

Multnomah County Attorney's 2002 - 2003 Annual Report



October 23, 2003



OFFICE OF MULTNOMAH COUNTY ATTORNEY

AGNES SOWLE
County Attorney

SCOTT ERIK ASPHAUG
Deputy

501 S.E. HAWTHORNE, SUITE 500
PORTLAND, OREGON 97214

FAX 503.988.3377
503.988.3138

MICHELLE A. BELLIA
DAVID N. BLANKFELD
CHRISTOPHER CREAN
SANDRA N. DUFFY
SUSAN DUNAWAY
PATRICK HENRY
JENNY M. MORF
MATTHEW O. RYAN
KATHRYN A. SHORT
JOHN S. THOMAS
JACQUELINE A. WEBER
Assistants

MEMORANDUM

Board of County Commissioners
Diane Linn, Chair
Maria Rojo de Steffey, Commissioner
Serena Cruz, Commissioner
Lisa Naito, Commissioner
Lonnie Roberts, Commissioner

FROM: Agnes Sowle

DATE: October 23, 2003

2002-2003 Annual Report

INTRODUCTION

Our office has fourteen lawyers and seven support staff. We provide legal services for all county officers and departments. This Annual Report summarizes the legal services we provided to county clients last year.

During the fiscal year 2002–2003, we provided 23,918.05 hours of direct legal services for litigation, legal consultation, legal document preparation and review, and client training.

We worked on many ordinances and resolutions for departments and the Board during the fiscal year. Twenty-seven of those ordinances were adopted by the Board. Notable among the ordinances and resolutions are the following:

2002-2003 Annual Report

Ord. 1000 (11/14/2002) Amending MCC Chap. 7 to add a subchapter relating to Emergency Management;
Ord. 1001 (12/12/02) - Adopting West of Sandy River Rural Area Plan;
Ord 1012 (06/19) Establishing a temporary local income tax for public schools, human services and public safety;
Res. 02-117 8/22/02 Submitting to voters a five-year rate based local option levy to continue library services;
Res. 02-130 (10/10/02) Adopting new public contract review board rules;
Res. 02-136 (10/17/02) Establishing a policy for construction of major facilities capital projects;
Res. 03-029 (2/27/03) Setting hearings for the PUD;
Res. 03-054 (4/10/03) Adopting HIPAA privacy policies and directing appointment of a county privacy officer; and
Res. 03-087 (6/12/03) establishing the boundaries of the PUD and referring the formation and levy to the voters.

