

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: ^{Feb 5 19} ~~January 29~~, 2013

Approx Start Time: ^{2:00} -2:00 **Approx Length:** 30 Minutes

Presentation Title: Office of County Counsel Annual Activity Report 2012

Department: County Counsel

Presenters: Stephen Madkour and the Office of County Counsel

Other Invitees:

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

EXECUTIVE SUMMARY:

The Office of County Counsel will present its Annual Activity Report to the Board of County Commissioners. The annual report provides the board with a detailed background on the services provided by the Office of County Counsel, including the client based served, and the cost.

FINANCIAL IMPLICATIONS (current year and ongoing):

None. The annual report is for informational purposes.

LEGAL/POLICY REQUIREMENTS:

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS:

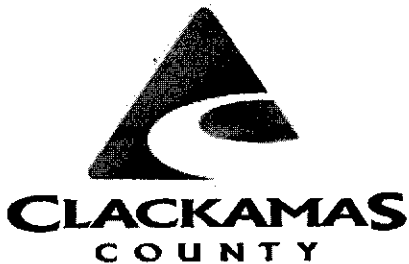
RECOMMENDATION:

ATTACHMENTS:

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____





OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

David W. Anderson
Kimberley Ybarra
Kathleen Rastetter
Scot A. Sideras
Chris Storey
Scott C. Ciecko
Alexander Gordon
Rhett C. Tatum
Assistants

OFFICE OF COUNTY COUNSEL ANNUAL ACTIVITY REPORT 2012

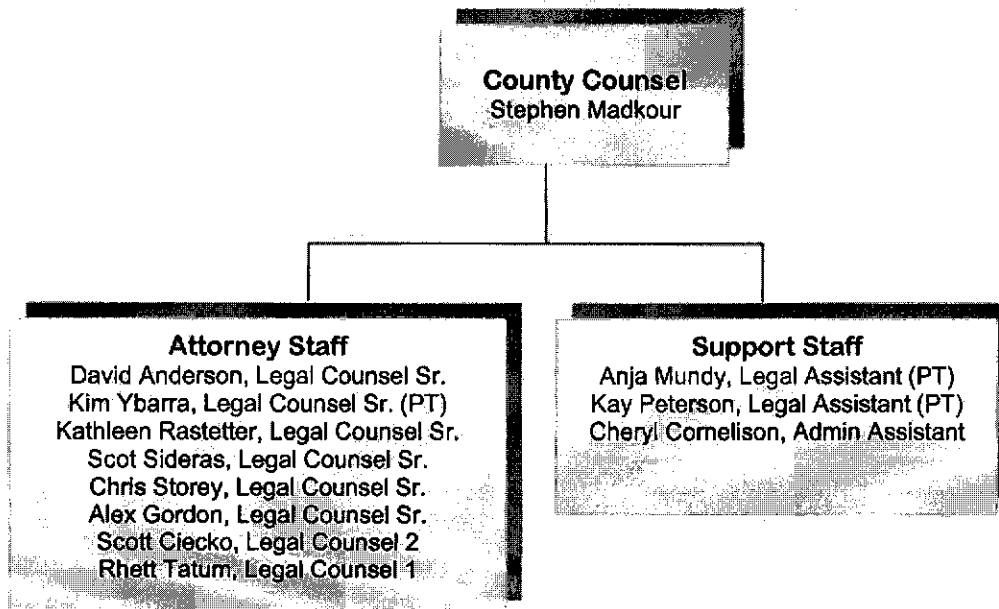
*County Counsel's Activity Report
Presented to the Clackamas County Board of Commissioners
January 2013*

I. Introduction

The mission of the Clackamas County Office of County Counsel is to provide quality legal services and representation to all County departments, elected officials, service districts, and employees while being responsible stewards of taxpayer resources.

II. The Office of Clackamas County Counsel

The Office of County Counsel provides a full range of legal service to the Board of County Commissioners, all elected County officials, all departments and divisions, and special districts. We provide general counsel and advisory legal services county wide, and also represent the County and its agents and employees in Federal, State, and Tax Courts, labor arbitrations, land use and administrative hearings, and in small claims.



The Office of County Counsel consists of 8 full-time attorneys, 1 three-quarter time attorney, 2 three-quarter time legal assistants and 1 administrative assistant, for an equivalent of 11.25 full time positions. The Office's budget for fiscal year 2012-13 is \$1.9 Million.

