



## Office of Multnomah County Attorney

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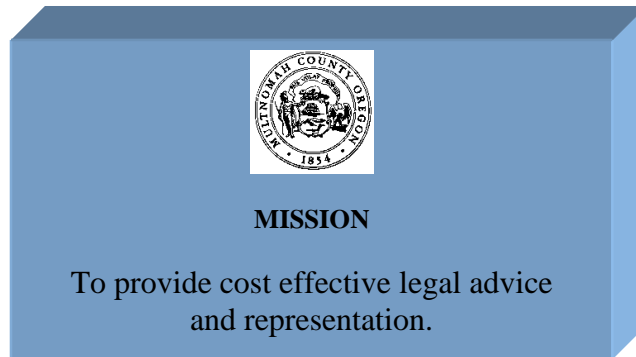
501 SE Hawthorne Blvd., Ste. 500  
Portland, OR 97214

# 2011-2012 Annual Litigation Report

*County Attorney's Litigation Report  
to the Multnomah County  
Board of Commissioners  
February 2013*

## **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.

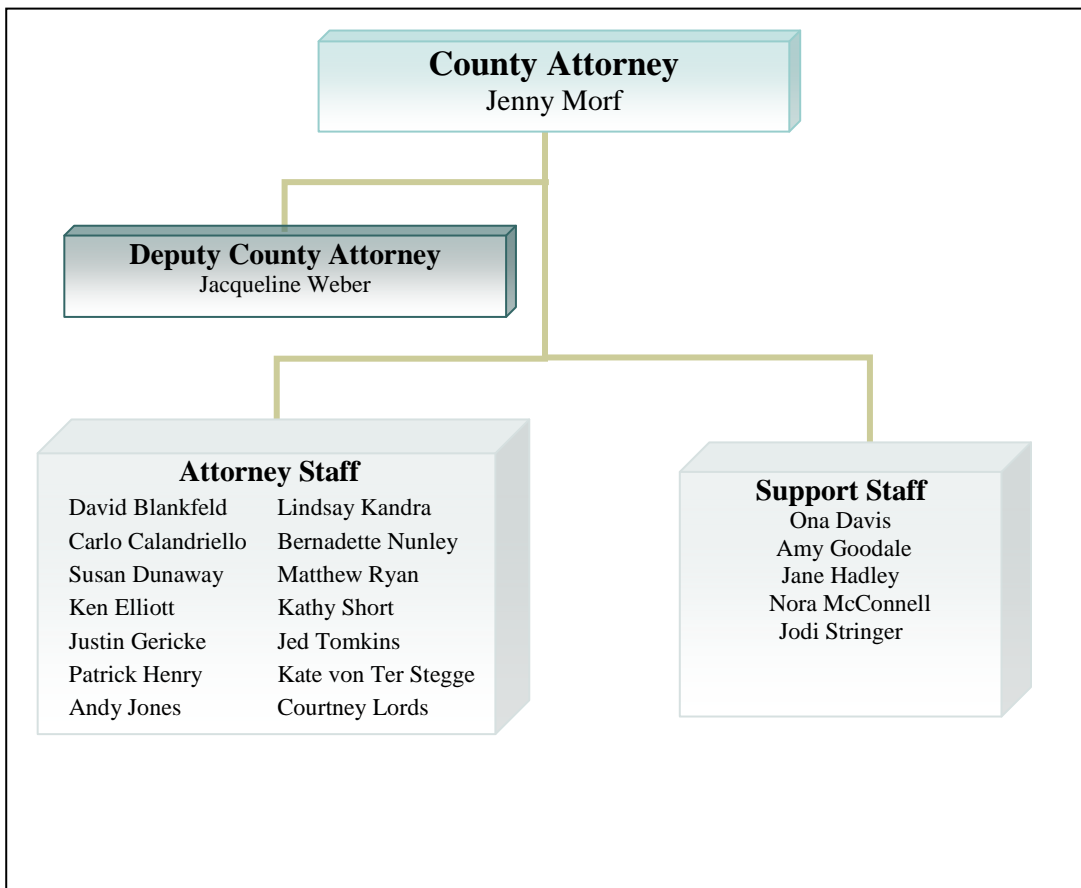
Our office staff of litigators represents the County and its agents and employees in both Federal and State trial courts and appellate courts. In addition, we represent the County in State Tax Court, before the Land Use Board of Appeals, in labor arbitrations and administrative hearings.