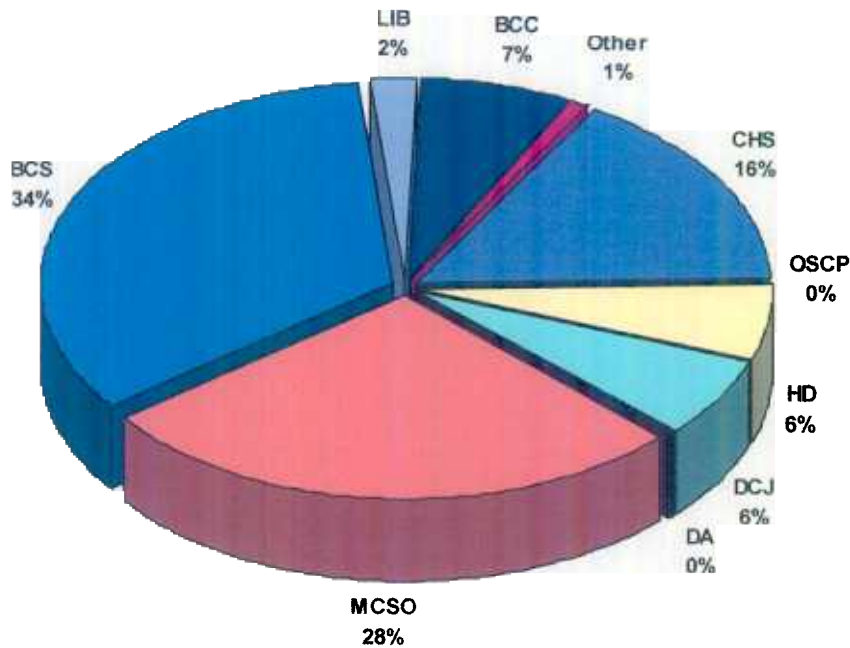
DIRECT SERVICE HOURS

Graph breaks down our direct services hours by department. The graph shows that the greatest amount of direct service time was devoted to Business and Community Services for the second year with 34%. The total hours for the Sheriff increased from 22% to 28%. Last year had demonstrated a substantial decrease in hours for the Sheriff (from 29% in 2001), in part due to the fact that no employment lawsuits came up during the year, so it is not so much an increase as a return to the number of hours needed in prior years. The hours spent on Health Department legal matters decreased to 6% from 10% last year. Community Justice decreased from 9% last year to 6% this year. Services for the Board increased from 5% last year to 7% this year.

Graph 2 depicts direct service hours expended by the various work types. Litigation was down slightly; it consumed 54% of our time down from 60% last year and 58% the year prior. Time spent in preparation and review of contracts and other legal documents was constant at 14%, legal consultation was 31%, up from 24% last year, and at 1% client training remained the same.

Direct Service Time to Departments

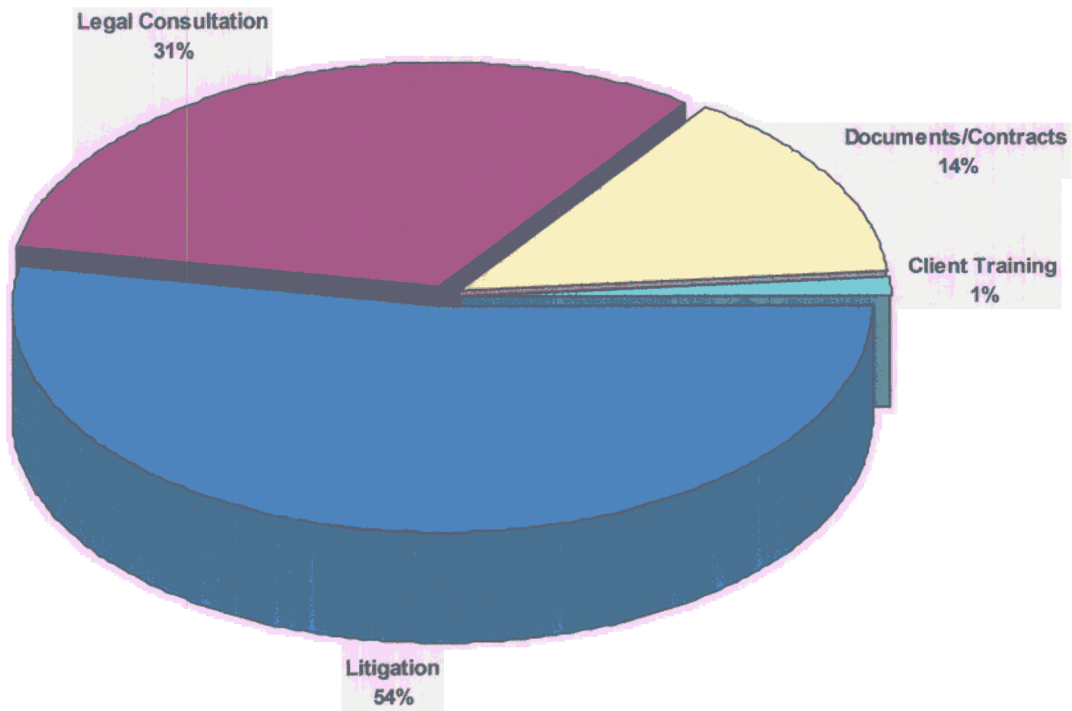
7/1/02 through 6/30/03



Department	Hours
Business and Community Services	8,024.60
Sheriff	6,581.90
County Human Services	3,827.00
Board of Commissioners	1,635.40
Health Department	1,477.85
Community Justice	1,467.00
Multnomah County Library	588.50
Other County	200.90
District Attorney	74.00
School and Community Partnerships	40.90
	23,918.05

Direct Service Time

7/1/02 through 6/30/03



Work Type	Hours
Litigation	12,692.25
Legal Consultation	7,535.70
Documents/Contracts	3,386.40
Client Training	303.70
	23,918.05

LITIGATION

Graph 3 shows our litigation hours broken down by department. The Sheriff continues to consume the most litigation hours at 43% (up from 31% last year, but constant with 42%. County Human Services used 17% of our litigation hours, a slight increase from the previous