The Office of County Counsel is staffed with attorneys and staff with a vast range of experiences. The staff attorneys representing Clackamas County present a firm profile that firms of comparable size would be proud to offer clients: Collectively our attorneys have over 180 years of hands-on practice experience ranging from advising clients in complex business transactions to presenting compelling legal arguments in the state's highest court.

Our trial team tries cases to judges and juries. Many of these cases present emotional issues involving police and citizen interactions as well as the balance of power between governmental interest and those of private citizens. Similarly our lawyers appear in state and federal appellate courts offering the County a specialized in-house legal resource. Drawing on experienced labor lawyers, environmental lawyers, land use practitioners, litigators, and tax counsel employed in the Office of the County Counsel, Clackamas County officials have boutique law firm resources available to them at extraordinarily affordable rates. Having the in-house legal resources available to represent the County means that the County can protect its interests on the merits rather than resolving disputes based upon the threatened cost of defense.

III. Practice Areas

The duties of the Office of County Counsel generally fall into two broad areas, legal representation and advice. The following are the major activities within the representation function:

- Tort Litigation - Defend the County and its officers and employees in state and federal courts against actions for personal injury or property damages, most commonly related to roads, transportation, law enforcement and jail/corrections operations.
- Civil Rights - Defend the County and its officers and employees in state and federal courts against actions alleging violations of civil rights.
- Employment/Labor Law - Represent the County in all forums, including State Employment Relations Board, Bureau of Labor and Industries, U.S. Equal Employment Opportunity Commission, Circuit Court, arbitration proceedings and labor negotiations.
- County Administration & Finance – Advise County Administration on internal and external operations; advise county audit committee, review loan documents and financing agreements.
- Elections - Represent the Board of Commissioners and the Clerk in election law matters.
- Assessor/Tax – Represent the County in matters before the Tax Court, Department of Revenue hearings, Circuit Court, and U.S. Bankruptcy Court proceedings where property taxes are owed or appealed, tax foreclosure proceedings, and ejectment actions.

- Health, Housing, and Human Services – Represent Social Services, Community Health, Behavioral Health, Children Youth and Families, Community Development, and Community Solutions Divisions in contract review, public records advice as related to patient privacy and confidentiality rights in accordance with HIPAA, Federal, and State laws and regulations.
- Housing Authority – Represent the Housing Authority in contract review, public records advice, and forcible entry and detainer actions against tenants.
- Civil Forfeiture – Serve as Counsel for the Sheriff's Office when they are the seizing agency of proceeds derived from criminal drug activity. Provide civil forfeiture legal services and training to Clackamas County cities and their police departments under contract with their policing agencies.
- Condemnations - Represent the County and Development Agency in condemnation claims.
- County Service Districts - Provide general legal services for the various county service districts, including matters relating to formation, changes in organization, boundaries, and other issues relating to county service districts.
- County Development Agency - Provide general legal services to staff and the governing body of the Development Agency on a variety of technical matters relating to urban renewal law.
- Code Enforcement - Prosecute actions before hearings officer and in Circuit Court for enforcement of Zoning Ordinance, Solid Waste Ordinance, Animal Control and other ordinances.
- Land Use - Defend decisions of Board of County Commissioners and Land Use Hearings Officer before Land Use Board of Appeals, and in many cases on further appeal to Oregon Court of Appeals. In addition, defend occasional mandamus actions in Circuit Court.
- Ethics, Public Records, Public Meetings, Elections - Advise elected officials and County staff concerning state law requirements for public meetings, public records, ethics, electioneering, and county governance.
- Staff/Training - Train County staff on a variety of legal issues such as use of force, elections law, supervision training, civil rights matters, and risk management issues.

