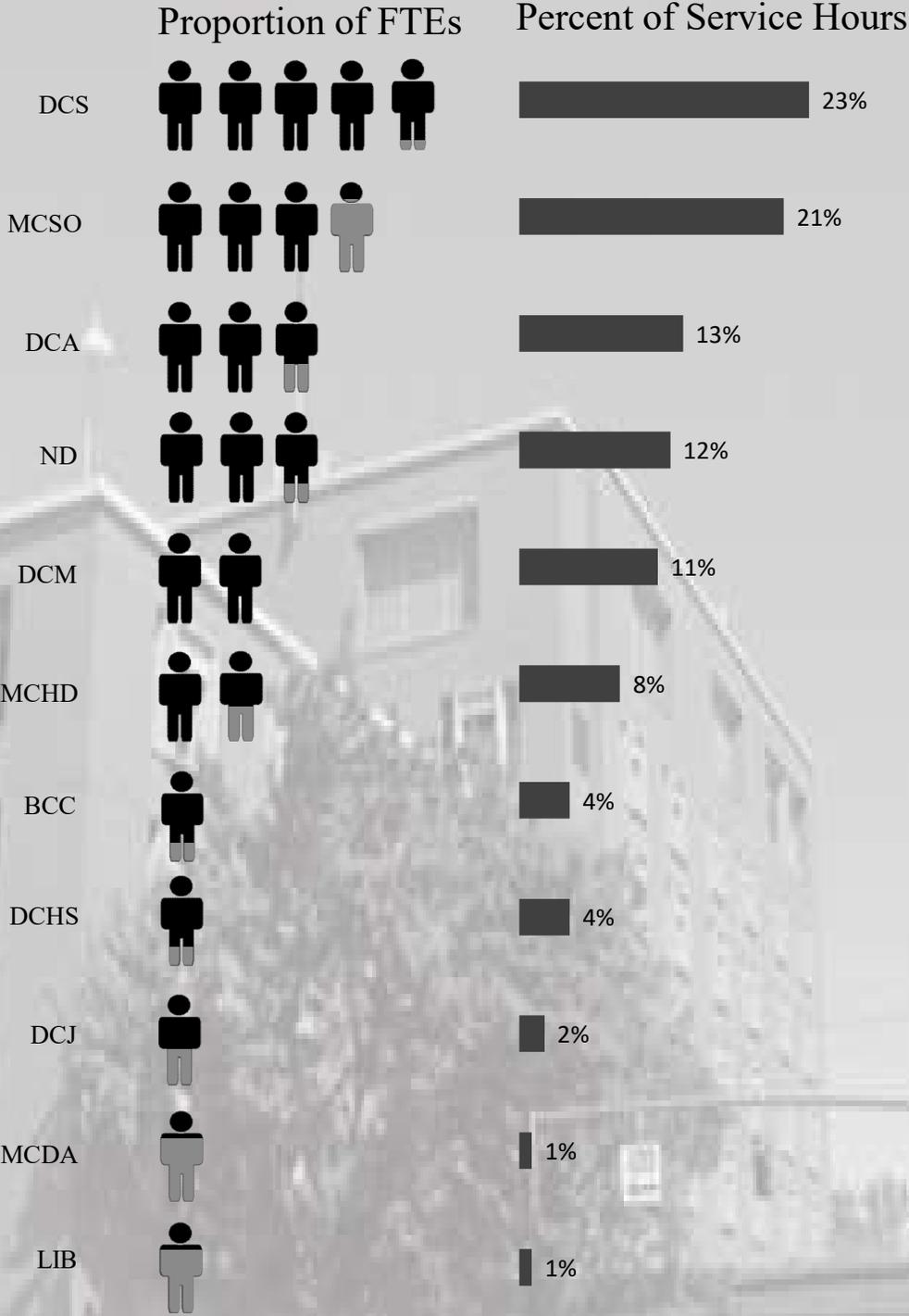
Community Services litigation represented 20% of total litigation hours. With several ongoing capital construction projects we can expect Community Services to continue to require increased litigation services.

County Management litigation represented 17% of litigation hours, up from 10% in fiscal year 2014-2015. Most tax-related litigation and labor and employment disputes and claims are addressed through County Management.

Chart 6 illustrates how fiscal year 2015-2016 litigation needs affect attorney staffing and resource allocation.

Chart 6: Fiscal Year 2015-2016 Litigation

Attorney time in terms of FTEs



= one FTE

New matters are evaluated upon intake, and a litigation strategy is developed by the litigation team. Some cases are resolved through motions practice or settlement, while other cases proceed to trial. Civil lawsuits typically extend over two or more fiscal years. This litigation report focuses on work done in fiscal year 2015-2016, but we necessarily acknowledge cases extend beyond that period.

