

OFFICE OF
MULTNOMAH COUNTY ATTORNEY



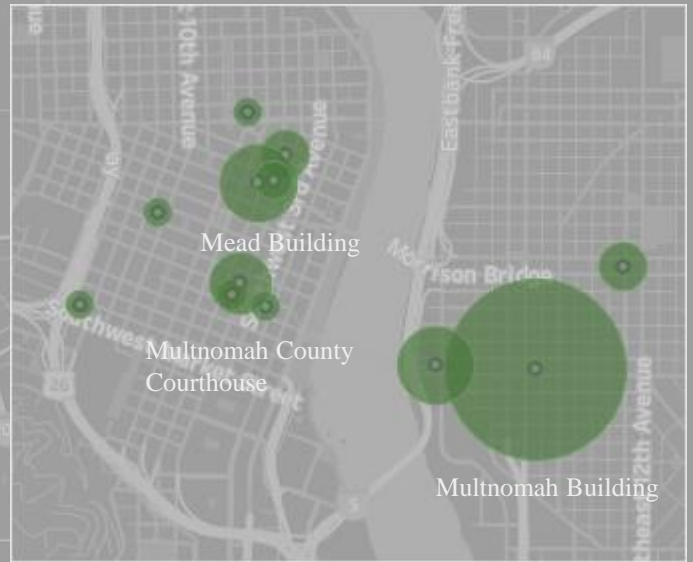
2016 – 2017 Annual Litigation Report
For the Board of County Commissioners

Acronym key and distribution of County Attorney services in FY 2016-2017 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

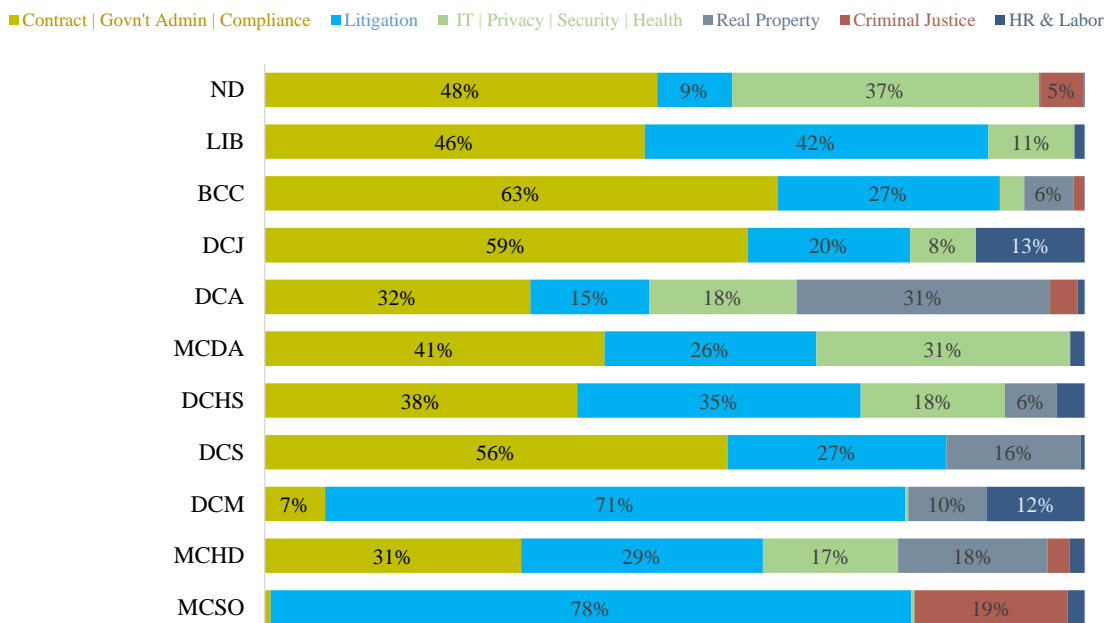
Multnomah County Code Section 25.320(I) requires the County Attorney to submit a formal annual litigation report to the Board. This Litigation Report summarizes the legal services provided to county clients from July 1, 2016, through June 30, 2017, hereinafter referred to as fiscal year 2016-2017, with 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 real estate and construction to services for our most vulnerable community members.

Over the past few years, the County Attorney's Office has responded to legal industry changes, met evolving client needs, and developed expertise in emerging areas of law in a number of ways. Two notable responses include hiring additional attorneys to reduce the use and cost of outside counsel and empowering current attorneys and staff to grow their skills and knowledge bases to meet changing client needs and develop in-house expertise. These efforts illustrate the office's ongoing process of reviewing the County's legal needs and offering attorneys and staff opportunities for growth.