Our staff of advisory attorneys provides 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 Multnomah County Attorney**

We continue to experience change with retirements and a changing workforce. The County Attorney's Office addressed these changes with a combination of strategies, including the reclassification of a position, creating entry level positions, and opportunities for succession planning. We currently have an attorney staff of fourteen (14). Four (4) attorneys are devoted to litigation, five (5) provide a mix of litigation and advisory work, and four (5) are primarily involved in advisory and contracting work.

The attorneys are supported by a highly trained and experienced support staff.



Our attorneys have significant legal careers in public service: three (3) have more than 20 years in public service; six (6) have 10-15 years in public service; and seven (7) have 4-9 years.

Many of our attorneys are recognized as subject matter experts on issues of county concern throughout the state. Areas of expertise include:

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

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. We participate annually in the Lewis & Clark Law School's externship program, through which third-year law students volunteer their services to gain valuable public sector legal experience.

### **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, clerical or office related tasks. The County Attorney utilizes a case management computer database to record direct service time as well as professional development and administrative/office related tasks.

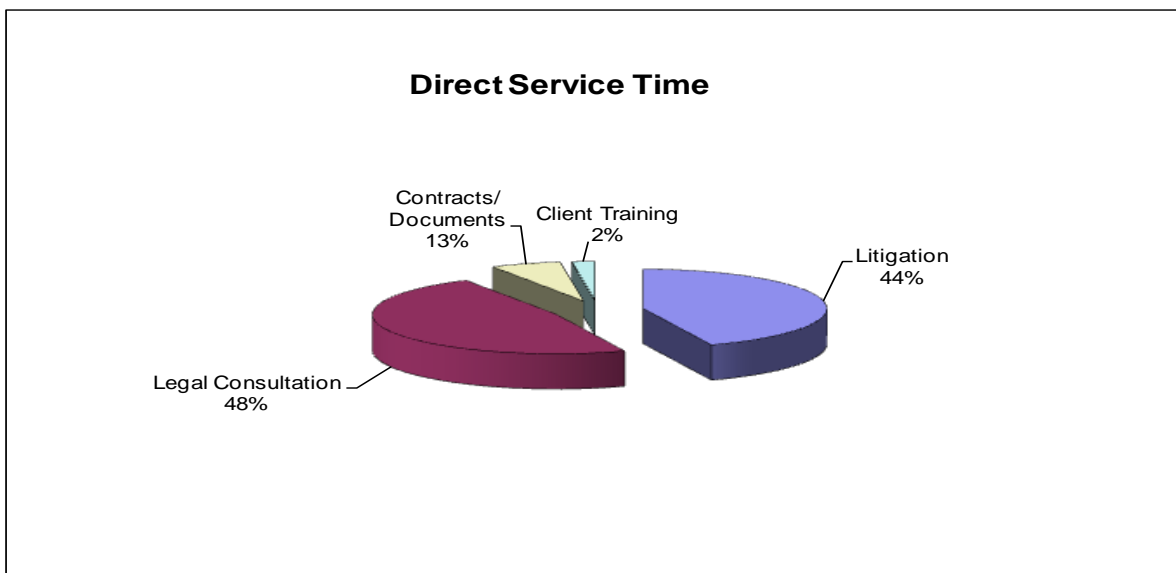
As Chart 1 indicates, 91% of County Attorney hours were devoted to direct service to our clients.

**Chart 1**  
**Direct Service Hours**

Total Hours Reported		20487.07
Direct Service	91%	18669.03
Non-Direct Service	9%	1818.04
<b>14 Attorney FTE Average Direct Service Hours</b>		1244.60

Direct Service hours reflect a combination of legal consultation with clients, drafting, reviewing and approving contracts, client training, and litigation. As reflected in Chart 2, almost half of attorney time is spent on providing legal advice, and 44% is spent on litigation. While client training reflects only 2% of attorney time, that figure reflects formal training hours only. We believe much of our advisory work also constitutes training.

