



Office of Multnomah County Attorney

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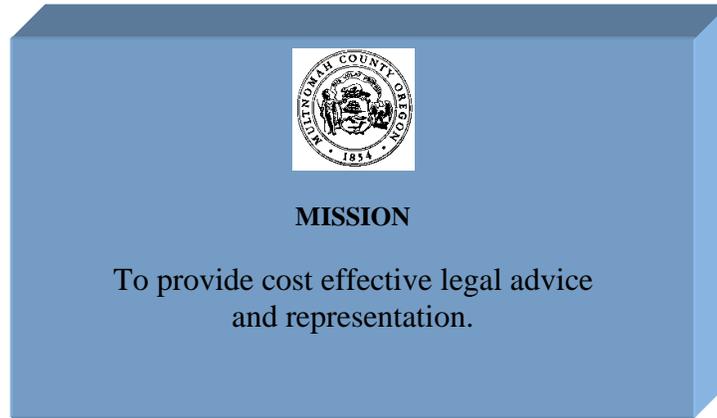
501 SE Hawthorne Blvd., Suite 500  
Portland, Oregon 97214

# **2012-2013 Annual Litigation Report**

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

## **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.

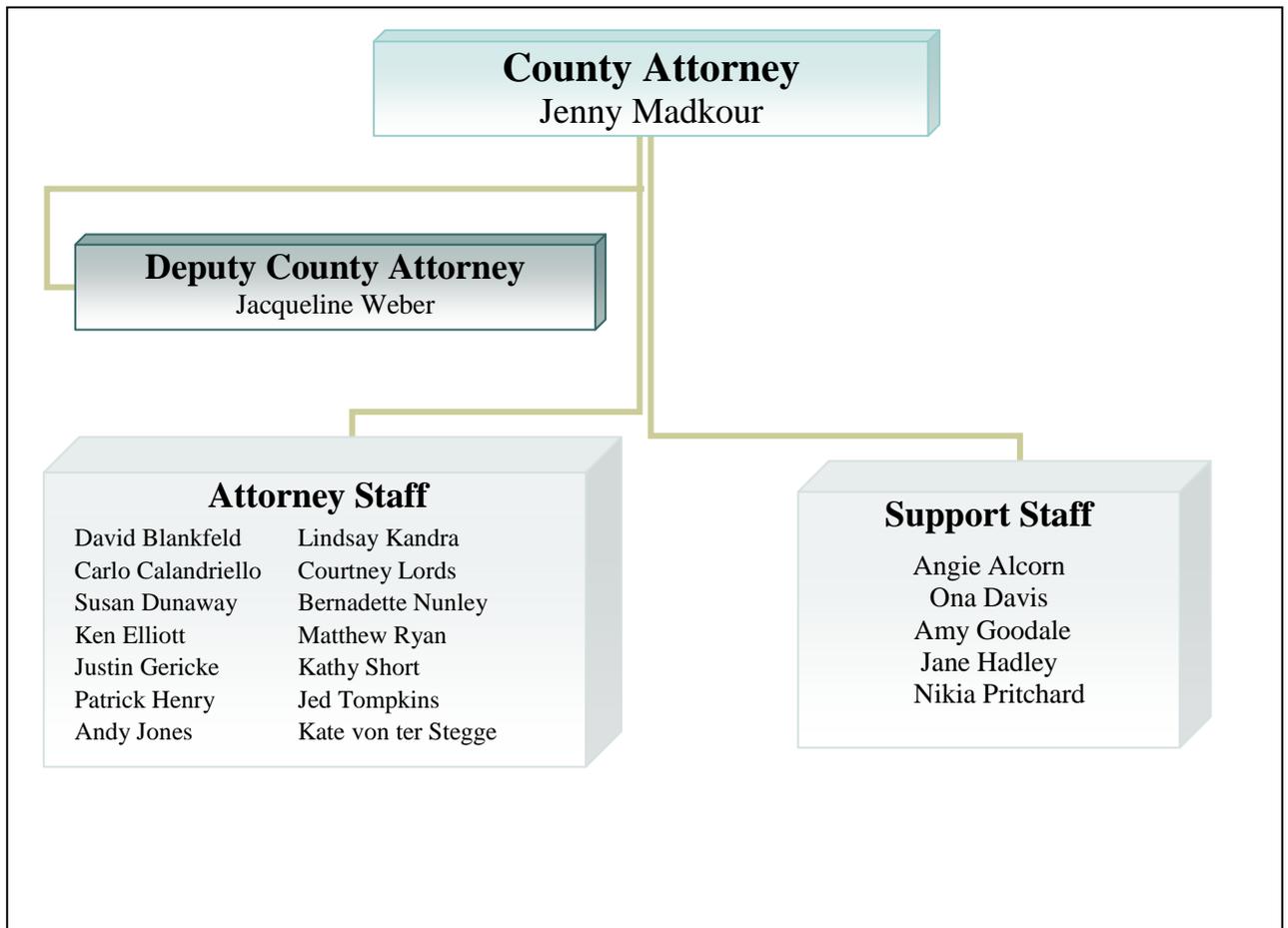
The Office of County Attorney provides a full range of legal services to the Board of County Commissioners, all elected County Officials, and all departments, divisions and special districts.