Our attorneys are classified in a series of positions – from entry level, to journeyman, to 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 and plan for anticipated retirements. In fiscal year 2016-2017 we added Jonathan Strauhull, who advises the Library and DCHS. James Rice, our new Litigation Manager, joined us in June 2017. Jacquie Weber, who served the County loyally and with astute and thorough legal advice for over 29 years, retired in June. Susan Dunaway, who served the County as a strategic and effective litigator for over 20 years also retired in June. By the end of this fiscal year, we had an attorney staff of nineteen and six highly-trained professional and experienced support staff.

Our legal work groups, the Property Law Group and the Health Law Group, 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 the groundbreaking and ongoing construction of the Health Headquarters and Courthouse, substantial completion of the Sellwood Bridge, acquisition of

real property for the Courthouse site assemblage, many County road improvement projects, and sale of the Troutdale Pig Farm. 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. Our office also began a Public Safety Group, again to ensure consistent and efficient recommendations throughout County departments.

The office 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 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, 92% of service hours tracked in fiscal year 2016-2017 were direct service hours. This year, our County Privacy Officer, Cindy Hahn, also provided contract work for Clackamas, Douglas, and Washington counties. Her expertise offers local consistency, which is especially helpful with Oregon’s coordinated care organizations’ regional efforts.

Chart 2: Service Hours

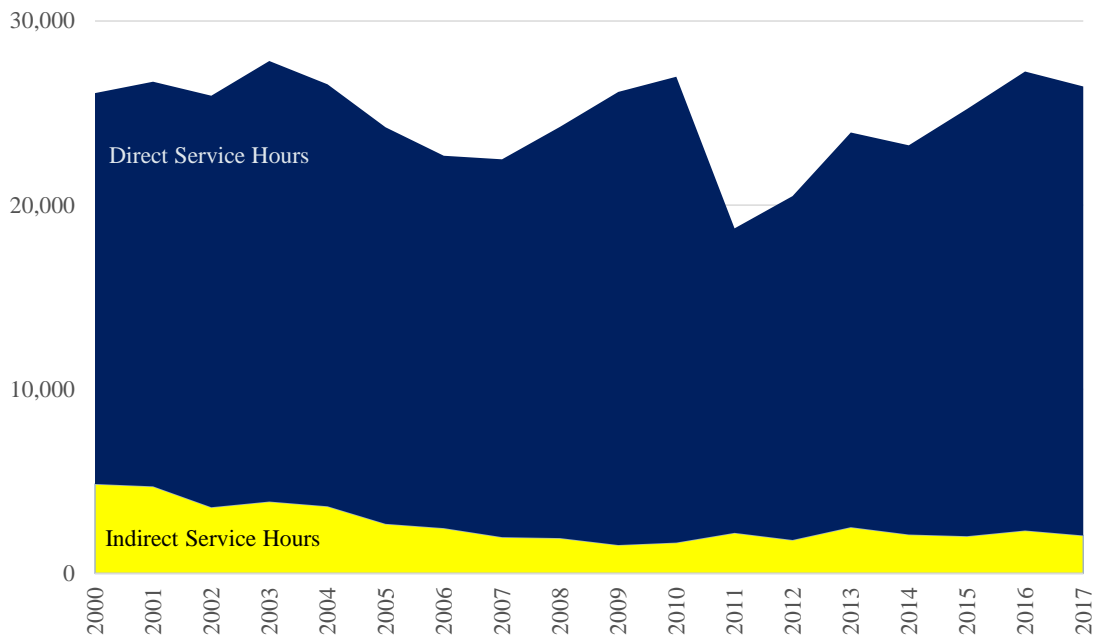
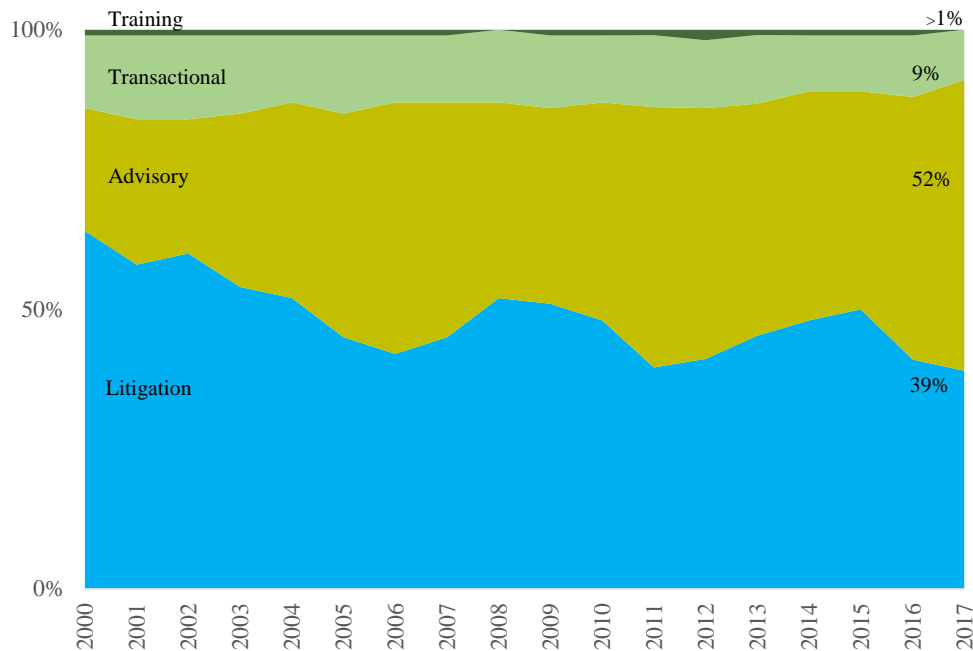