During this fiscal year the County received 83 new tort claims. A tort claim is a notice of intent to bring a lawsuit for damages against the County or its employees. In addition to tort claims, the County was served with 15 lawsuits or claims. As shown in Chart 7, this volume varies on a year over year comparison and was lower than usual, we presume because court filing fees for plaintiffs increased during the fiscal year. The litigation team is handling more cases prior to lawsuit filing.

Chart 7: Tort Claims and Complaints

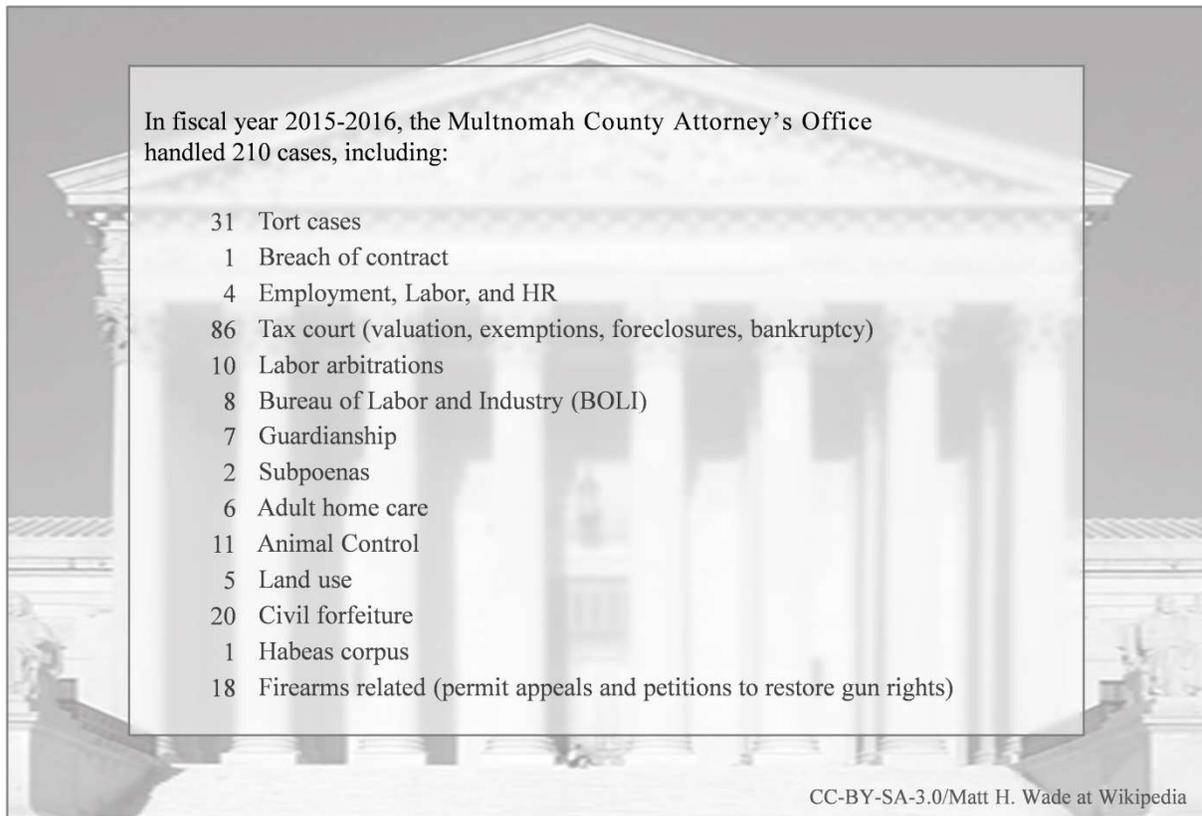
Tort claims peaked in 2013 but have been declining since that time.