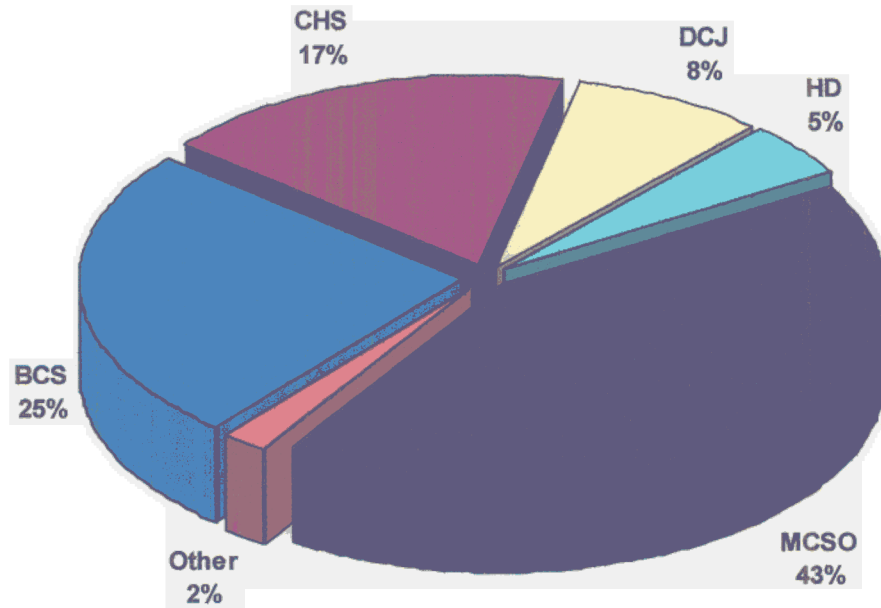
Litigation time for Community Justice decreased from 1259.10 hours to 1059.25 hours or

Graph 4 highlights the top twenty of last year's cases based on hours expended. This past year the Sheriff had 10 of the cases, two more than last year. Community Justice cases in the top 20 decreased from 3 to 1. The Health Department decreased from 2 in the top 20 cases to 1. Business and Community Services remained constant at 3 cases. In the past fiscal year, the total top 20 cases accounted for 44% of all litigation hours, down substantially from 57% as last year. This statistic might appear to indicate that we are experiencing less complicated cases, but it may also be attributable to the fact that with the life of a lawsuit running two or three years, it is not uncommon for a case's hours to be split between two or three years.

Brief descriptions of the top 20 cases follow graphs 3 and 4.

Litigation Time by Department

7/1/02 through 6/30/03



Department	Time
Sheriff	5,447.80
Business and Community Services	3,202.75
County Human Services	2,200.00
Community Justice	1,059.25
Health Department	585.10
Multnomah County Library	83.55
County Attorney	72.55
Board of Commissioners	67.60
District Attorney	30.20
School and Community Partnerships	1.50
	12,750.30

