



Office of Multnomah County Attorney

---

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

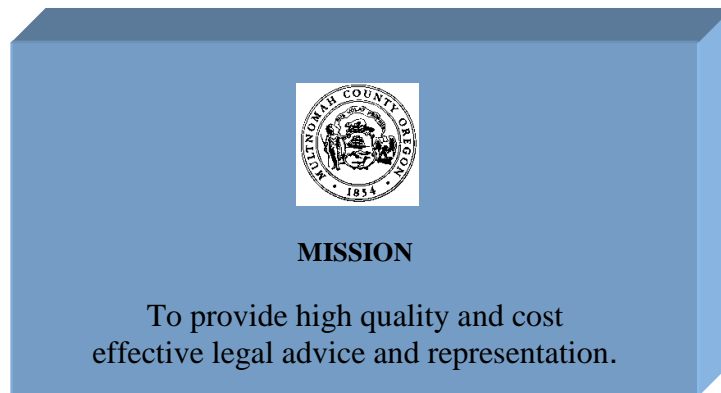
# **2014-2015 Annual Litigation Report**

*For the Multnomah County Board of Commissioners*

## **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, 2014, through June 30, 2015, hereinafter referred to as fiscal year 2014-2015, 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 for all county elected officials, officers and departments.



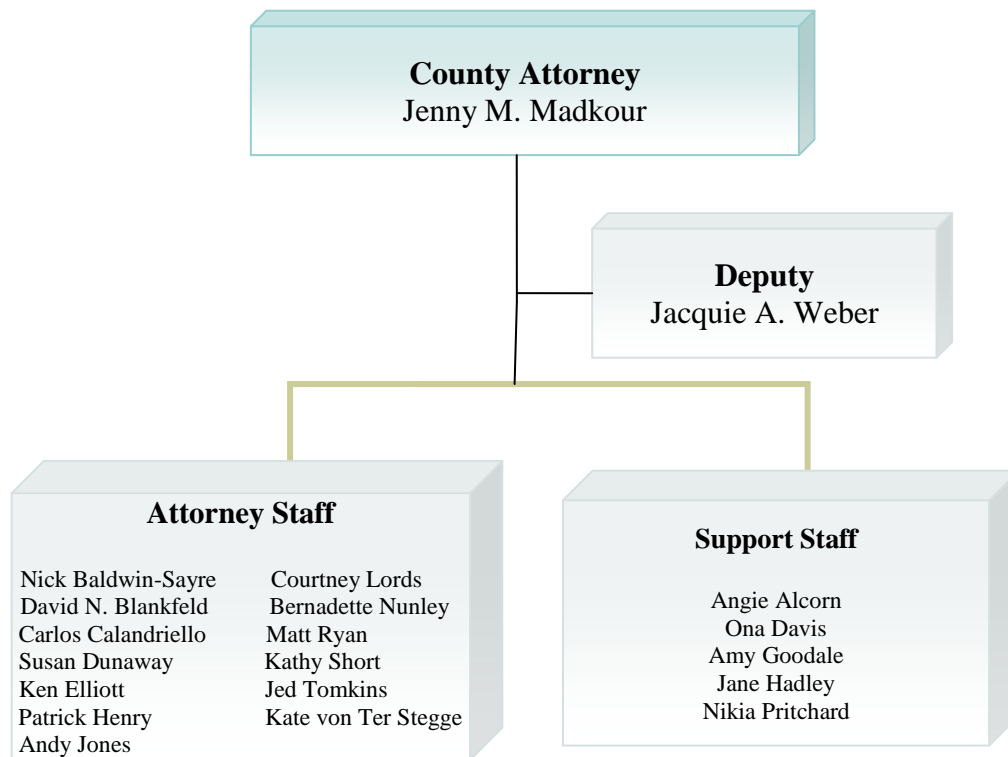
In order to meet that mission, we have established the following objectives:

- To draft legal documents and provide legal opinions in response to client requests in a timely manner.
- To determine the county's legal liability when claims are filed and to efficiently and effectively resolve the claims through settlement or litigation.
- To assist the county in preventing liability, as well as providing vigorous defense of claims.
- To continuously upgrade practical skills of staff and meet professional standards for continuing legal education.
- To establish an office environment that maximizes the ability of staff to respond professionally and efficiently to all legal needs.