LITIGATION ACCOMPLISHMENTS AND RESOLUTIONS

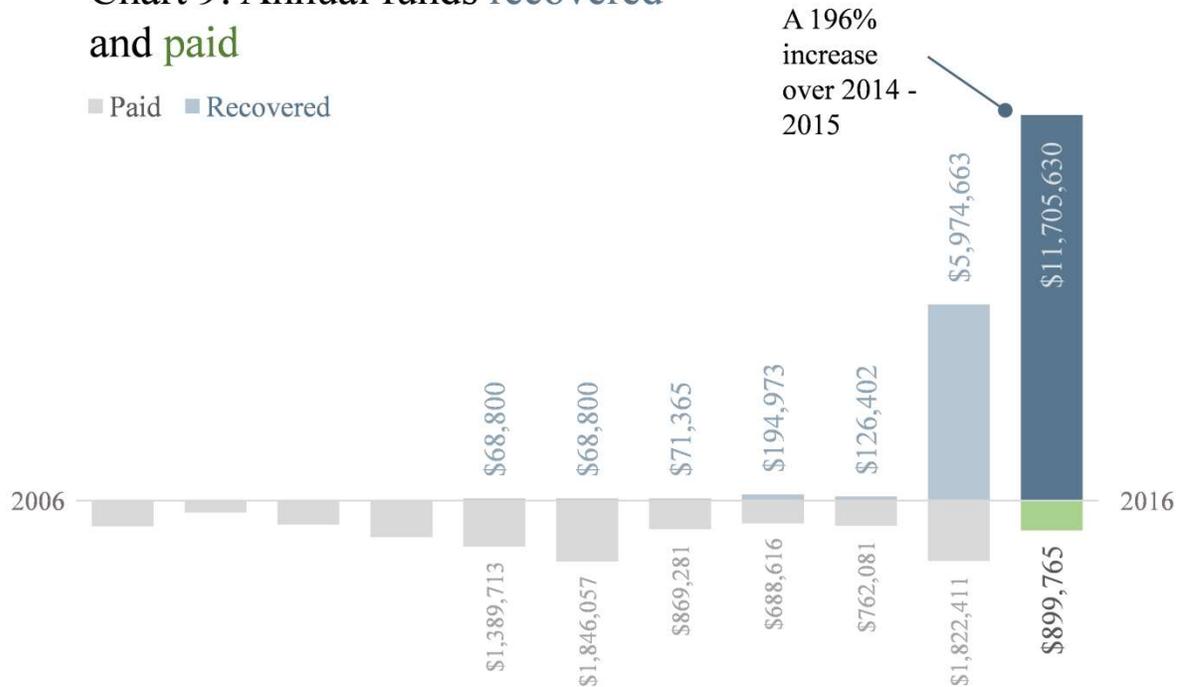
In fiscal year 2015-2016 our litigation team successfully defended the County and its employees in approximately 210 cases. The matters vary in type and complexity, but all of them deal with important rights and issues of public interest, as shown in Chart 8, below.

Chart 8: Case Types



In fiscal year 2015-2016 the county secured over \$11,705,630 in cash and property through its litigation efforts. The recovered sums included \$135,648.88 from subrogation claims and \$141,007.57 from a class action settlement. By contrast, the county paid a total of \$107,608.90 in awards, settlements, and expenses in fiscal year 2015-2016. As shown in Chart 9, this continues a year-over-year trend where our recoveries outpaced our paid claims.

Chart 9: Annual funds recovered and paid



The paid amounts above do not include the settlement of a breach of contract claim associated with a Sellwood Bridge-related contract. This construction-related claim sought over \$1.5 million in damages and was resolved for \$792,156. This settlement resolved a disputed claim and resulted in a savings of County Attorney resources, court costs and fees, and avoided the risks of a month-long court trial.

The County also realized two unprecedented successes in actions initiated by the County. The County is not routinely in the position to bring lawsuits, but in both of these cases, the public interest favored proactive action. The first case was against MERS (Mortgage Electronic Registrations Systems, Inc.) and several member banks. The County alleged that banks used MERS to bypass public recording requirements and fees. The case settled prior to trial and Multnomah County received a substantial settlement. The details of the settlement cannot be discussed here, but are available online at: http://multnomah.granicus.com/MediaPlayer.php?view_id=3&clip_id=1295&meta_id=83298. In

addition, MERS agreed to change its recording practices and the County will benefit from recording fees collected in future years in the amount of \$700,000 to \$800,000 annually.

The County, along with the City of Portland, also settled a suit (which began in 2012) with Expedia, Inc. and several other online travel sites. The suit was based on the travel site’s failure to forward to the City and County transient lodging taxes it collected from customers who booked hotel accommodations within the City of Portland and Multnomah County. As a result of the settlement, Multnomah County collected \$1.7 million.