Litigation Time - Top 20 Cases

7/1/02 through 6/30/03

377 total open litigation files

<i>Business and Community Services</i>			3 of 104 open litigation files	Total	% of Dept's Lit
0343-00	JMM	Minter, Peggy Jo v. MC and Daniel Brown		459.30	
0101-02	DNB	Matthews, Shelley - Merit Council Appeal		378.30	
0014-02	JST	Portland Shipyard LLC/Cascade General Property Tax Appeal		288.30	
				1,125.90	3,202.75
<i>Community Justice</i>			1 of 43 open litigation files	Total	% of Dept's Lit
0328-01	JMM	Connell, Cathreen Ann v. Multnomah County; USDC 01-1726 HA		378.20	
				378.20	1,059.25
<i>County Human Services</i>			5 of 38 open litigation files	Total	% of Dept's Lit
0343-01	SMD	Alpha Energy Savers, Inc., and Robert Obrist v. Multnomah County		714.95	
0115-02	KG	Multnomah County v. Wildwood Personal Initiatives, Inc.; MCCC 0		325.35	
0148-02	KAS	Perfili, Linda v. Multnomah County; USDC 02-762-JE		244.50	
0283-02	JMM	Strutz, Susan v. Multnomah County USDC 02-1672-FR		177.60	
0155-02	GHI	Wildwood Personal Initiatives, Inc. v. Multnomah County and Howa		149.45	
				1,611.85	2,200.00
<i>Health Department</i>			1 of 17 open litigation files	Total	% of Dept's Lit
0351-00	GHI	Vazquez-Vargas, Vianey v. Multnomah County, Chan, OHSU, Stei		140.90	
				140.90	585.10 24.1%
<i>Sheriff</i>			10 of 153 open litigation files	Total	% of Dept's Lit
0292-01	AS	Cross, Rodger v. Noelle, et al. - USDC Case No. 01-1848 JE		589.95	
0147-02	AS	Hathaway, Dawn v. Multnomah County Sheriff's Office; USDC 02-7		316.70	
0081-02	AS	Montoya and Borja v. Noelle, et al; CV 02-446 KI		297.10	
0134-02	DNB	Denson, Horace v. Sgts. Phelps & Camp, Deps. Edwards & Blesco		214.00	
0149-02	JMM	Edwards, Rod - Merit Council Appeal		195.65	
0139-02	GHI	Elam, Curtis v. Multnomah County MCCC 0205-05353		162.10	
0256-00	SEA	Ossig, Michael Johnny v. P Gayman, RN, S. Brunton, RN, et al; C		157.15	
0122-02	DNB	Hall, Kenneth A. v. Multnomah County USDC 02-579-HU		147.80	
0144-00	SMD	Biberdorf, Lowell C. v. State of Oregon, Multnomah County, et al		143.85	
0039-02	GHI	Woods, Laurence v. Sheriff Noelle and Chaplain Duncan; 02-00142		143.55	
				2,367.85	5,447.80
Total Litigation Hours for these Cases				5,624.70	
Total Litigation Hours - All Departments				12,692.25	
% of Total Litigation Hours for these Cases				44.3%	

BUSINESS AND COMMUNITY SERVICES

Peggy Minter v. Multnomah County, et al – (459.30 hours)

Minter, a former manager in the Facilities Division, was terminated for falsification of accounting records. She filed a Federal lawsuit against the County and her supervisor alleging that she was terminated in violation of her First Amendment rights because she was a whistleblower, and that her termination amounted to a wrongful discharge. We were granted summary judgment on the whistleblower and wrongful discharge claims. The parties prepared for trial on the First Amendment claim, but entered into settlement negotiations because of several adverse evidentiary rulings by the Court. Minter's initial settlement offer was for \$300,000 plus \$50,000 in attorney fees. We ultimately settled the case for \$80,000.

Shelley Matthews, Merit Council Appeal – (378.30 hours)

Matthews was a County employee who was terminated during her probationary period. She appealed her termination to the Multnomah County Merit Council on the grounds that her termination was in violation of County Personnel Rules and was discriminatory based on her race and ethnicity. Issues arose throughout the case including concerns about the Merit Council's authority to send all the issues to a designated Hearings Officer and a potential conflict of interest on the part of one of the Merit Council members. Eventually a full evidentiary hearing was held. The Hearings Officer recommended the appeal be dismissed in its entirety and the Merit Council adopted the Hearings Officer's Proposed Order.

Portland Shipyard LLC/Cascade General Property Tax Appeal – (288.30 hours)

The Portland Shipyard property consisting of more than 50 acres of improved industrial property went on the tax rolls for the first time in 2001 as a result of the sale of the property from the Port of Portland to Portland Shipyard, Inc. and Cascade General. The property had previously been exempt from taxation. The county assessor and the owner could not agree on the value to be assigned to the property. As the matter was set to go to trial, the county proposed mediation of the dispute. After a two-day mediation session, the parties agreed on values for the 2001 tax year and the years following. The valuation of this property involved many complex legal, factual and appraisal issues. This office is increasing its use of mediation in complex property tax cases. Mediation reduces litigation cost to the county and the taxpayer and produces results that are equivalent to verdicts that might be expected at trial.

COMMUNITY JUSTICE

Connell v. Multnomah County – (378.20 hours)

Connell, a current employee, was terminated for insubordination for failing to follow a direct order of the Director. At Merit Council, she was ordered reinstated without back pay. She then filed a Federal lawsuit claiming that her termination violated her Due process rights (procedural and substantive), her First Amendment rights, and constituted a wrongful termination under Oregon State law. Our motion for summary judgment was granted and the lawsuit was dismissed in its entirety.

