



Office of Multnomah County Attorney

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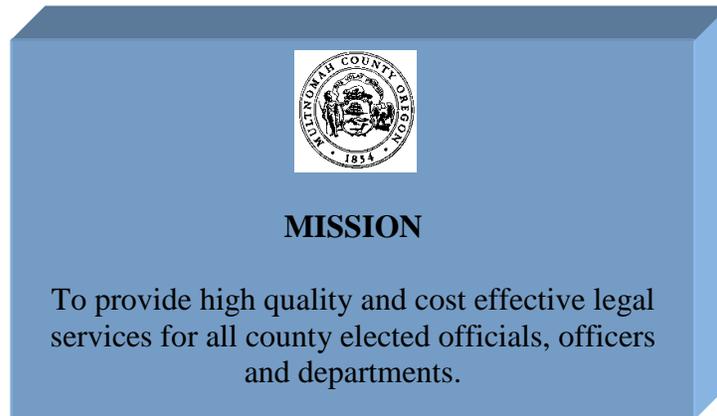
501 SE Hawthorne Blvd., Suite 500  
Portland, Oregon 97214

# **2013-2014 Annual Litigation Report**

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

## **THE OFFICE OF COUNTY ATTORNEY**

The mission of the County Attorney's office is to provide high quality and cost effective legal services for all county elected officials, officers and departments.