Our attorneys represent the County and its employees in both Federal and State trial courts and appellate courts. In addition, we represent the County in State Tax Court, before the Land Use Board of Appeals, in labor arbitrations and administrative hearings.

Our advisory attorneys provide daily advice on all aspects of legal issues that affect the County internally, as well as issues that affect the delivery of County services ranging from bridges to healthcare.

## THE OFFICE OF COUNTY ATTORNEY

We continue to experience staffing adjustments with retirements and a changing workforce. We have addressed these changes with a combination of strategies, including the reclassification of a position, creating entry level positions, and a deliberate approach to planning. We currently have an attorney staff of sixteen. The attorneys are supported by a highly trained professional and experienced support staff, and we are pleased to report that we have successfully filled two vacant legal assistant positions in this fiscal year for a total of five (5) support staff.



Our attorneys are classified in a series of entry level, journeyman, and senior. Thirteen of the attorneys have ten or more years of experience. We work together as a team to assure timely and efficient legal work. We are recognized as subject matter experts on issues of county concern throughout the state. Areas of expertise include:

Public Health	Assessment and Taxation
Corrections	Health and Human Services
Community Corrections	Code Enforcement
Juvenile Justice	Ethics, Public Meetings and Records
Public Contracting	Labor and Employment
Land Use	Intellectual Property
Elections	Constitutional Law

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 and lawyers. We participate annually in the Lewis & Clark Law School's externship program, the Oregon State Bar, Oregon State Bar Diversity & Inclusion Department's Clerkship Stipend Program and Public Honors Fellowship Program. These programs provide experience and opportunities to law students and new lawyers to apply their legal skill and gain valuable public sector legal experience.

### **DIRECT SERVICE HOURS**

The County Attorney tracks time dedicated to client services, professional development, and administrative/office related tasks. We do not bill Departments directly for this time. Instead, Departments pay for County Attorney services as part of their "overhead" costs. 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 direct service hours. Direct service hours represent attorney time dedicated to litigation, legal consultation, legal document preparation and review, and client training. Direct service hours exclude time spent on professional development, administrative work, clerical and office related tasks.

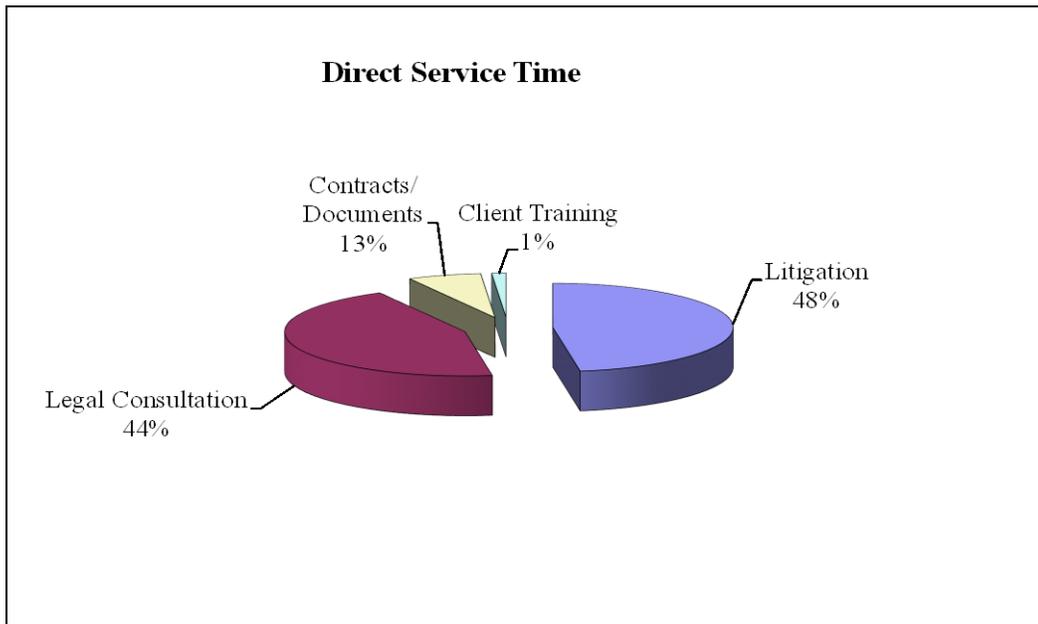
As Chart 1 indicates, 89% of County Attorney hours were devoted to direct service. Direct Service hours reflect a combination of legal consultation with clients, drafting, reviewing and approving contracts and other legal documents, client training, and litigation.