## 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 both federal and state courts at the trial and appellate levels. In addition, we represent the county in Tax Court, before the Land Use Board of Appeals, in labor arbitrations and administrative hearings. We also 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.

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 2014-2015 we added a construction law attorney to address the increased legal needs related to capital construction projects and associated litigation. By the end of this fiscal year, we had an attorney staff of fifteen and five highly trained professional and experienced support staff.



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

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

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 professional skills, and establish a professional network with seasoned government attorneys. 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 almost half of our attorneys 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/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 direct 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. Direct service hours exclude time spent on professional development, administrative work, clerical, and office related tasks.

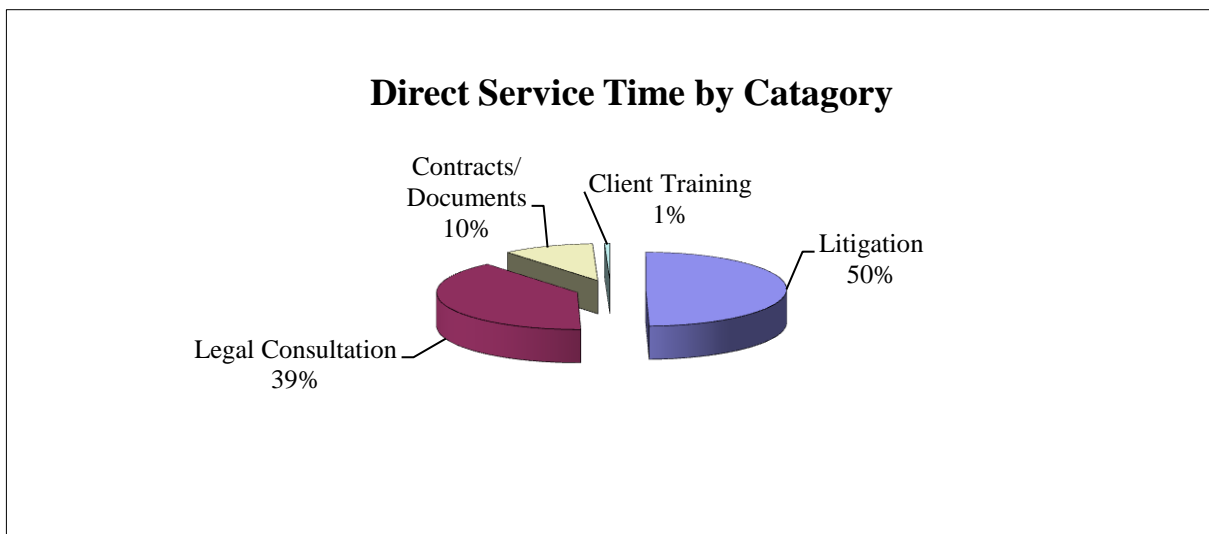
As Chart 1 indicates, 92% of County Attorney hours were devoted to direct service.

**Chart 1**

<b>Direct Service Hours</b>		
Total Hours Reported		25,222
Direct Service	92%	23,198
Non-Direct Service	8%	2,024
<b>15 Attorney FTE Average Direct Service Hours</b>		1547

As reflected in Chart 2, 49% of our direct service time is dedicated to general legal consultation and review of documents and contracts, and 50% is spent on litigation matters. While client training reflects only 1% of attorney time, that figure reflects 140 hours of formal training hours. In addition to formal training, we provide daily advice that has elements of counseling, guidance, and training.