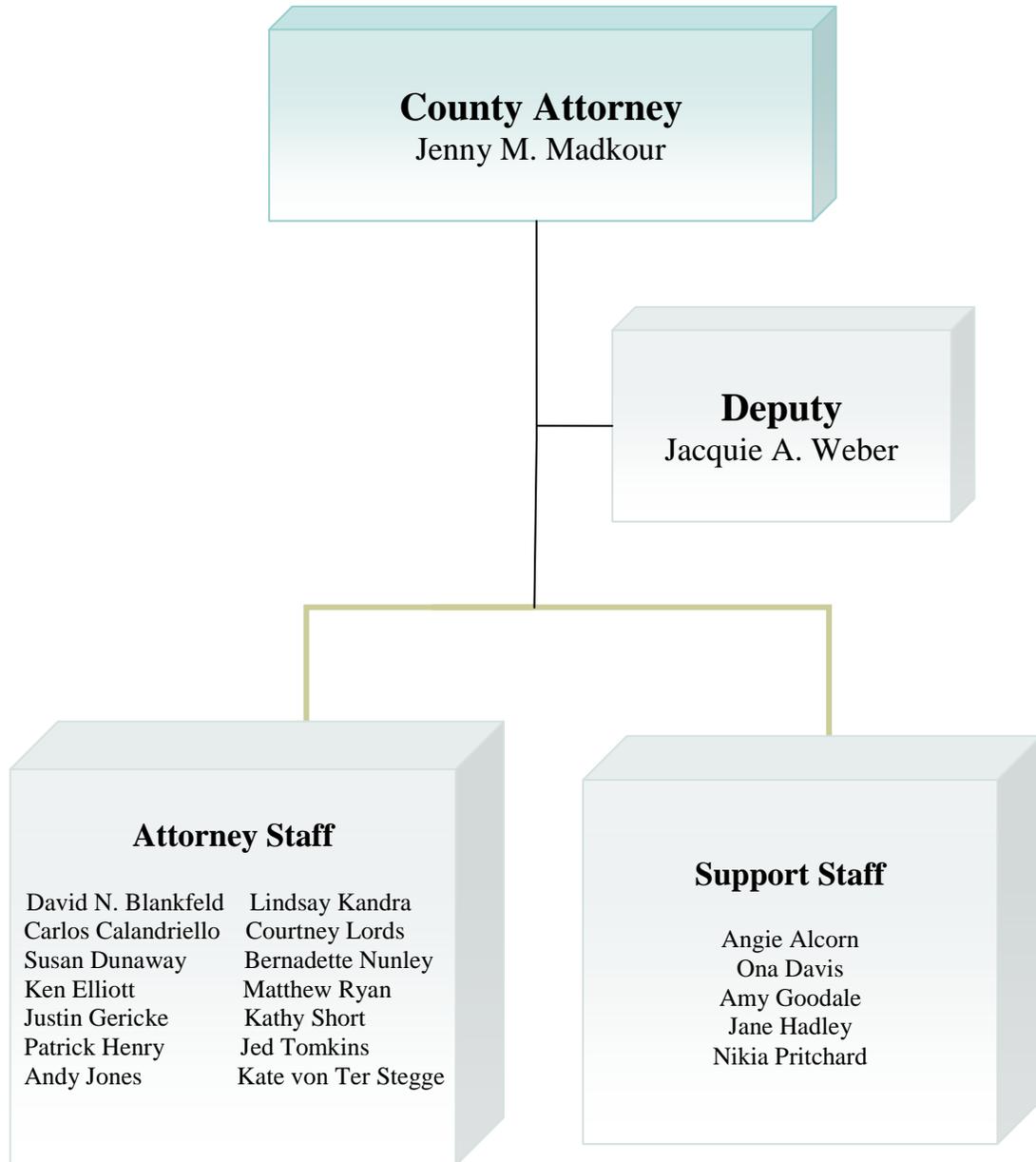


Multnomah County Code Section 25.320(I) requires the County Attorney to submit a formal annual litigation report to the Board. This Litigation Report summarizes the legal services provided to county clients during the 2013-2014 fiscal year, with a specific emphasis on litigation services.

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. 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 have an attorney staff of sixteen, and have a budget proposal to add a construction attorney in 2015. The attorneys are supported by a highly trained professional and experienced support staff of one paralegal, three legal assistants, and one administrative assistant.



Our attorneys are classified in a series of entry level, journeyman, and senior. We have recruited and maintained a highly qualified team that works together to assure the highest quality 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

In addition to the full-time staff, we also manage a successful law clerk program and provide 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 skills 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 an “overhead” cost. 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, 91% of County Attorney hours were devoted to direct service.

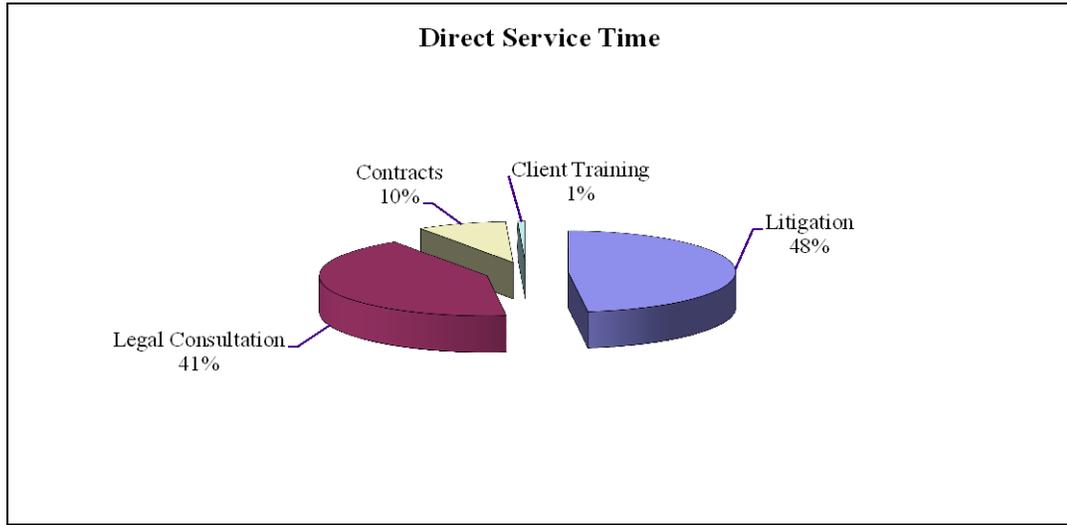
**Chart 1**

<b>Direct Service Hours</b>		
Total Hours Reported		23,246.70
Direct Service	91%	21,135.31
Non-Direct Service	9%	2,111.38
<b>16 Attorney FTE Average Direct Service Hours</b>		1,320.95

As reflected in Chart 2, 52% of our direct service time is dedicated to general legal services (contracts, training and 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. We use our litigation perspective and institutional knowledge to identify trends and provide training to county employees. This partnership increases the implementation of best practices at the program level and reduces exposure and liability. For example, in 2010, we developed a comprehensive training with the Sheriff’s Office on the use of force in corrections and law enforcement. This training was well attended and provided line staff deputies an opportunity to interact directly with the County Attorney’s Office and ask questions about the legal implications of law enforcement activities.