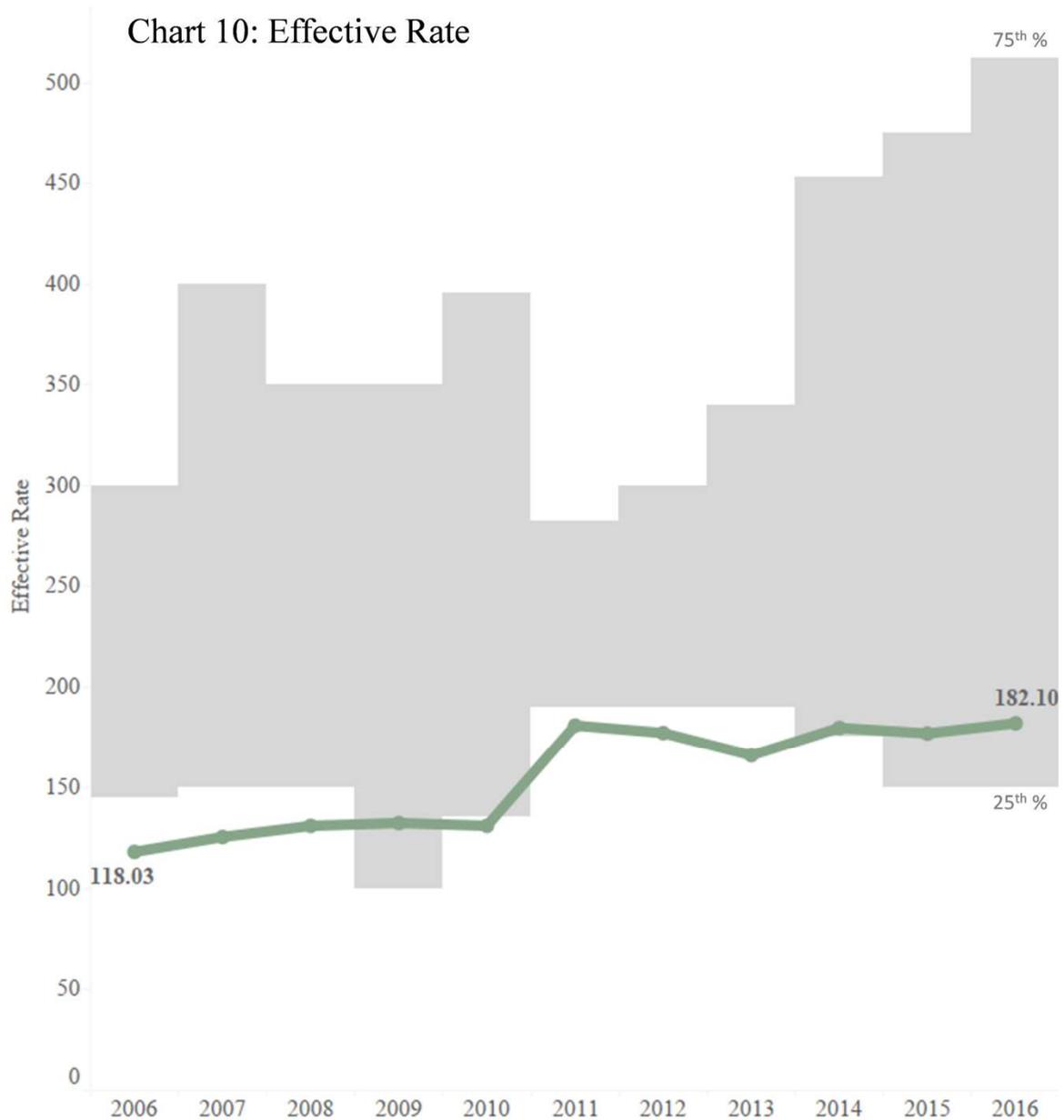
From a public policy and accountability perspective, these legal actions made clear statements that Multnomah County will take proactive steps to protect its legal interest and to steward taxpayer dollars.

EFFECTIVE RATE

The effective rate paid for each hour of direct legal service in fiscal year 2015-2016 was \$182.10. 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, as shown in Table 2 below.

Table 2 Effective Hourly Rate		
Total Hours Reported		27,261
Direct Service		24,933
Indirect Service		2,328
18 Attorney FTE Average Direct Service Hours		1,385
Office Actual Expenditures 2015-2016		\$4,540,341
Divided by Direct Service Hours		24,933
2016 Effective Hourly Rate		\$182.10

Our effective rate calculation includes time spent providing direct service hours only and does not take into account the hours spent on office administration and continuing legal education activities required for licensing.



As shown in Chart 10, our effective rate has remained roughly consistent since 2011, with a range between \$177.02 and \$182.10. This range represents a significant cost savings to comparable services provided by private sector lawyers. Although few attorneys publish their

billing rates, the data available to us – including an Oregon State Bar attorney salary survey from 2012 – show that a civil litigator: (a) in Portland area; (b) in private practice; and (c) with a level of practice experience comparable to the attorneys in the office (i.e., 15 years in practice), bills an average rate of \$290.00 per hour. Comparable practitioners at the highest billing levels charge over \$500.00 per hour. With an effective rate of \$182.10, we continue to provide the highest quality legal services to the County at a fraction of the rate charged by comparable attorneys at private law firms.

CONCLUSION

The County Attorney's Office is continually challenged to provide efficient and effective legal services while meeting the demands of increasingly more complex litigation. 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.