**Chart 1**

<b>Direct Service Hours</b>		
Total Hours Reported		23,951.11
Direct Service	89%	21,431.56
Non-Direct Service	11%	2,519.55
<b>16 Attorney FTE Average Direct Service Hours</b>		1,339.47

As reflected in Chart 2, 44% of our time is dedicated to legal consultation and 48% is spent on litigation matters. While client training reflects only 1% of attorney time, that figure reflects formal training hours only. This number does not capture our daily advisory work which also has elements of consultation, guidance and training.

**Chart 2**



## **DIRECT SERVICE HOURS TO COUNTY DEPARTMENTS**

Chart 3 shows direct services hours broken down by county department. Consistent with prior years, the Department of County Management, Community Services, and the Sheriff's Office, received the most direct service hours.

**Chart 3**

<b>Direct Service Hours by Department</b>		
County Management	4457.28	21%
Community Services	3845.41	18%
Sheriff's Office	3730.00	17%
Health Department	2468.01	12%
County Assets	2127.21	10%
County Human Services	1620.83	8%
Board of Commissioners	983.78	5%
Community Justice	979.40	5%
Nondepartmental	447.20	2%
Library	319.11	1%
District Attorney's Office	141.40	<1%
Other	14.55	<1%
<b>TOTAL</b>	<b>21,134.18</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, before administrative tribunals and labor arbitrators, County Circuit Courts, Tax Court, Land Use Board of Appeals, Oregon Court of Appeals, Oregon Supreme Court, United States Federal District Court, and the Court of Appeals for the Ninth Circuit.

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

In addition to defending the County in litigation matters, our litigation team initiates litigation on behalf of Multnomah County, upon Board approval. We also assist the third party claims administrator in the collection of subrogation claims by initiating litigation to collect amounts owed to the County. In 2013 the County secured over \$106,000.00 in subrogation claims.

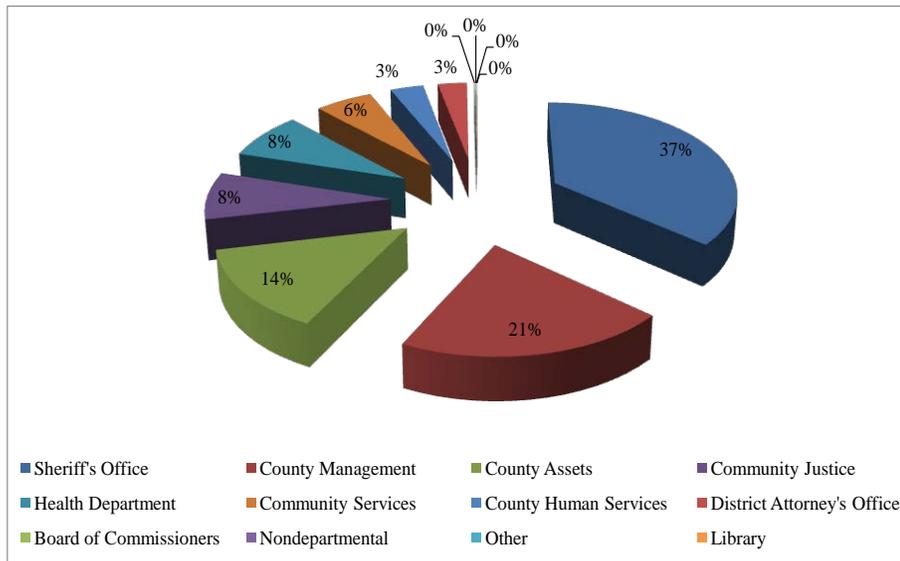
The litigation team also works with the advisory attorneys to provide training to county employees with the goal of reducing county liability. For example, in 2010, county attorneys recognized that there was an increase in the number of use of force claims. A training program was developed regarding use of force liability and how to avoid it. This training along with the support of the Sheriff's Office resulted in a significant decrease in use of force claims.