**Chart 2**



**DIRECT SERVICE HOURS TO COUNTY DEPARTMENTS**

Chart 3 shows direct services hours broken down by 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>		
Sheriff's Office	4545.35	20%
Community Services	4259.43	19%
County Management	3862.14	17%
County Human Services	1858.72	8%
Health Department	1800.00	8%
County Assets	1678.61	7%
Community Justice	1201.70	5%
Board of Commissioners	1133.12	5%
Nondepartmental	290.23	1%
Library	264.61	1%
District Attorney's Office	122.70	<1%
Other	119.00	<1%
<b>TOTAL</b>	<b>21,135.31</b>	



## **LITIGATION**

Our litigation team defends against claims brought against the County, its employees, and elected officials in all aspects of litigation. 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.

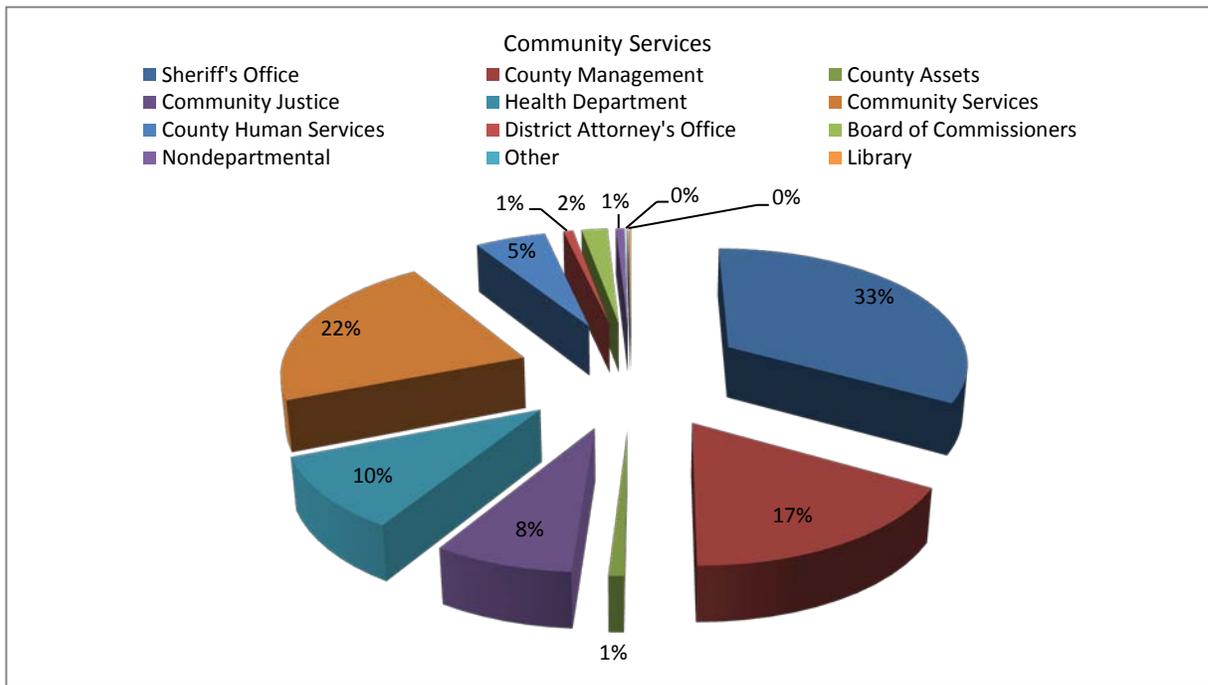
Litigation takes many forms and includes lawsuits alleging personal injury, civil rights violations, medical malpractice, and employment discrimination. We also represent the County in matters arising out of County operations and legal duties. These cases include tax appeals, elections cases, land use matters, guardianship proceedings, Animal Service Enforcement actions, Adult Care Home Program regulatory proceedings, Sheriff's Office hand gun permitting, and civil forfeiture actions. In 2014 we identified a need for increased legal services related to the County's capital construction planning. To address that need, and control costs to the County, we received approval to hire a construction defect litigation specialist. We expect to add an attorney to our office in fiscal year 2015.