COUNTY HUMAN SERVICES

Alpha Energy Savers, Inc. and Obrist v. Multnomah County et al – (714.95 hours)

An independent contractor who has performed weatherization services for the County under a non-exclusive contract has brought both state and federal claims against the County and two of its employees who work in the Weatherization department. The federal claim alleged that the County and the individual defendants retaliated against the contractor for exercising his First Amendment rights by testifying at a union hearing and by volunteering to testify in a federal case brought against the County by a former County employee. Alpha sought a million dollars in damages plus attorney fees. The Court granted our motion for summary judgment and dismissed the lawsuit. Alpha appealed to the Ninth Circuit, which is pending.

Multnomah County v. Wildwood Personal Initiatives, Inc (325.35 hours)

Wildwood Personal Initiatives, Inc. v. Multnomah County -- (149.45 hours)

These two files relate to the same case. The lawsuit alleged a civil rights claim arising out of the decision by the DD Program to not renew a provider's annual contract based upon the County administrators' business judgment that the provider was wasting an unreasonable amount of County resources in administering the contract. WPI claimed that the non renewal was motivated by retaliation for their protesting terms of the agreement and other related matters. The County obtained a preliminary injunction after a trial in June requiring WPI's cooperation in transitioning the clients to other providers. At the same time we successfully opposed WPI's cross motion seeking a TRO requiring the continuation of the contract. Using the information the WPI subsequently provided, the DD program safely transitioned all the clients to new providers in August of 2002.

Subsequent to the transition of the clients and obtaining authority from the Chair's office, the County Attorney's Office entered into negotiations to settle WPI's claims against the County. Obtaining a reasonable settlement made sense for a number of reasons. First, because of the timing of the decision not to renew the contract, there was at least a colorable claim that the County had a bad motivation for doing what it did. Though the total damage exposure was limited, the case was worth a significant amount of money due to the provider's statutory right to recover attorney fees if it made any recovery at all. Second, the state gave absolutely no support to the DD program as it attempted to deal with this very difficult situation. Finally, because of budget cuts, the DD program had limited resources in terms of employee time to invest in a trial. In addition, a number of key staff were no longer with the County. The claim ultimately settled for \$135,000.

Linda Perfili v. Multnomah County - (244.50 hours)

Perfili is a current employee who brought a federal lawsuit claiming federal and state disability discrimination, FMLA/OFLA discrimination, gender discrimination and civil rights violations. She claims that the County failed to accommodate her disabilities. She was granted her requested FMLA and OFLA. The County's motion for summary judgment was granted and the case dismissed. She appealed to the Ninth Circuit which is pending.

Susan Strutz v. Multnomah County – (177.60 hours)

Strutz is a current employee who was employed as a manager in the Department of County Human Services. Her position was eliminated in 2002 as part of a reduction in workforce and she "bumped" into a lower level position. She then brought a Federal court lawsuit alleging interference with her rights under the FMLA and as well as state claims. Discovery is ongoing. In the meantime, we have scheduled this case for mediation with a federal judge mediator in December 03'. If a settlement is not reached, the County will move for summary judgment.

HEALTH DEPARTMENT

Vianey Vazquez-Vargas v. Multnomah County – (140.90 hours)

This is a medical malpractice case in which a baby suffered serious neurological damage as a result of undiagnosed TB Meningitis. The County and one of its physicians have been sued for failing to correctly diagnose the illness along with OHSU and Emanuel. The case is currently under abatement and we believe that the plaintiff will voluntarily dismiss the case against the County.

SHERIFF'S OFFICE

Lowell Biberdorf v. Multnomah County, et al. – (143.85hours)

Biberdorf brought a 42 USC Section 1983 action as well as state claims in Federal Court alleging that the Sheriff's Office violated his civil rights by failing to give him three and a half months of credit for time served. The county brought a third-party complaint against the criminal defense attorneys who represented Biberdorf in his criminal cases seeking indemnification/contribution on the theory that the criminal defense attorneys were negligent in failing to apprise the judge of all information concerning the plaintiff, which resulted in an inaccurate judgment of conviction being forwarded to the County. The County's summary judgment motion was granted in part. At that point the parties went to mediation with a federal judge mediator. We are currently using a federal judge mediator for several of our lawsuits where there is some risk of exposure, especially if the prevailing party will be awarded attorney fees. Here, mediation resulted in the County paying the sum of \$12,000 to Biberdorf.