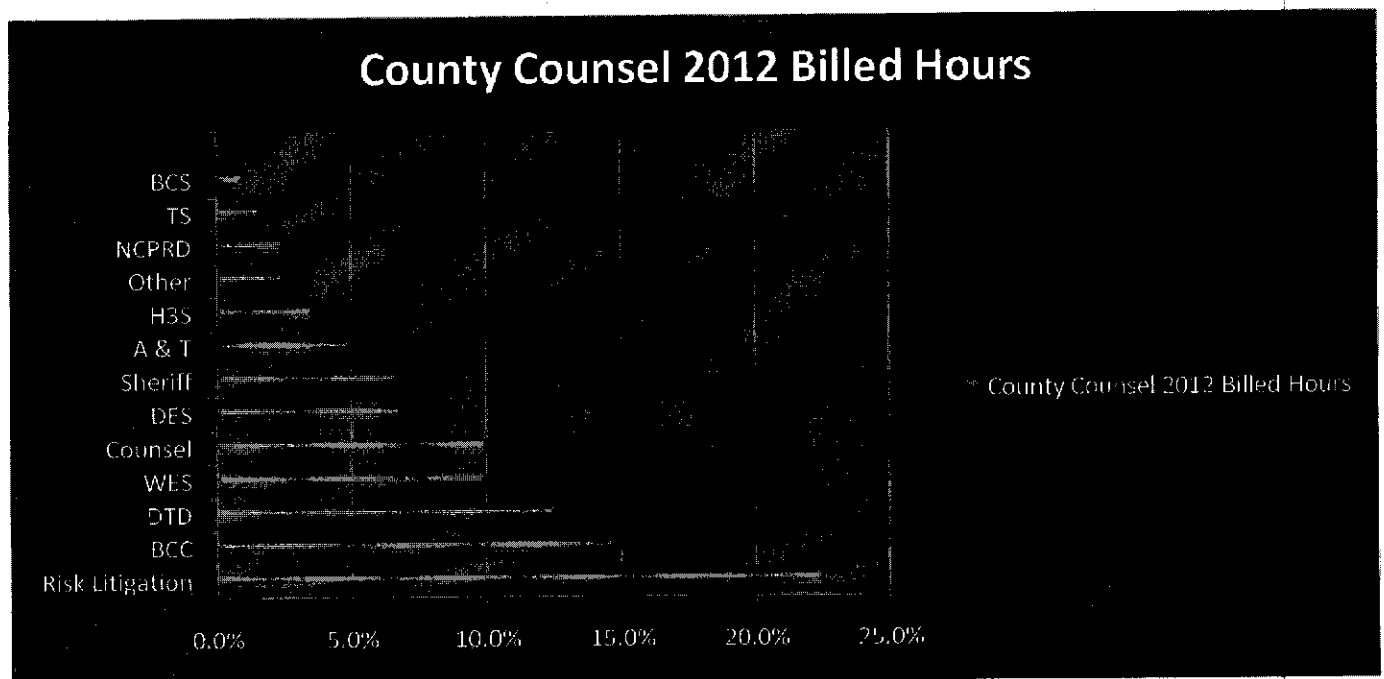
Advice to departments is diverse, ranging from frequent requests for a quick opinion over the telephone or email, to the drafting of detailed opinions, complicated and lengthy County ordinances. The Office of County Counsel responds to hundreds of opinion requests each year. Moreover, other major functions include attending all meetings and hearings of the Board of County Commissioners, the planning commission, and other boards and commissions, drafting orders, resolutions, ordinances, contracts, intergovernmental agreements, and reviewing contracts and other legal documents.

Direct service hours represent attorney time dedicated to litigation, legal consultation, legal document preparation and review, and client counseling. Direct service hours exclude time spent on professional development, administrative, clerical or office related tasks. County Counsel utilizes a case management computer database to record direct service time as well as professional development and administrative/office related tasks.

Attorneys and legal assistants reported a total of 14,498 hours, of which 13,055.46 hours, or 90% of County Counsel hours were dedicated to the direct service of County departments.

IV. Our Clients – Service Hours by County Department

Our data allows us to identify the client base served by the Office of County Counsel. The following chart indicates that the greatest user of Counsel time was DES Risk Litigation at 22.5% of the hours.



| Department | Hours | Summary |
|-----------------|--------|---|
| Risk Litigation | 3,266 | All litigation where a claim for damages is alleged against the County, such as employment claims, and civil rights litigation. |
| BCC | 2,140 | Opinions, advice, records and research, meetings, citizen response |
| DTD | 1,821 | Development support, land use, code enforcement, trial |
| WES | 1,485 | Service District support, opinions, environmental issues |
| Counsel | 1,436 | Mandatory training, staff briefings, education and support, case consultations |
| DES | 996 | Labor and employment, representation of County in BOLI actions |
| Sheriff | 975 | Forfeiture litigation, policy review, provide training, employment issues |
| A & T | 734 | Represent County in tax litigation cases, research and advice |
| H3S | 523 | Opinions, advisory work, contract reviews, employment issues |
| Other | 371 | Opinions, reviews, contract reviews, employment issues for smaller departments |
| NCPRD | 364 | Service District support, opinions, contract reviews, research |
| T S | 254 | Opinions, mediations, research, contract reviews |
| BCS | 133 | Opinions, contract reviews, employment issues |
| | 14,498 | Total Hours Billed |

V. Litigation

The majority of lawsuits filed against the county are handled in-house by our litigation team. Our office 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. Our office regularly appears in the state and federal courts in Oregon. Moreover, our office appears in Tax Court, the Land Use Board of Appeals (LUBA), Oregon Court of Appeals, Oregon Supreme Court, and the Court of Appeals for the Ninth Circuit. We will also appear before small claims court and administrative tribunals. Our attorneys regularly participate in labor arbitrations and mediations. Occasionally, the office will need to retain outside counsel to appear on behalf of the county in certain situations.