**Chart 2**  
**Direct Service Time**



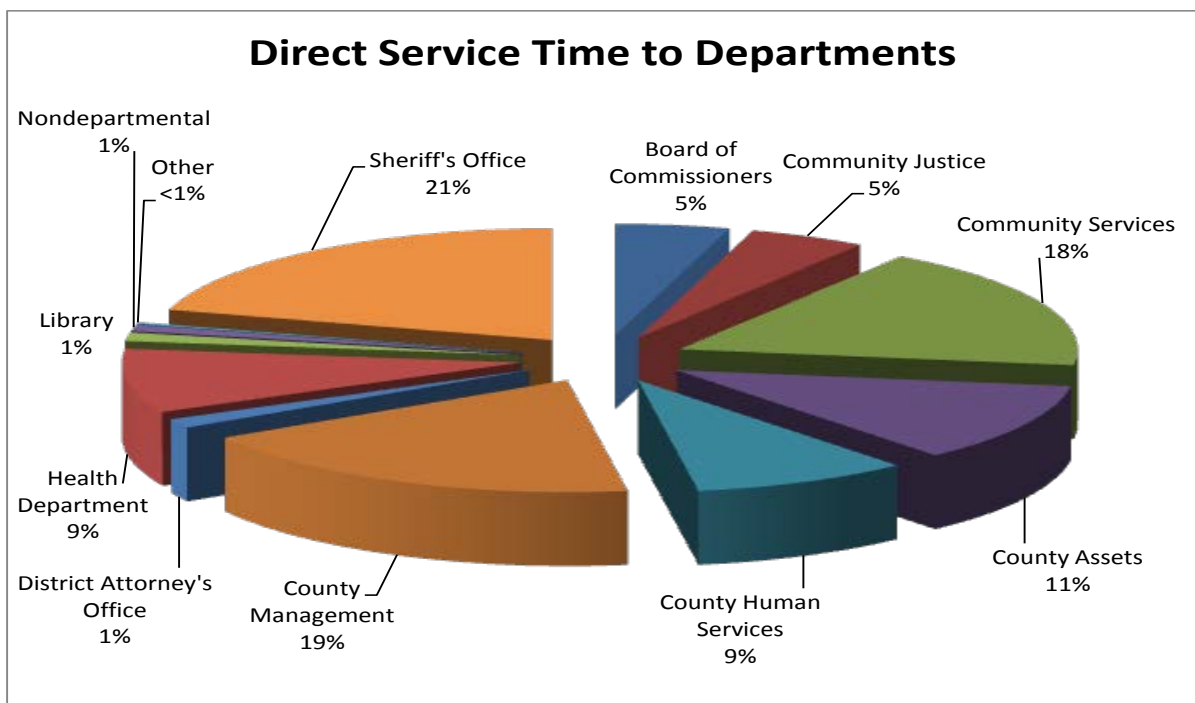
## **DIRECT SERVICE HOURS TO COUNTY DEPARTMENTS**

Charts 3 and 4 show direct services hours broken down by county department. Consistent with prior years, the Sheriff's Department, Department of County Management, and Community Services received the most direct service hours.

**Chart 3**  
**Direct Service Hours by Department**

Sheriff's Office	3850.65	21%
County Management	3516.59	19%
Community Services	3340.97	18%
County Assets	2138.66	11%
Health Department	1725.13	9%
County Human Services	1648.86	9%
Community Justice	888.15	5%
Board of Commissioners	864.75	5%
District Attorney's Office	249.4	1%
Library	230.87	1%
Nondepartmental	168.45	<1%
Other	45.55	<1%
<b>TOTAL</b>	<b>18668.03</b>	