**LITIGATION HOURS BY DEPARTMENT**

Chart 4 shows the percentage of direct service hours spent on litigation matters for each County department. Just one or two cases can substantially change the percentage of litigation hours attributed to each department from year to year. As in prior years, the largest percentage of attorney time spent on litigation involves the Sheriff’s Office (37 %). Most of the Sheriff’s Office litigation involves the jail operations and lawsuits by current or former inmates (many representing themselves). Claims include excessive force, religious discrimination, and various other civil rights claims. However, this percentage also represents civil forfeiture actions and concealed handgun license appeals.

County Management (21%) and County Assets (14%) represent a combined 35% of litigation hours. County Management litigation time reflects a large construction defect case and two significant employment cases. Due to their complexity, construction and employment litigation historically consume a large percentage of attorney hours.

**Chart 4**



## **CLAIMS PROCESSING**

New matters are evaluated upon intake, and a litigation strategy is developed by the litigation team and our third party administrator. Although we pursue prompt resolutions, civil lawsuits typically extend over two or more years.

During the 2012-2013 fiscal year the County received 291 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 16 lawsuits. As in years past, the number of tort claims received far exceeds the number of lawsuits filed.

Many 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 because most *pro se* litigants are unfamiliar with civil litigation. The majority of *pro se* claims we receive are filed by Multnomah County Sheriff's Office inmates and are related to either their incarceration, or the medical treatment provided by Corrections Health.

## **LITIGATION ACCOMPLISHMENTS AND RESOLUTIONS**

Our litigation team is very successful in obtaining dismissals and favorable resolutions of complex litigation. These cases require a significant amount of attorney time and resources, and most cases extend over a period of years. Therefore, the following is only a snap-shot of cases that resolved in FY 2012-2013.

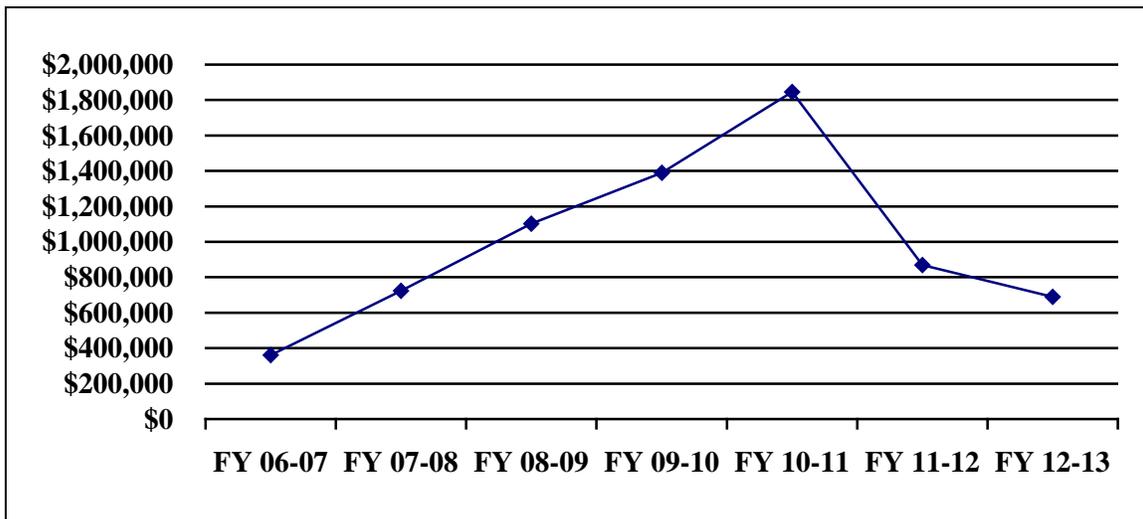
Our litigators obtained judgments favorable to the county in cases that involved a wide range of legal issues. We work closely with our Claims Administrator to resolve these claims prior to litigation being filed. Last year 34 claims were favorably resolved prior to litigation being filed, saving the County thousands of dollars in litigation costs. A summary of some of our accomplishments and resolutions include:

- 27 cases litigated in state or federal court
- argued and won 12 dispositive motions in state or federal court
- defended 9 labor arbitrations and 1 Unfair Labor Arbitration

- defended 10 employment lawsuits
- prosecuted 7 guardianship proceedings
- processed 15 Animal Services enforcement actions
- appeared in 13 administrative Land Use matters
- handled 14 firearms cases for the Sheriff's Office, most of which concerned concealed hand gun licenses
- secured over \$88,973.18 in cash and property by obtaining judgments in 17 civil forfeiture actions, which we expect to triple in 2014
- appeared in 2 adult care home cases
- appeared in 5 habeas cases
- appeared in 40 tax court proceedings
- appeared in 8 land use proceedings
- secured over \$106,000.00 in subrogation claims.

In fiscal year 2012-2013 the County paid a total of \$688,616 in awards, settlements, and expenses. This represents a significant decrease from the past five years. Chart 6 indicates how this figure can fluctuate from year to year depending upon the types of cases filed.

**Chart 6**



## CLIENT SATISFACTION

In order to gauge client satisfaction we seek input from clients on an annual basis. We requested input from elected officials and their staff, department and division directors. Those who responded characterized the services rendered by County Attorneys as “excellent,” “very high quality,” and “timely, accurate and helpful.” We continually strive to nurture positive relationships with County officials, and to provide the County with high quality legal services. We take great pride in demonstrated client satisfaction.

## EFFECTIVE RATE

The effective rate paid for each hour of direct legal service in FY 2012-2013 was \$165.98. 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 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.

**Chart 7**

<b>Effective Hourly Rate</b>		
Total Hours Reported		23951.11
Direct Service	89%	21431.56
Non-Direct Service	11%	2519.55
16 Attorney FTE Average Direct Service Hours		1339.47
Office Actual Expenditures 2012-2013		3,557,209.00
Divided by Direct Service Hours		21431.56
<b>2013 Effective Hourly Rate</b>		<b>\$165.98</b>

This rate fluctuates up or down each year, with a five-year range between \$130.94 and \$180.96. The 2012 Oregon State Bar Attorney Salary survey reveals that a civil litigator in private practice in the Portland area bills an average rate of \$309.00 per hour, and practitioners at the highest levels bill at \$453.00 per hour. Therefore, we continue to provide the highest quality legal services to the County at a significantly lower rate than is charged by comparable private law firms.

A brief case study is useful to illustrate the cost effectiveness of our services. During the past fiscal year, the County Attorney's Office was awarded summary judgment in a multi-million dollar tort case involving catastrophic injuries, obtained a jury verdict in an employment case, and litigated a use of force case. Collectively, our office billed just over 2,000 hours on these matters. If these cases had been billed at the rate charged by private sector attorneys, the cost to the County would have ranged from \$620,163 to \$909,171<sup>1</sup>. Instead, with a County Attorney rate of \$165.98 per hour, the cost to the County was \$333,121, which represents a 46 % to 64% savings.

A decade ago, County Attorneys' direct legal services rate was \$97.07, and the average billable rate for private sector attorneys ranged from \$200 to \$250 per hour. In other words, the cost of legal services by the County Attorney's Office was on average only 43% of the cost of legal services in the private sector. A decade later, with a County Attorney rate of \$165 per hour and a private sector rate ranging from \$309 to \$453 per hour, the cost of legal services by the County Attorney's Office is still on average only 44% of the cost of legal services in the private sector.

With an effective rate of \$165.98 per hour the County Attorney continues to provide quality legal services at a significantly lower rate than those charged by private law firms.

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<sup>1</sup> The cost for these legal services would actually be higher because outside attorneys would have to acquire the institutional knowledge that county attorneys already have.

## **CONCLUSION**

We have compiled fourteen 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. We continue to improve our method of collecting data to support the accuracy of the data, and to more efficiently manage, monitor and deploy the County's legal assets.

The County Attorney's Office is continually challenged to provide efficient and effective legal services while meeting the demands of increasingly more complex litigation. We continue to work closely with Risk Management and with the departments that utilize our litigation resources to alert them to systemic issues we identify that result in claims, and work with them to appropriately address any such issues.

Our continued effectiveness in representing the County in litigation is founded in proactive, sound legal advice to the departments as they daily deliver services to and protect the safety of residents of Multnomah County, and a strong investment in training county employees on the legal issues they face.

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.