Litigation takes many forms and includes lawsuits alleging contract claims, personal injury, civil rights violations, medical malpractice, and employment discrimination. The following list identifies those active cases in 2012 with a medium to high degree of potential fiscal liability:

| CASE NAME | DESCRIPTION | AMOUNT PLEAD |
|------------------------------|--|--|
| Ajir v CC | Deputy's claim for UM benefits | \$200,000 plus attorney fees |
| Avery & Bunick v CC Assessor | Property owner's claim of negligent or willful misrepresentation, unjust enrichment, malicious prosecution, for alleged unlawful taxation. | \$27,000 |
| Baranovich | Minor's claim of excessive force for use of taser | \$150,000 plus attorney fees (Settled \$30,000) |

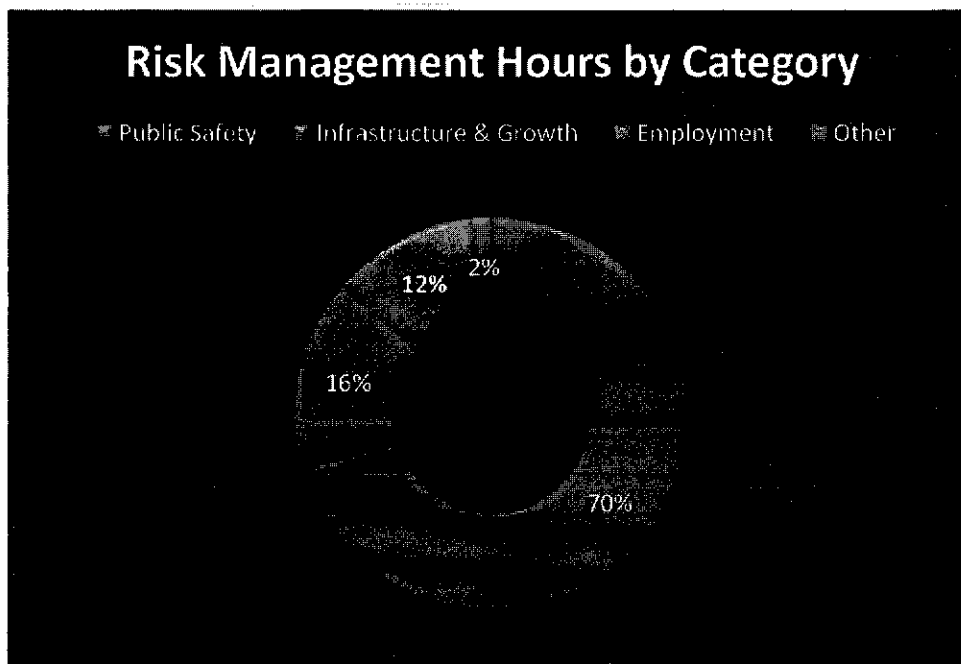
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|--------------------------------|--|----------------------------------|
| Barringer v CC | Inmate's claim for cruel & unusual punishment, and battery. | \$100,000 plus attorney fees |
| Baumgardner v CC | Inmate's claim of excessive force against corrections deputy | \$1.5 Million plus attorney fees |
| Bradford v CC, et al | Inmate's claim of excessive force against corrections deputy | \$8 Million |
| Chaffee v CC et al | Probationer's claim of sexual harassment against supervising deputy. | \$100,000 plus attorney fees |
| Dukes v NCPRD | Swimmer's personal injury claim alleging dangerous diving board | \$490,000 |
| Fossen v CC | False arrest & imprisonment | \$102,000 |
| Fournier v CC, et al | Tenant's claim of negligence against deputy | \$100,000 plus attorney fees |
| Gibson, Curtis v CC | Arrestee's claim of defamation, lack of due process, and excessive force | \$49,000 |
| Gibson, Jacob v CC | Arrestee's claim excessive force and personal injury during arrest | \$75,000 |
| Gitnes v CC | Craig's list lovers claim of false arrest, emotional distress, and negligence | \$250,000 plus attorney fees |
| Henninger v CC | Employment claim alleging wrongful termination and whistle blower | \$500,000 plus attorney fees |
| Higgins v CC | Motorist's claim of negligence against deputy | \$150,000 |
| Hoffmeister & Schulmerich v CC | Estate's claim of wrongful death and failure to train resulting from murder-suicide by Deputy Grahn. | \$8 Million |
| James, Neil v CC | Claim of breach of benefit plan for retired police officers | \$55,000 |
| Lydecker v CC | Dog owner's claim of harassment and abuse of power | \$50,000 |
| Mackey, Sherry | Employee's claim of age, FMLA, whistleblower and disability discrimination | (Settled \$37,500) |
| Matheny v CC | Probationer's claim of sexual harassment against supervising deputy. | \$1.5 Million plus attorney fees |
| Miller v CC | Motorist's claim against sheriff's office from high speed pursuit | \$533,300 |
| Nunn v Stefani | Employee's claim against County and financial services ING | \$240,000 |
| O'Connor, John P v CC | Arrestee's claim against sheriff's office for false arrest and negligence | \$100,000 plus attorney fees |
| O'Connor, Kip v CC et al | Contractor's due process claims against county planning and CPO | \$1 Million plus attorney fees |
| Ouma v CC | Inmate's claim of false arrest | \$100,000 plus attorney fees |
| Palmer v CC | Pro se inmate's claim of excessive force and illegal search at traffic stop | \$1,500,000 |