Table 1, below, provides a breakdown of the service hours reported in fiscal year 2016-2017.

Table 1 Direct Service Hours		
Total Hours Reported		26,448
Direct Service	92%	24,446
Indirect Service	8%	2,002
18.5 Attorney FTE Average Direct Service Hours		1,321

As reflected in Chart 3, 52% of our direct service time in fiscal year 2016-2017 was dedicated to advisory matters, such as general legal consultation; 39% was spent on litigation matters; 9% of direct service time was spent on transactional matters, such as reviewing documents and contracts. While client training reflects less than 1% of attorney time, that figure reflects 100 hours of formal training hours. In addition to formal training, our advisory services have elements of counseling, guidance, and training.

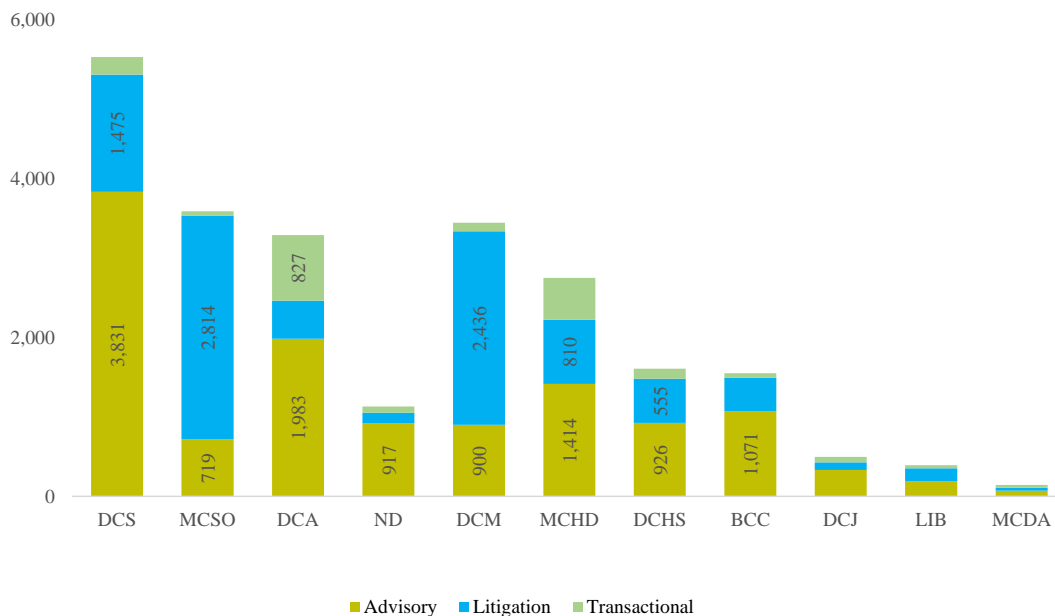
Chart 3: Service Hour Allocation



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 2, below, is a breakdown of the service hours shown in Chart 4.