Rodger Cross v. Multnomah County – (145.15 hours)

Montoya and Borja v. Noelle et al – (297.10 hours)

Cross, Montoya, Borja and one other former employee, all corrections deputies, were terminated as the result of their conduct with an inmate, Dennis Poe, and the following investigation. They brought federal lawsuits claiming that they were denied due process and equal protection among numerous other claims. Discovery was conducted on all three together. We moved for and were granted summary judgment on Cross' lawsuit. He has appealed. We also moved for summary judgment on Montoya's and Borja's claims, but before deciding the matter, Borja's reserve unit was shipped overseas and the case was abated. As soon as he returns, we will move forward with the summary judgment motions.

Horace Denson v. Sgt. Phelps, et al. – (214.00 hours)

Mr. Denson is a former inmate who brought suit against the Multnomah County Detention Center and a number of Sheriff's Office employees for a number of state and federal civil rights violations including; Due Process violations, denial of medical services, cruel and unusual punishment, illegal detention, intimidation, harassment, First Amendment violations and other unspecified civil rights violations. After extensive discovery, research and case prep, Mr. Denson was transferred to another correctional facility and failed to maintain the lawsuit. The case was dismissed for failure to prosecute.

Kenneth A. Hall v. Multnomah County and Josephine County – (147.80 hours)

Mr. Hall sued Multnomah and Josephine Counties for false imprisonment and civil rights violations stemming from an alleged unlawful incarceration in both counties. Initially, Mr. Hall was arrested by Portland Police for driving under the influence. An on-scene background check revealed a Josephine County arrest warrant. After being in custody two days at MCDC, one day at MCIJ, one day in Salem and two days in Josephine County it was determined that the arrest warrant was intended for a different Kenneth A. Hall. With a federal judge sitting as mediator, a settlement was reached. Josephine County paid the bulk of the settlement.

Dawn Hathaway v. Multnomah County Sheriff's Office – (316.70 hours)

Hathaway is a current corrections deputy who brought a federal action against the Sheriff's office for hostile work environment and battery. She claimed a co-worker had inappropriately kissed her. After an IAU investigation, the co-worker was disciplined by a 30 day suspension. The Court granted our motion for summary judgment on the grounds that the conduct was not sufficiently severe and pervasive to alter the conditions of her employment and that the County had responded to her complaint promptly and appropriately.

Rod Edwards Merit Council Appeal – (195.65 hours)

A current deputy filed a Merit Council appeal alleging that he was not promoted to Sergeant in retaliation for having been awarded veteran's preference points. After a two day evidentiary hearing a hearings officer determined that there was no discrimination on the basis of veteran's preference points. The Merit Council unanimously upheld the hearings officer's decision. Mr. Edwards is requesting review of the Merit Council's decision by the state court. This writ will likely be heard in state court in 2004.

Curtis Elam v. Multnomah County – (162.10 hours)

This state court case alleges that an inmate with a serious leg impairment was injured while attempting to get out of an upper bunk at the Multnomah County Detention Center. The case alleges negligence in failing to determine the extent of plaintiff's disability and in placing the inmate in an upper bunk. Discovery is ongoing with depositions of involved physicians to take place later in the fall.

Michael Johnny Ossig v. P. Gayman, RN et al – (157.15 hours)

This inmate, representing himself, filed a federal lawsuit alleging violation of his civil rights. He raised numerous issues regarding corrections and correction health practices. The Federal Magistrate agreed with our position at summary judgment and made findings and

recommendations of dismissal. (A magistrate's recommendations must be approved by a Federal District Court Judge). The plaintiff recently filed his objections to the Findings and Recommendations and we are in the process of responding. This case exemplifies how pro se complaints by inmates often-times result in expenditures of time and resources far in excess of the negligible value of the their complaints. Cases like these, however, are not settled for nuisance value as sound public policy dictates otherwise. We can expect that we will continue to see cases similar to this into the foreseeable future.

Employment cases in the top twenty have increased this year. We have seen a trend in the past two years of plaintiffs appealing the cases we have won at summary judgment. We currently have five employment appeals in process.