Our litigation team also initiates litigation on behalf of Multnomah County with Board approval. Notable examples include the Morrison Bridge litigation, and lawsuits against the Mortgage Electronic Registration System ("MERS"), and Expedia.

## 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 (33%). Most of the Sheriff's Office litigation involves the jail operations and lawsuits by current or former inmates (many representing themselves). Claims include issues related to medical care, religious discrimination, various other civil rights claims and property claims. However, this percentage also represents civil forfeiture actions, habeas and concealed handgun license appeals.

**Chart 4**



County Management (17%) and Community Services (22%) represent a combined 39% of litigation hours. The litigation figure for Community Services is an increase of 14% from last fiscal year due to multiple construction defect litigation cases. Due to their complexity, construction and employment litigation historically consume a large percentage of attorney hours.

New matters are evaluated upon intake, and a litigation strategy is developed by the litigation team, internal partners and our third party administrator. Although we pursue prompt resolutions, civil lawsuits typically extend over two or more years. Therefore, during the current year, the litigation team works on the new cases filed as well as the cases that were not resolved during the previous fiscal year.

During the 2013-14 fiscal year the County received 243 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 36 lawsuits. As in years past, the number of tort claims received far exceeds the number of lawsuits filed. This year saw a slight decrease in the number of tort claims, but over 100% increase in the number of lawsuits filed against the County. There are at least two notable themes with the new cases filed. First, more employment cases are being filed in state court instead of federal court. The reasons for this are unclear, however, a rising tort claims limit and new state court administrative rules are possible explanations. A second theme is that many cases are filed with damages of \$50,000 or below. Pleading in this manner forces the cases into court mandated arbitration, allowing quick resolution at less cost to both parties.