**Chart 2**

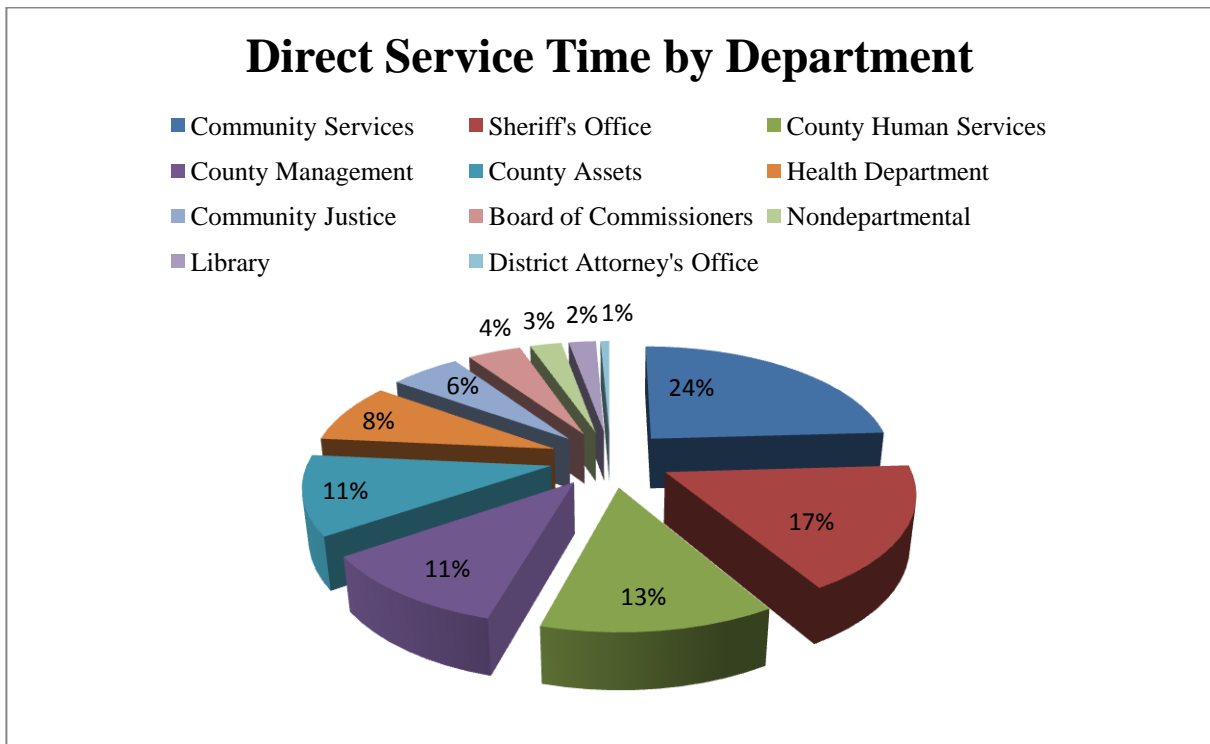


**DIRECT SERVICE HOURS TO COUNTY DEPARTMENTS**

Chart 3 shows direct services hours broken down by department. This pattern is consistent with prior years, and is directly affected by active litigation in the departments.

**Chart 3**

<b>Direct Service Hours by Department</b>		
Community Services	5,552	24%
Sheriff's Office	4,011	17%
County Human Services	2,967	13%
County Management	2,558	11%
County Assets	2,554	11%
Health Department	1,937	8%
Community Justice	1,275	6%
Board of Commissioners	975	4%
Nondepartmental	574	3%
Library	495	2%
District Attorney's Office	161	1%
<b>TOTAL</b>	<b>23,059</b>	



## **LITIGATION**

Our litigation team defends against all civil 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 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. We continually review and assess service levels and make adjustments as necessary to respond to changing client needs. In fiscal year 2014-2015 we hired a construction law attorney to provide legal advice and guidance on construction issues. This addition minimizes the need for outside counsel and will result in significant cost savings overtime.