| | | |
|------------------------------|---|--|
| Pearson v CC | Former County Surveyor's claim of age discrimination and retaliation for termination | \$1,070,000 plus attorney fees |
| Pritchett v CC | Pro se inmate's claim of negligent medical care | \$50,000 |
| Selby v CC | Inmate's claim of excessive force, battery and emotional distress | \$13,700,000 |
| Streeter v Taser Intl and CC | Excessive force claim by mentally ill man tasered by deputy at Clackamas Town Center. | \$3 Million plus attorney fees (settled for \$120,000) |
| Thomas v CC | Motorist personal injury claim | \$241,485 |
| Wilson v CC and MC | Mother and daughter's claim against community corrections for damages caused by parolee | \$21,118,957 |

Litigation represents 22.5% of our direct service attorney and legal assistant hours. Staff dedicated over 3,266 hours defending the County. Naturally, these numbers vary slightly year to year. However, litigation consistently represents the bulk of attorney time.

VI. Litigation Hours by Risk Category

The following chart shows the percentage of direct service hours spent on litigation matters for general service areas. As in prior years, the largest percentage of attorney and legal assistant time spent on litigation involves the Sheriff's Office. The majority of the Sheriff's Office litigation involves corrections and jail operation claims including excessive force, unlawful arrest, discrimination, unlawful detention, inadequate medical care, and various other civil rights claims.



In addition to those cases that have been assigned to Risk Management, Counsel devoted an additional 2,243 hours representing the County in litigation and hearings related to non-risk management cases, such as matters arising out of County operations and general legal duties. These cases include tax and assessment claims, land use matters, dog services, special districts, labor and employment, building and zoning code enforcement actions, bankruptcies, Sheriff's Office hand gun permitting and civil forfeiture actions.

The percentages and types of non-risk management cases requiring legal representation by Counsel during the year are set forth below.



VII. Evaluation and Processing of Claims

Clackamas County is a self-insured public entity with a \$1 million retainage. The County has excess liability insurance coverage from \$1 million to \$7 million, and self insured beyond \$7 million.

New liability claims, usually in the form of a tort claim notice, are evaluated upon intake. The Office of County Counsel works closely with the County's Risk Management Department, and the county's third-party administrator, Farrell and Associates Insurance Claims Services, to review and develop strategies during the evaluation, pursue prompt resolutions, or undertake additional investigation. The Office of County Counsel will also work directly with the affected department in an early effort to partner in the assessment and resolution of claims. This process has demonstrated to be a valuable effort in implementing risk avoidance procedures.

During the 2012 calendar year, Clackamas County received 133 tort claims, an increase from the 2011 total of 108 claims. A tort claim is a notice of intent to bring a lawsuit for damages against the County or its employees. The number of tort claims received typically exceeds the number of lawsuits filed. During 2012, the Office of County Counsel defended 35 new lawsuits.

Presently, the Office of County Counsel is handling an active case load of 74 risk and non-risk cases, 28 Interagency Task Force civil forfeitures, 41 personnel matters, and 5 handgun license issues.