## **LITIGATION ACCOMPLISHMENTS AND RESOLUTIONS**

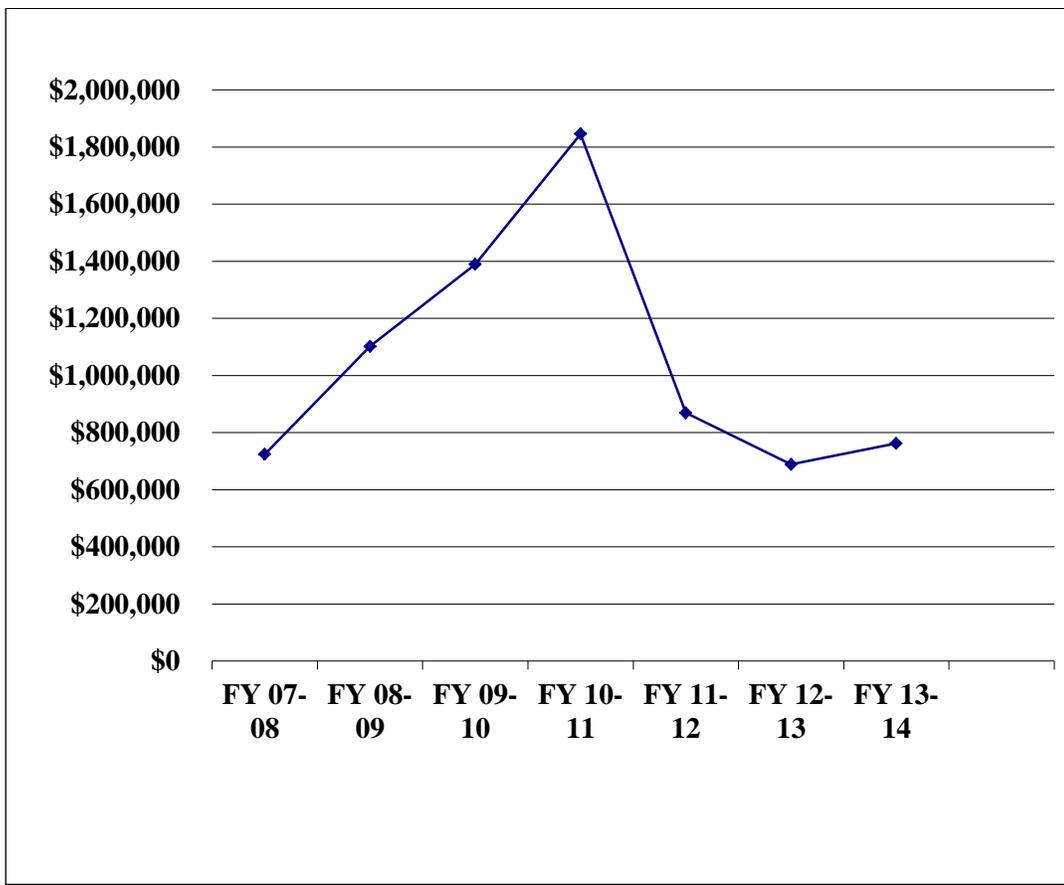
Our litigation team is very successful in obtaining dismissals and favorable resolutions of complex litigation. These cases require a significant amount of attorney time and resources, and most cases extend over a period of years. Our attorneys litigate cases in state and federal court, as well as before state administrative agencies. In FY 2013-14 we actively litigated 44 tort related lawsuits involving constitutional and civil rights, medical and dental malpractice, automobile accidents, allegations of sexual misconduct, slip and fall, false imprisonment and property damage. Of those 44 active cases, 21 favorably resolved during the fiscal year, and the others are ongoing. We also actively defended 12 employment cases, 6 of which resolved within the fiscal year. In addition to tort and employment litigation our attorneys litigated cases in the following subject areas:

- Adult Care Home – 10
- Animal Service - 7
- Civil Forfeiture – 52 (secured approximately \$126,402 in cash and property)
- Concealed Firearms - 8
- Guardianship – 12
- Habeas Corpus – 8
- Land Use - 2
- Oregon Tax Court – 42
- Animal Control Enforcement - 25
- Bureau of Labor and Industry Complaints - 20
- Labor Arbitrations – 14 (including 2 Unfair Labor Practice)
- Land Use Board of Appeals – 5

Many of these matters resolved without substantial costs to the County. Of particular note is the fact that our attorneys successfully obtained voluntarily dismissal of eight lawsuits, one of which involved catastrophic injuries and serious claims for eight figure damages.

In fiscal year 2013-2014 the County paid a total of \$762,081 in awards, settlements, and expenses. Approximately \$700,000 of this amount represents settlements of 4 cases that involved significant damages to the plaintiffs. Despite these few high damages cases, the overall amount paid for claims continues to represent a decrease from the past fiscal years. Chart 6 indicates how this figure can fluctuate from year to year depending upon the types of cases filed.

**Chart 6**



**EFFECTIVE RATE**

The effective rate paid for each hour of direct legal service in FY 2013-2014 was \$179.79. 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		23,246.70
Direct Service		21,135.11
Non-Direct Service		2,641.75
16 Attorney FTE Average Direct Service Hours		1,320.94
Office Actual Expenditures 2013-2014		3,800,014.00
Divided by Direct Service Hours		21,135.11
<b>2014 Effective Hourly Rate</b>		<b>179.79</b>

This rate fluctuates up or down each year, with a five-year range between \$130.96 and \$179.79. The Oregon State Bar Attorney Salary survey, which was last conducted in 2012, 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 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 \$179.79 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 approximately 50% of the cost of legal services in the private sector.

## **CONCLUSION**

We have compiled fifteen 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 upon proactive, sound legal advice to the departments as County employees daily deliver services to and protect the health and safety of residents of Multnomah County, and upon 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.