## **LITIGATION HOURS BY DEPARTMENT**

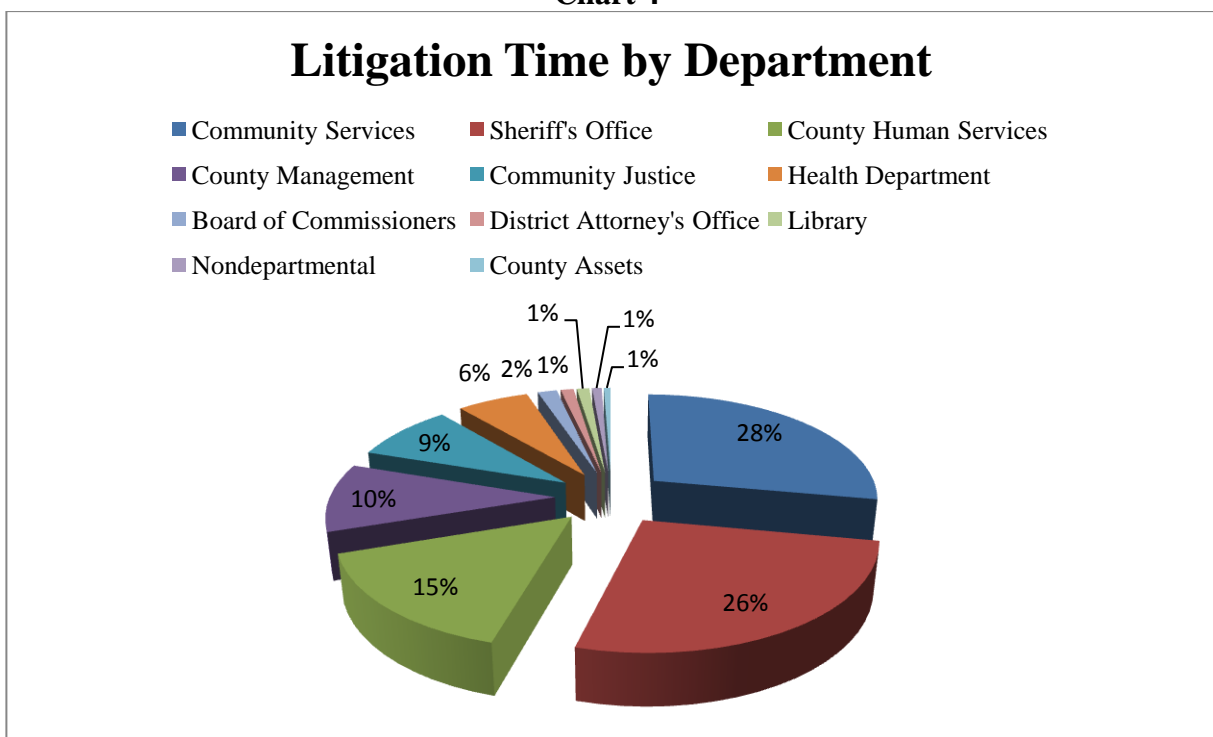
Chart 4 shows the percentage of direct service hours spent on litigation matters for each county department. Just one or two cases can substantially change the percentage of litigation hours attributed to each department from year to year. In fiscal year 2014-2015 the litigation team realized significant success in obtaining dismissals of cases through motions practice. These dismissals resulted in cost savings, time savings, and avoided the uncertainties of trial. Although civil trials are increasingly uncommon, this office does not hesitate to take a

case to trial. Employment cases can be especially contentious with high exposure to liability. Last year we successfully defended the county against multiple employment claims, including a nine-day jury trial with a verdict in the County’s favor.

As in prior years, the Sheriff’s Office represents a large percentage of litigation hours (26%). 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 28% of total litigation hours. This is a significant increase over prior years and is attributed to construction defect cases. To illustrate, this year the litigation team dedicated an additional 960 hours to Community Services litigation over the prior fiscal year. With several ongoing capital construction projects we can expect Community Services to require increased litigation services in future years.