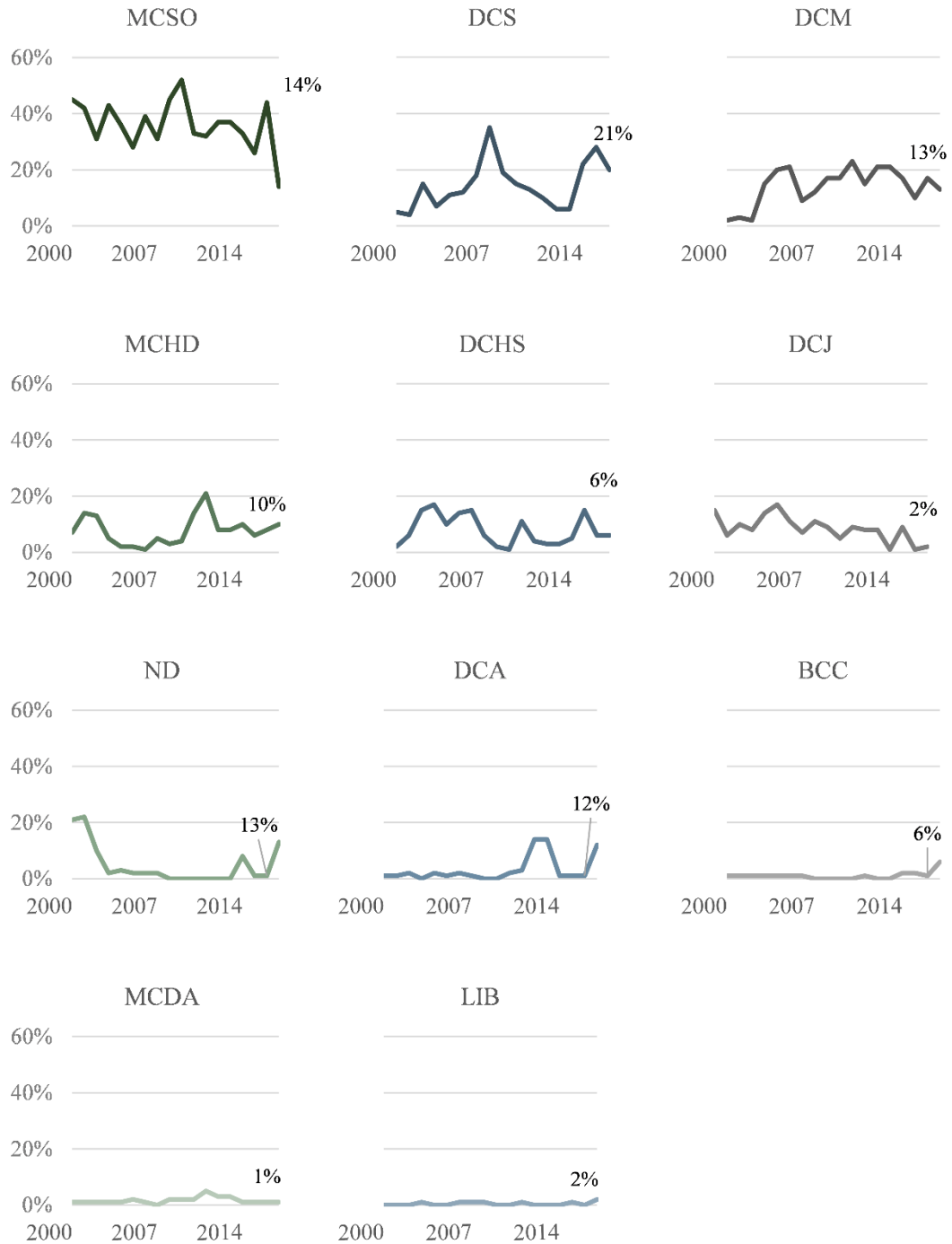
DCS	5,327	22%
MCSO	3,752	15%
DCM	3,387	14%
DCA	3,515	14%
MCHD	2,208	9%
ND	2,022	8%
BCC	1,605	7%
DCHS	1,573	6%
LIB	390	2%
DCJ	522	2%
MCDA	145	1%
TOTAL	24,446	

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 2016-2017, 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, contract disputes, 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 30% of the litigation-related direct service hours. The majority of 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.