VIII. Contract Review and Approval

The Office of County Counsel reviews draft contracts for all county departments. These draft contracts might be in the form of IGAs, MOUs, or contracts for goods and/or services between the County Department and outside agencies or companies. The attorney reviews include reviewing the documents for proper language, appropriateness, legality, and form. County contracts can range from one page to hundreds of pages.

The Office of County Counsel reviewed 520 contracts, MOUs, IGAs, Letters of Understanding, and other general contract related documents during 2012. Presently, Technology Services, County Counsel, and H3S are working on a pilot program to allow for contract distribution, review, approval, and execution entirely electronically, without the need for multiple paper copies.

IX. County Client Trainings

The Office of County Counsel provides in-house training to county employees and elected officials on a variety of topics, including Public Records Law, Public Meetings Law, Ethics, Supervising Union Represented Employees, Campaigning Issues, Mandatory Child Abuse Reporting, Use of Force Training, and Report Writing.

X. Accomplishments and Resolutions

The Office of County Counsel advises and counsels the County's 24 departments, which employ more than 2100 full and part-time employees. The office provides a wide range of legal services in a timely, efficient, and effective manner.

Our litigation team is very successful in obtaining dismissals and favorable resolutions of complex litigation. The majority of cases are dismissed before trial through motion practice. However, some cases require a trial and our office will not hesitate to take a case to trial. In 2012, the office had 6 jury trials in Federal Court and one jury trial in state court. Of those trials, 5 resulted in verdicts in favor of the county, and the remaining two resulted in hung juries. Typically the claims against the county are in the hundreds of thousands of dollars, and an adverse verdict in any of these cases could

easily reach \$250,000 in damages and an equivalent amount for the opposing party's attorney fees.

We also successfully defended the county assessor in 6 trials in the tax court. In addition to a successful trial record, the office handled 8 labor arbitrations, 8 petitions for writs of habeas corpus, 4 writs of mandamus, 3 declaratory judgment action, and 20 civil forfeiture cases.

Over the past several years we have witnessed increases in the costs associated with tort litigation and settlement. In 2012, the county paid a total of \$314,931.85 in settlements, attorney fees, and for expert services and other litigation expenses. While \$315,000 is a significant amount, Counsel's active pursuit of cases has resulted in the avoidance of millions of dollars in costs to the County by securing positive judgments, dismissals, and substantial settlement reductions.

XI. County Counsel Cost Rates

The Office of County Counsel continues to provide quality and affordable legal services to its County clients. Currently County Counsel attorneys and Legal Assistants bill their time to department clients at \$124.00 and \$66.00 per hour respectively. Not all departments/divisions reimburse Counsel for their time. Most General Fund departments do not reimburse for hours dedicated to their department for legal service. Special billing rates have been established for WES and DTD Development Agency. Those departments pay a portion of salary and benefits for two attorneys based on hours directly charged to those departments. Another attorney bills the Sheriff's Office at a special agreed upon rate for any hours worked for that department.

Additionally, another income source is Civil Forfeiture work being done by an attorney and legal assistant for local law enforcement agencies. Those agencies include the Police Departments of the cities of Canby, Oregon City, and West Linn, and the Yamhill County Sheriff's Office.

The average fully-loaded hourly cost for county counsel is \$88.00. For comparison, the most recent Oregon State Bar Attorney Salary survey states that a civil litigator in private practice in the Portland area bills an average rate of \$250-\$274 per hour. With a billable hourly rate of \$124.00 for 2012, County Counsel continues to provide quality legal services at a significantly lower rate than those charged by private sector law firms.

XII. Conclusion

The Office of County Counsel tracks time entries and tasks in an effort to quantify the hours of legal services, the nature of the services, and the clients that receive our services. The data allows us to more efficiently manage, monitor, and deploy the county's legal resources. We continue to work to improve the accuracy of our data.

Our challenge is to provide efficient and effective legal services while meeting the demands of our County clients and defending the County in increasingly complex litigation. We continue to work closely with all county clients in an effort to establish and maintain efficiencies and anticipate client needs. The Office of County Counsel works 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 and respond to any such issues.

We believe that we best serve the County's legal needs by providing sound legal advice to decrease claims, ensure appropriate contract language to reduce liability, and remain strong legal advocates in our role as litigators. Our mission is to provide quality legal services and representation to all County departments, elected officials and service districts, while being responsible stewards of taxpayer resources. We believe we are performing that mission well.