**Chart 4**

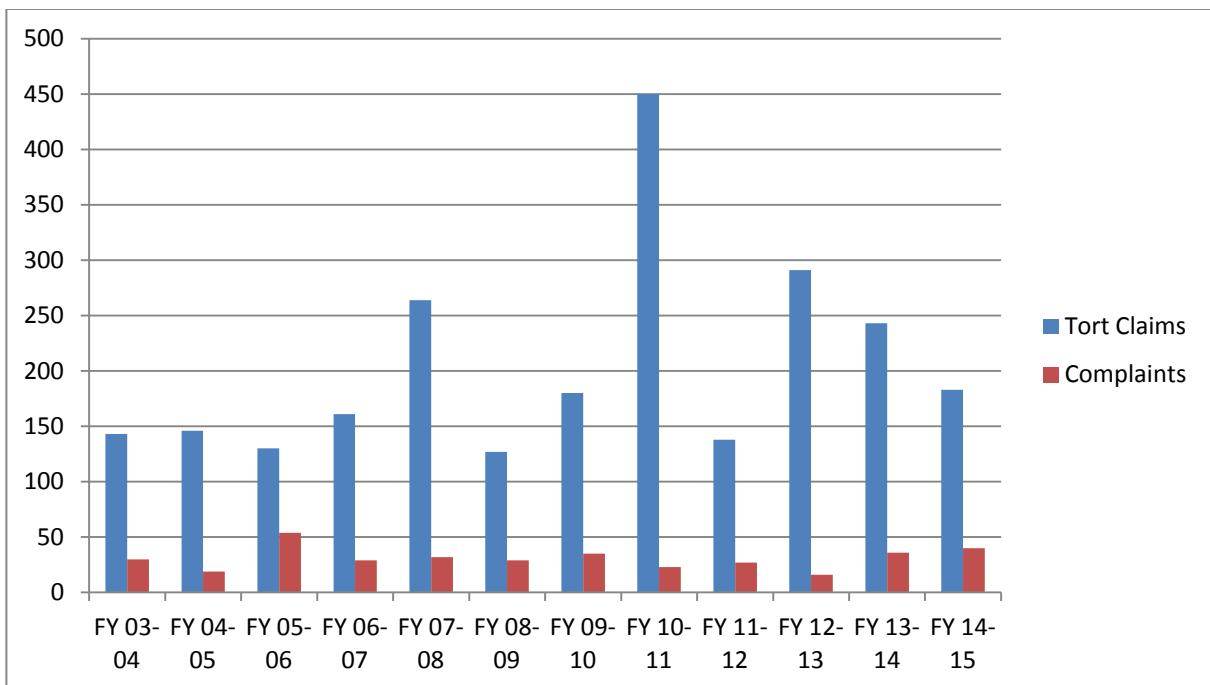




New matters are evaluated upon intake, and a litigation strategy is developed by the litigation team. Some cases are resolved through motions practice or settlement, while other cases proceed to trial. Civil lawsuits typically extend over two or more fiscal years. This litigation report focuses on work done in fiscal year 2014-2015, but we necessarily acknowledge cases extend beyond that period.

During this fiscal year the County received 183 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 40 lawsuits or claims. This volume varies on a year over year comparison but is within the expected range.