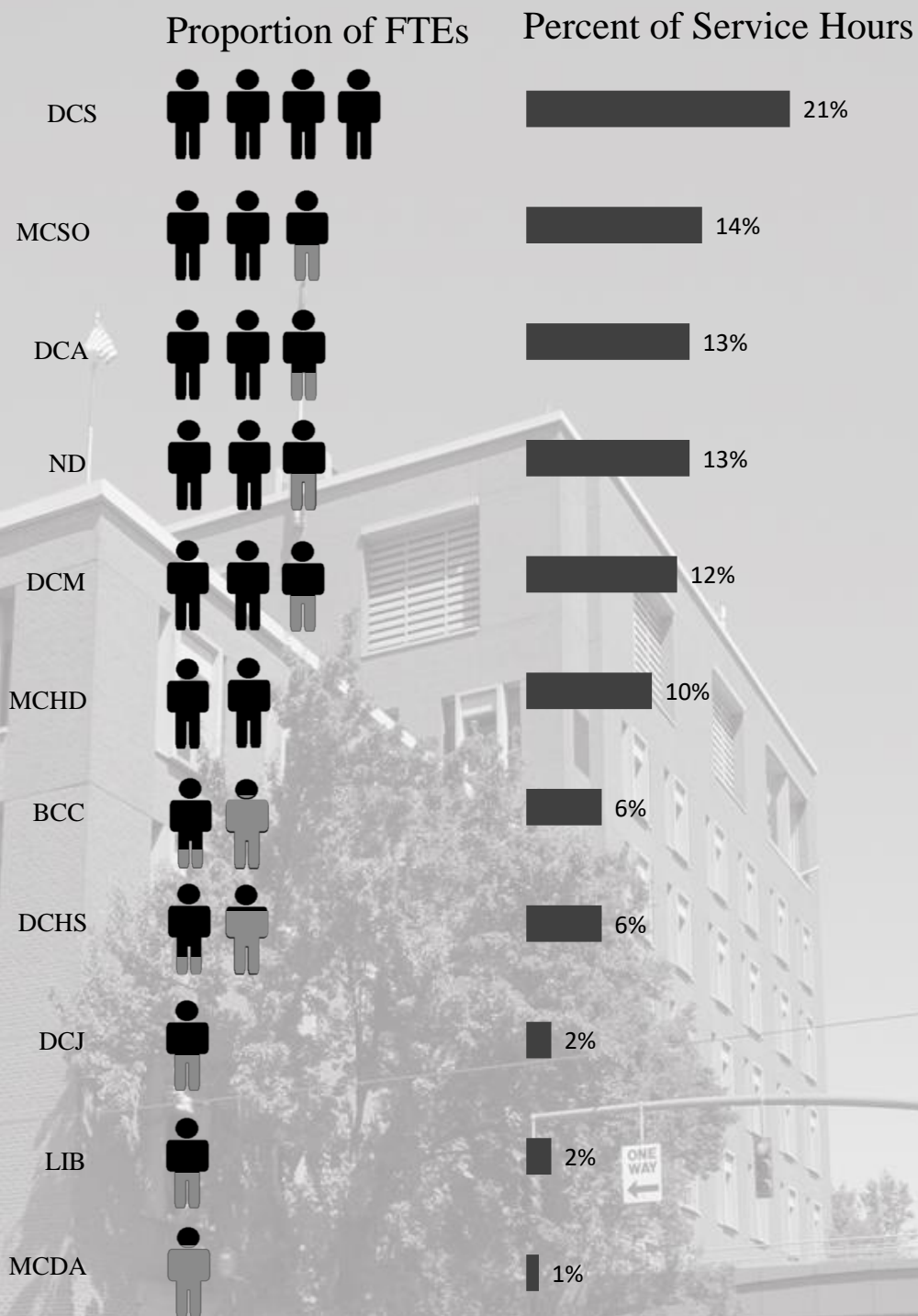
County Management litigation represented 26% of total litigation hours, up from 15% in fiscal year 2015-2016. Most tax-related litigation and labor and employment disputes and claims are addressed through County Management.


Community Services litigation represented 16% of litigation hours, down from 21% in fiscal year 2015-2016. With several ongoing capital construction projects we can expect Community Services to continue to require increased litigation services.

Chart 6 illustrates how fiscal year 2016-2017 litigation needs affect attorney staffing and resource allocation.