The County has continued to limit liability losses in the past fiscal year. However, given the serious nature of current cases pending and the uncertain future of the Oregon Tort Claims Law, it may be difficult to maintain our record. We are increasing our use of mediation in complex cases and those with a high risk of loss, high damages potential, the likelihood of our having to pay attorney fees, or any combination of these.

ADVISORY WORK

We continue to look for opportunities to provide high quality legal advice to our clients. During the past fiscal year, this Office assisted in the Transportation Division's revision of the County's Street Standards manual, the rules and guidelines relating to development along and use of county roads. The new manual is pending and is tentatively to be called the "Road Rules" which is consistent with the statutorily defined phrase "county roads". Other major tasks include the Bridge Use Ordinance and the 257th (Kane) Project in Gresham for transportation and various individual Service District issues.

We have spent significant time creating new forms for use by Facilities Management for construction work. A new construction and architect and engineer boilerplate draft has been prepared with assistance of outside counsel experienced in this area. This draft is being reviewed

by county staff and should be implemented in the next several months. A new form for use to purchase goods and services on a requirements basis was completed and is now in use.

Transportation Special Conditions were completely re-written to conform to the new ODOT 2002 Specification Book.

Construction disputes also consumed a substantial amount of time. Claims by the general contractor and the architect on the East County building were settled in mediation. Claims by the County for design and construction defects in the building are near resolution. contractor on the Children's Receiving Center project also filed a claim with the county that was ultimately settled. A construction dispute with the contractor on the Hillsdale Library went to mediation and resulted in an agreement by the contractor to withdraw from the contract. After a limited competition, Hoffman Construction was selected to replace the contractor and Hoffman is completing the work.

Two unique issues required substantial attorney time during the year. The imposition of the Multnomah County personal income tax and the petition for a People's Utility District both presented legal analysis and preparation rarely required by our office.

EFFECTIVE RATE

The effective rate paid for each hour of direct legal service was \$94.1 down \$3.06 per hour from last year. The savings resulted, in substantial part, from our attorneys putting in more work hours. This rate saved the County and taxpayers a significant amount of money from rates charged by private law firms. Legal fees charged by Portland firms for representing government clients now exceeds \$225 per hour and, in some cases, is as high as \$250 per hour. Our rate is also less than that charged by other government law firms.

Of all hours reported by County Attorneys 85.7% went to direct client legal services; the percentage of our hours devoted to administrative and professional development services is only 14%, slightly less than last year. In addition, the average number of direct legal service hours provided during the fiscal year by each lawyer increased substantially from 1,595.67 to 1,708.43

The following chart summarizes the effective hourly rate computation:

Total Hours Reported		27,886.27
Direct Service	(85.7%)	23,918.05
Non-Direct Service	(14.2%)	3,910.17
Administrative	(10.1%)	2,828.67
Professional	(4%)	1,139.55
14 Lawyer FTE Average Direct Service Hours*		1,708.43
Office Actual Budget Expenditures		\$2,251,158.00
Divided by Direct Service Hours		23,918.05
Effective Hourly Rate		\$94.11

* We actually did not have 14 Lawyer FTE this year. We had one part time attorney who took 12 weeks of family leave, one attorney who worked .8 FTE all year, one attorney who worked .8 FTE part of the year and .5 FTE the rest of the year. In addition we had a resignation in February which was not replaced until July. In short, the actual average hours of direct service for the attorneys is somewhat higher than the average shown.

CONCLUSION

We have now compiled five years of reliable legal service data permitting us to quantify the hours of legal services, the nature of the services and the clients that receive services. The data allows us to more efficiently manage, monitor and deploy county legal assets.

Three statistics that particularly show the efficiency of the County Attorney Office are:

- (1) Over 85% of lawyer office hours go to direct legal services;
- (2) Each lawyer averages 1,708 direct service hours per year; and
- (3) The cost of each direct service hour is \$94.01.

Our challenge is to continue to provide efficient and effective legal services and increase appropriate non-litigation use of our resources. We also must meet the increasing demands of more complex and serious litigation. We continue to work closely with the Sheriff, the department that uses the largest share of our resources. We continue to seek opportunities to effectively use County legal resources and look for ways to improve our services to best meet the County's legal needs. Our mission is to provide high quality, customer-focused service and good value for the tax dollar. We believe we perform that mission well.