**Chart 5**



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**

In fiscal year 2014-2015 our litigation team successfully defended the County and its employees in approximately 232 cases. The matters vary in type and complexity, but all of them deal with important rights and issues of public interest:

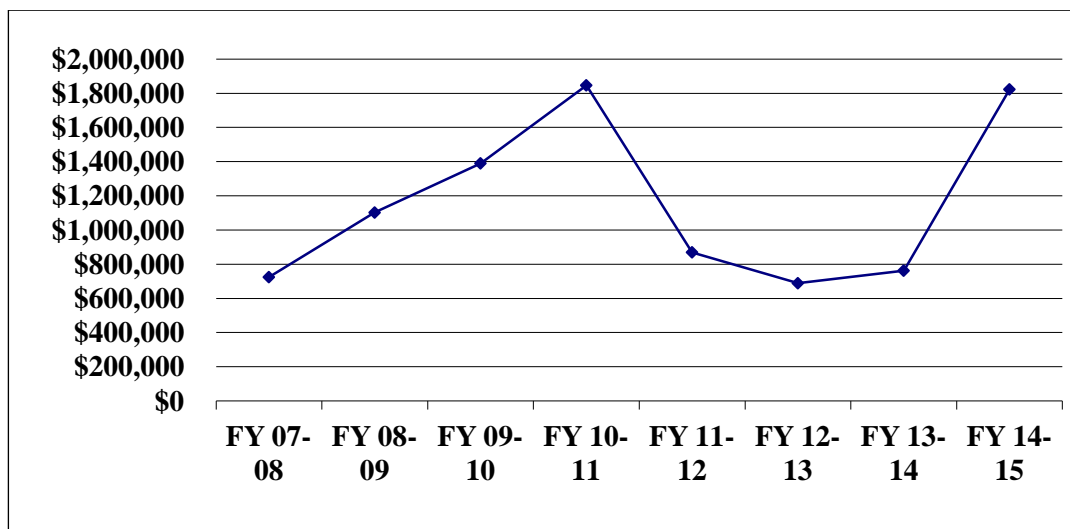
- 62 tort cases litigated with 24 dismissals by the court or plaintiff
- \$5,647,000 jury verdict in Morrison Bridge construction defect litigation
- 11 employment lawsuits, with 1 jury verdict in the County's favor with reimbursement of \$145,071.53 in attorney fees
- 57 tax court proceedings
- 11 labor arbitrations and 1 Unfair Labor Arbitration
- 17 Bureau of Labor and Industry complaints
- 10 guardianship proceedings
- 5 adult care home administrative appeals
- 16 Animal Control administrative enforcement actions and lawsuits
- 9 administrative Land Use matters
- 17 civil forfeiture actions which secured over \$197,772.11 in cash and property
- 3 habeas corpus cases
- \$129,891.20 recovered from subrogation claims
- 13 firearms permit appeals

In most cases we defend against claims brought against the county, but occasionally the County initiates litigation with approval from the Board. We realized success in one such case this fiscal year that delivered an unprecedented verdict. The Morrison Bridge construction defect case concluded in 2015 with a jury finding of negligence on the part of all parties, and awarded damages of over \$5.6 million to the county. This lawsuit secured funds

dedicated toward construction costs associated with the replacement of the bridge deck, and made clear that Multnomah County will hold contractors accountable for substandard performance.

In fiscal year 2014-2015 the county paid a total of \$1,822,410.59 in awards, settlements, and expenses. Just over \$1 million of this amount represents two tort cases that involved significant damages to the plaintiffs.

**Chart 6**



**EFFECTIVE RATE**

The effective rate paid for each hour of direct legal service in fiscal year 2014-2015 was \$177.02. 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		25,222
Direct Service		23,198
Non-Direct Service		2,024
15 Attorney FTE Average Direct Service Hours		1547
Office Actual Expenditures 2014-2015		\$4,106,399.00
Divided by Direct Service Hours		23,198
<b>2014 Effective Hourly Rate</b>		<b>\$177.02</b>

Our effective rate has remained relatively consistent for the past five years with a range between \$177.02 and \$179.79. This range represents a significant cost savings to comparable services provided by private sector lawyers. An Oregon State Bar Attorney Salary survey from 2012 found that a Portland area civil litigator in private practice bills an average rate of \$309.00 per hour, and practitioners at the highest levels bill at \$453.00 per hour. With an effective rate of \$177.02, we continue to provide the highest quality legal services to the County at a fraction of the rate charged by comparable 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.