Chart 6: Fiscal Year 2016-2017 Litigation

Attorney time in terms of FTEs

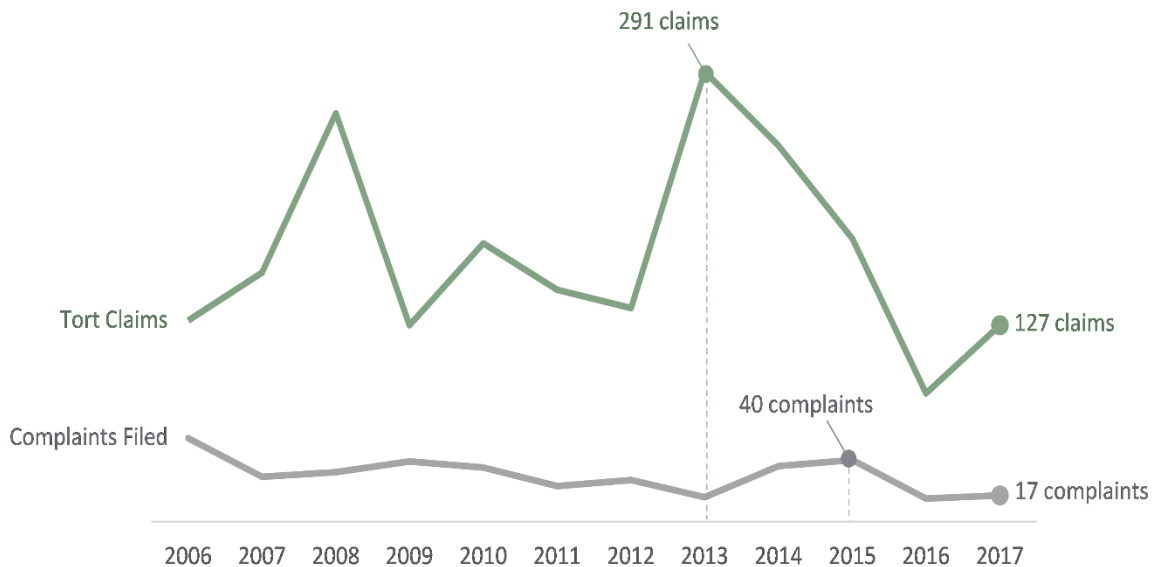


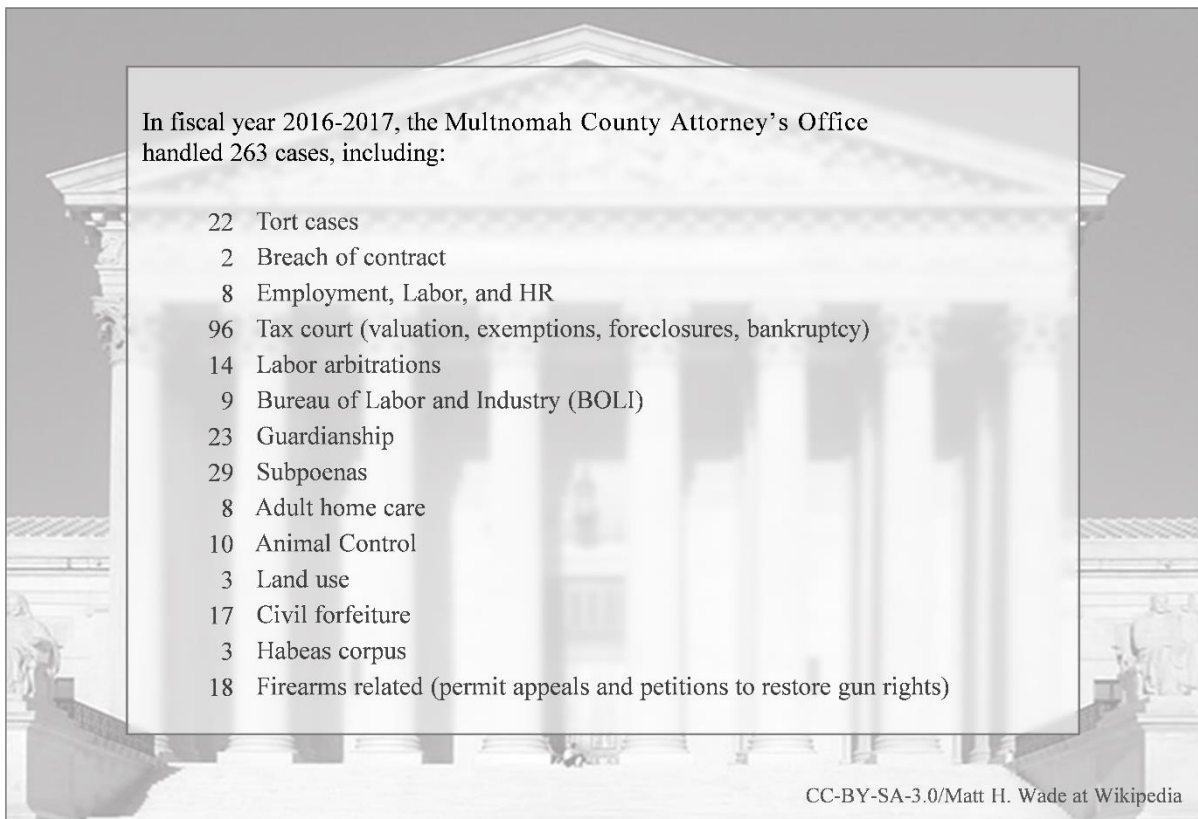
 = one FTE

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 2016-2017, but we necessarily acknowledge cases extend beyond that period.

During this fiscal year the County received 127 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 17 lawsuits or claims. As shown in Chart 7, this volume varies on a year over year comparison and was lower than in past years, though 35% higher than fiscal year 2015-2016. Continuing a trend established in the past five years, the litigation team is handling more cases prior to lawsuit filing.

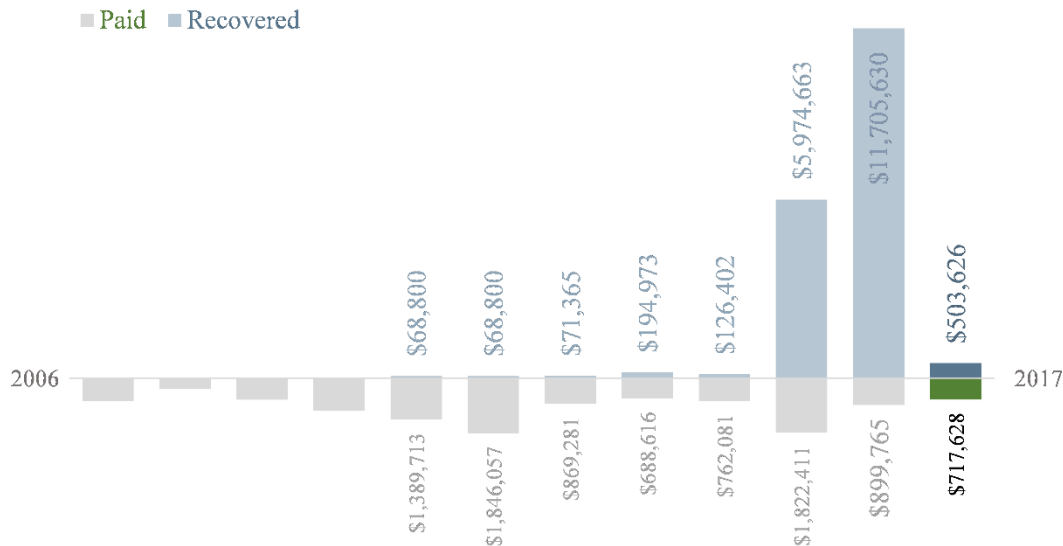
Chart 7: Tort Claims and Complaints





In fiscal year 2016-2017 the County secured over \$503,626 in cash and property through its litigation efforts. The recovered sums included \$53,446 from subrogation and restitution claims, \$84,179 from civil forfeitures, and \$340,000 from settlement of a contract dispute. By contrast, the County paid a total of \$717,628 in awards, settlements, and expenses in fiscal year 2016-2017. As shown in Chart 9, this continues a year-over-year trend where our recoveries approached or, in fiscal year 2014-2015 and 2015-2016, outpaced paid claims.

Chart 9: Annual funds recovered and paid



This year included three high-profile elections matters covering the sugar-sweetened beverage ballot title, a veterans’ preference case, and the campaign finance law.

The County also filed suit in Oregon against opioid manufacturers and distributors. This litigation is intended to highlight and seek relief for the public nuisance and growing public health and safety problems thrust upon our community as a result of manufacturers’ and distributors’ improper and wrongful actions.

In November 2015, the County embarked on a new regulatory program to curb illegal tobacco sales to youth. After a year of developing the administrative rules and educating the community, program staff began enforcing against tobacco retail license holders who violate the law. Initial enforcement focused on education, but the program expects to see some violations and resulting administrative appeals hearings in the upcoming year.