**Chart 4**



## **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.

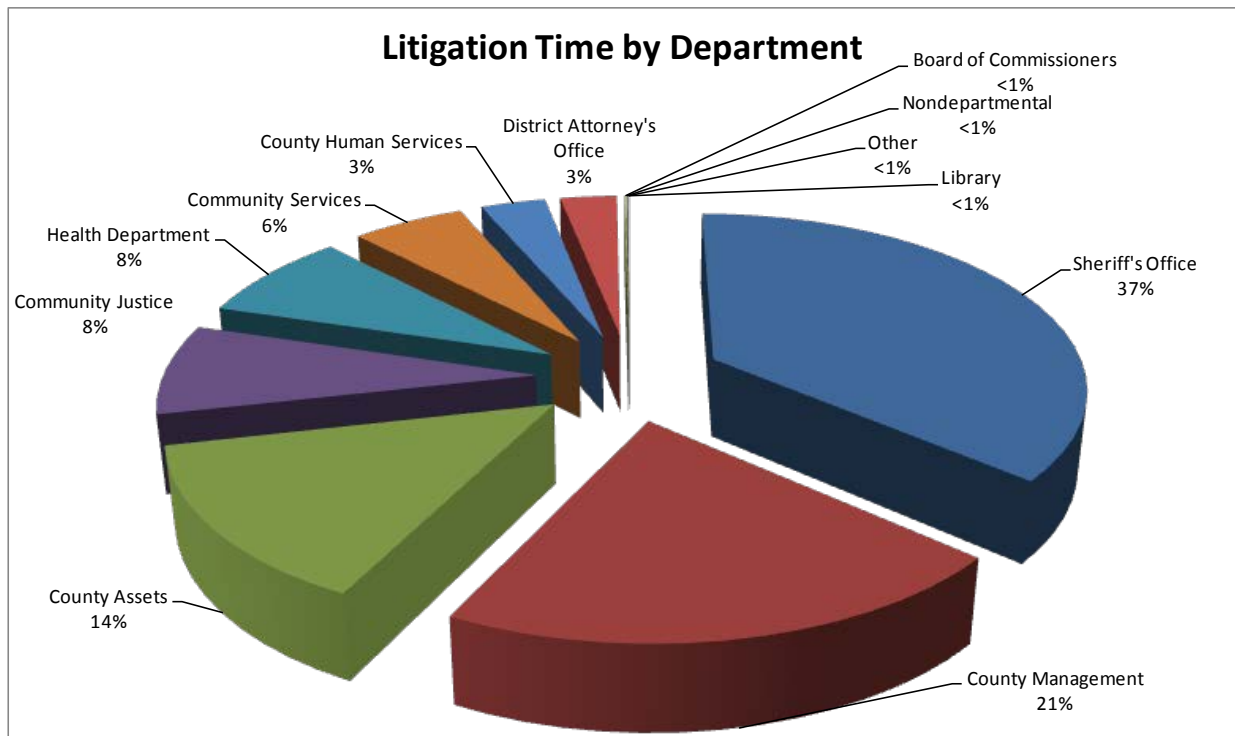
Litigation takes many forms and includes lawsuits alleging civil rights violations, medical malpractice, tax appeals and employment discrimination. We also represent the County in matters arising out of County operations and legal duties. These cases include land use matters, guardianship proceedings,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

## **LITIGATION TIME BY DEPARTMENT**

Chart 5 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. 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 claims and concealed handgun license appeals. County Management (21%) and County Assets (14%) represent a combined 35% of litigation time. County Management litigation time reflects a large construction defect case. The litigation time for County Assets

represents an employment case. Due to their complexity, construction and employment litigation historically consume a large percentage of attorney time.

**Chart 5**



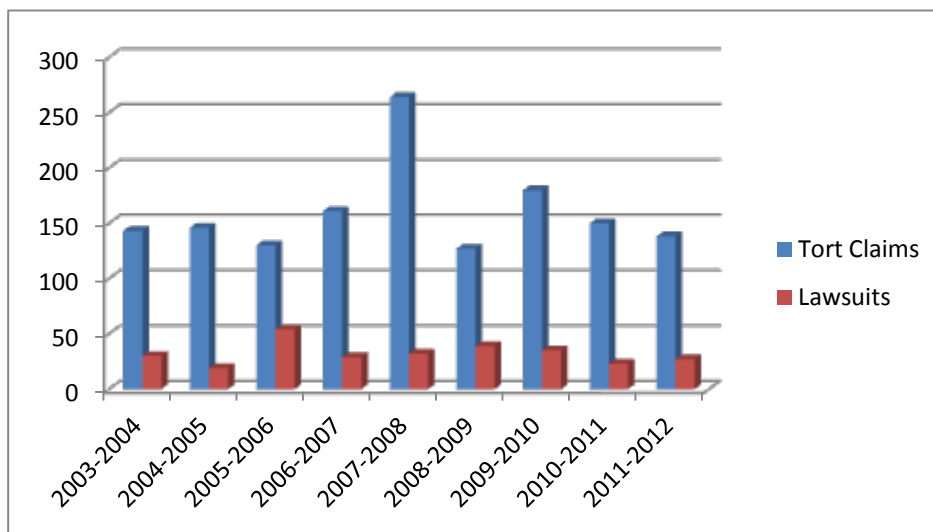
## **CLAIMS PROCESSING**

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

During the 2011-2012 fiscal year the county received 138 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 27 lawsuits. The graph below shows the number of tort claim notices and lawsuits received by the County over the past seven fiscal years.



**Chart 6**



As evidenced by the graph above, the number of tort claims received typically far exceeds the number of lawsuits filed.