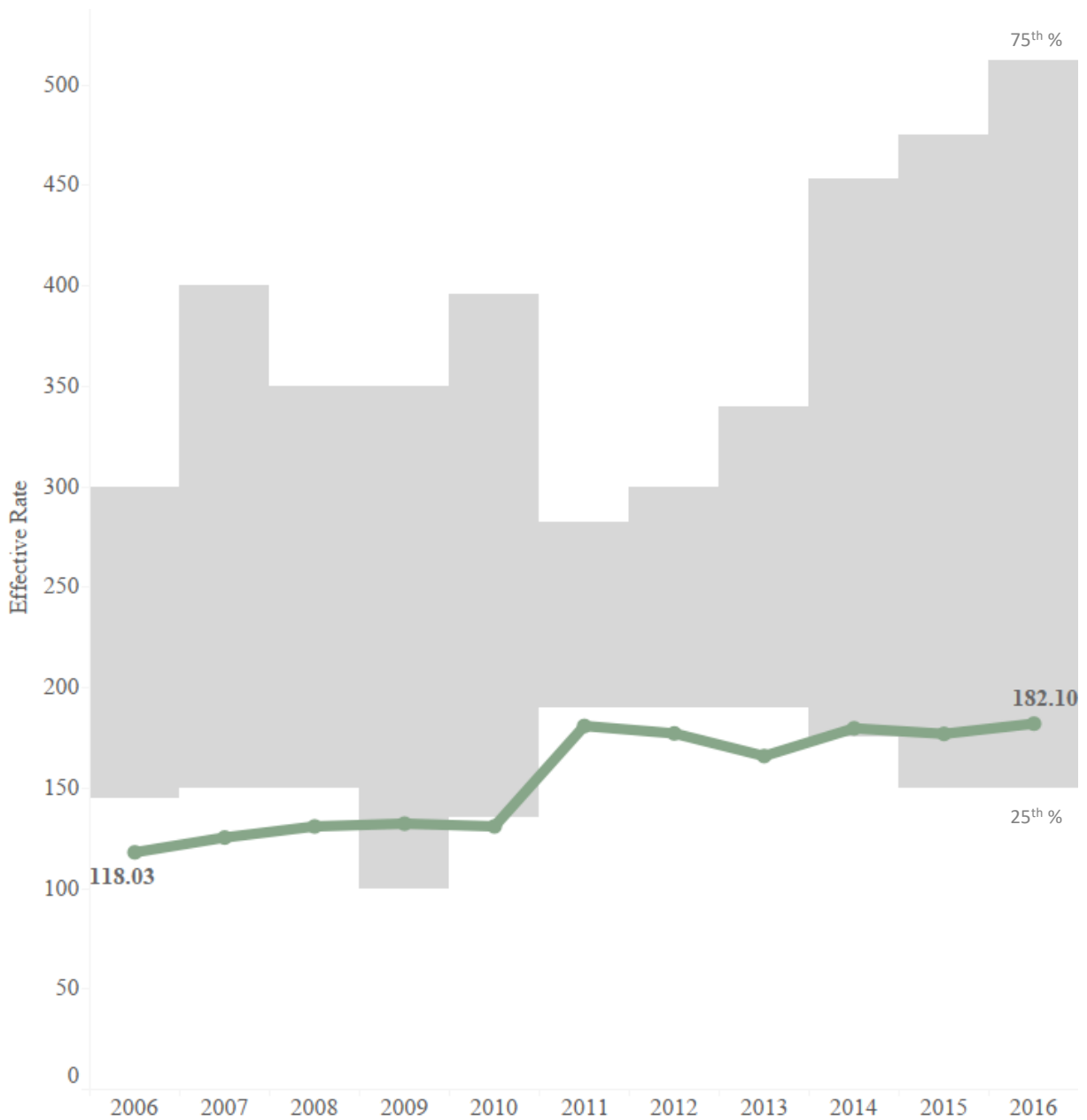
From a public policy and accountability perspective, these legal actions made clear statements that Multnomah County will take proactive steps to protect its legal interest, and to steward taxpayer dollars.

EFFECTIVE RATE

The effective rate paid for each hour of direct legal service in fiscal year 2016-2017 was \$200.92. 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 3 below.

Table 3 Effective Hourly Rate		
Total Hours Reported		26,448
Direct Service		24,446
Indirect Service		2,002
18.5 Attorney FTE Average Direct Service Hours		1,321
Office Actual Expenditures 2016-2017		\$4,911,620
Divided by Direct Service Hours		24,446
2016 Effective Hourly Rate		\$200.92

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 \$200.92. 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 2017 – 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., 18 years in practice), bills an average rate of \$324.00 per hour. Comparable practitioners at the highest billing levels charge over \$525.00 per hour. With an effective rate of \$200.92, 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.