A large portion 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. 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 a snapshot of cases that resolved in FY 2011-2012.

Our litigators obtained judgments favorable to the county in cases that involved a wide range of legal issues. We handled 267 litigation matters in FY 2011-2012. A total of 141 claims were investigated and denied. A total of 61 were favorably resolved prior to litigation being filed, saving the County thousands of dollars in litigation costs. As a result of the

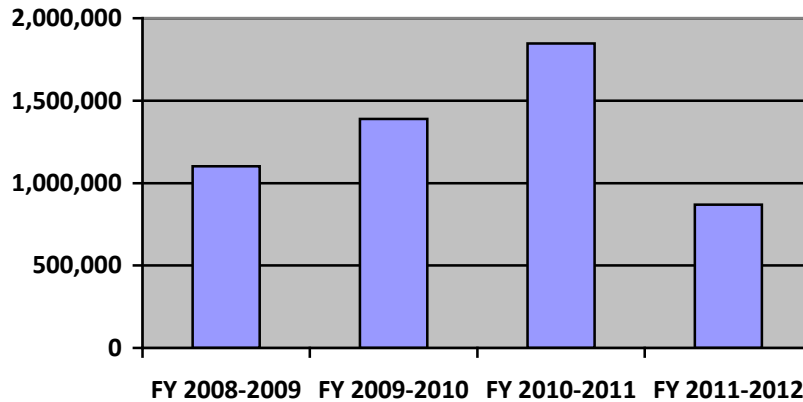
claims filed in FY 2011-2012, approximately 45 resulted in lawsuits we are currently defending. Examples include the due process rights of parolees in relation to government funded housing; the constitutionality of Sheriff's Office policies, procedures and training regarding protecting inmates from any type of sexual misconduct; a decision that a search and seizure in a drug distribution case was lawful; and a finding that the county was not liable, based upon allegations of erroneous release from jail, for assault by a former inmate upon his ex-wife shortly after release. In addition, our office represented the county in the following venues:

- In state tax court, we tried 4 cases and argued 7 dispositive motions for summary judgment.
- We defended 10 labor arbitrations, and 2 Unfair Labor Arbitrations.
- We defended 10 employment lawsuits.
- We prosecuted 10 guardianship proceedings in state court.
- We processed 21 Animal Services enforcement actions.
- We appeared in 5 administrative Land Use matters, and assisted without appearing in an additional 12 matters.
- We handled 20 firearms cases for the Sheriff's Office, most of which concerned concealed hand gun license cases.

Finally, the County Attorney's Office secured over \$71,365.00 in cash and property by obtaining judgments in approximately 10 civil forfeiture actions.

In fiscal year 2011-2012 the County paid a total of \$869,281.00 in awards, settlement, attorney fees and for expert services and other litigation expenses. This represents a decrease from FY 2010-2011 by over \$900,000. The following chart indicates how this figure can fluctuate from year to year depending upon the types of cases filed.

**Chart 7**



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**CLIENT SATISFACTION**

In order to gauge client satisfaction we seek input from clients on an annual basis. We requested input from about 291 County employees and elected officials. Of the responders, 93% rated their overall satisfaction with County Attorney services as “satisfied” to “very satisfied”, a one percent increase from last year.

**EFFECTIVE RATE**

The effective rate paid for each hour of direct legal service in FY 2011-2012 was \$177.24. 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 8**  
**Effective Hourly Rate**

**FY 2012**

<b>Total Hours Reported</b>		<b>20487.07</b>
<b>Direct Service</b>	<b>91%</b>	<b>18669.03</b>
<b>Non-Direct Service</b>	<b>9%</b>	<b>1818.04</b>
<b>15 Attorney FTE Average Direct Service Hours</b>		<b>1244.60</b>
<b>Office Actual Expenditures 2011-2012</b>		<b>3308960.40</b>
<b>Divided by Direct Service Hours</b>		<b>18669.03</b>
<b>Effective Hourly Rate</b>		<b>177.24</b>

This rate fluctuates up or down each year by a few dollars. However, our effective hourly rate continues to be significantly lower than the rates charged by comparable private law firms. The most recent Oregon State Bar Attorney Salary survey from 2012 states 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.

With an effective rate of \$177.24 per hour this past fiscal year, the County Attorney continues to provide quality legal services at a significantly lower rate than those charged by private law firms.

### **CONCLUSION**

We have compiled thirteen 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.