

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 7/11/2017 **Approx Start Time:** 10:30 a.m. **Approx Length:** 30 Min

Presentation Title: County Counsel Annual Report

Department: County Counsel

Presenters: Stephen Madkour, Kathleen Rastetter, Chris Storey

Other Invitees: County Counsel Staff

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

No formal action is requested. Information only to introduce the Board and general public to the work the Office of County Counsel performs, including updates from the last year.

EXECUTIVE SUMMARY:

The Office of County Counsel began the Performance Clackamas program in the fall of 2015 to align its strategic plan with the goals identified by the Board of County Commissioners for the entire organization. Through that process, we identified the following mission statement:

The Mission of the County Counsel is to provide comprehensive legal services easily accessible to Clackamas County (and its special districts) through its elected officials and departments so that they can effectively implement their policy objectives, achieve success for their operations, and minimize risk and adverse results.

Since creating our strategic plan, we have worked to clearly identify the goals of our office and find ways to measure our progress towards those goals. We have aligned our budget in accordance with the Performance Clackamas County model and our three lines of business: County Operations Legal Support, Litigation and Labor, and Office of the County Counsel. In generally describing our scope of practice, it is more easily understood by breaking it out into the nature of the work, so the attached annual report categorizes work into three main areas: Advisory, Litigation, and Transactional.

The 2017 annual report is an attempt to introduce the work we do to the Board and the general public, particularly in regard to our progress in the last year. We hope the Board will find this overview helpful.

FINANCIAL IMPLICATIONS (current year and ongoing):

None.

STRATEGIC PLAN ALIGNMENT

This proposal aligns with the "Build Public Trust through Good Government" strategic plan goals of Clackamas County, by ensuring that the resources entrusted to County Counsel are used wisely and promote the overall effectiveness of Clackamas County and its components units.

LEGAL/POLICY REQUIREMENTS:

None.

PUBLIC/GOVERNMENTAL PARTICIPATION:

County Counsel is a support service to Clackamas County as an entity, and its component legal entities. The Board of County Commissioners, as a group and not individually, are the elected representatives of that entity and the guiding force with respect to the representation of the entity.

OPTIONS:

Informational only.

RECOMMENDATION:

Informational only.

ATTACHMENTS:

Counsel Annual Report

SUBMITTED BY:

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



For information on this issue or copies of attachments, please contact Mandy Gordon @ 503-655-8619

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Annual Report 2017

Presented to the Board of County Commissioners on July 11, 2017



Back row, left to right: Nathan Boderman, Alexander Gordon, Jeffrey Munns, Chris Storey, Stephen Madkour, Shawn Lillegren, Anja Mundy, Christina Thacker, Scott Ciecko
Front row, left to right: Kay Peterson, Kathleen Rastetter, Mandy Gordon, Amanda Keller

I. **Introduction**

The Mission of the County Counsel is to provide comprehensive legal services easily accessible to Clackamas County (and its special districts) through its elected officials and departments so that they can effectively implement their policy objectives, achieve success for their operations, and minimize risk and adverse results.

II. **The Office of Clackamas County Counsel**

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

In doing so, the Board of County Commissioners as a collective group on behalf of the County as an entity is the client for the attorneys of the Office and the departments, divisions and components are agents of our client.

The Office of County Counsel consists of 10 full-time attorneys, 2 three-quarter time legal assistants and 1 full-time administrative assistant, for an equivalent of 12.5 full time positions. The Office's budget for fiscal year 2016-2017 was \$2,450,929.

Clackamas County has boutique law firm resources available at extraordinarily affordable rates. In-house legal resources enables the County to protect its interests on the merits rather than resolving disputes based upon the threatened cost of defense, to engage in complex transactions without cost being a barrier, and to interact confidently with the State and Federal Governments regarding regulatory matters.

III. **Practice Areas**

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

- Board of County Commissioners – The BCC as a body is the client of County Counsel as the elected decision-makers for Clackamas County and her daughter special districts. Duties include supporting all BCC Business meetings, policy and executive sessions, and providing advice and opinions on matters of public concern.
- Assessor/Tax - Represent the County in matters before the Tax Court, Department of Revenue hearings, U.S. Bankruptcy Court proceedings where property taxes are owed, and tax foreclosure and ejectment proceedings.
- Boundary Issues - Provide legal advice and guidance regarding the Board of County Commissioners' role as the boundary commission of Clackamas County, including formations, annexations, withdrawals, or other proposed changes
- Civil Forfeiture - Serve as Counsel for the Sheriff's Office when they are the seizing agency. Provide legal services to Clackamas County cities under contract with their policing agencies.
- Condemnation - Represent the County, Service Districts and Development Agency in condemnation claims.
- Code Enforcement - Prosecute actions before hearings officer and in Circuit Court for enforcement of Zoning Ordinance, Solid Waste Ordinance, Animal Control and other ordinances.
- Constitutional Law and Civil Rights Litigation- Defend against state and federal court suits alleging violation of civil rights, often arising from the County's obligation to provide a jail.
- County Administration - Advise County Administration on internal and external operations.
- 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 real property acquisition and development, and urban renewal law.

- County Parks and Forest – Provide legal advice regarding contracts and legal issues involving the park system and county forest land.
- County Service Districts - Provide general legal services for the eight county service districts, including matters relating to contracting, regulatory obligations, service arrangements, special purpose budgeting, assessment districts, and other issues relating to county service districts.
- Economic Development - Provide legal support to economic development efforts, including licensure, permitting, tourism promotion, site identification, and incentives.
- Elections - Represent County Clerk in elections and public records law, and recording matters.
- 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 and District Courts, arbitration proceedings and labor negotiations, provide advice and support for best practices regarding employment policies, discipline and grievance matters.
- Environmental Law - Regulatory counsel for WES and other County departments with respect to Clean Water Act, Clean Air Act, CERCLA, and other applicable environmental laws.
- Finance - Advise county audit committee, review loan documents and financing agreements, policies, and matters of public concern.
- Health, Housing, and Human Services – Provide contract and grant review, public records advice as related to patient privacy and confidentiality rights in accordance with HIPPA, 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.
- 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.
- Negotiations - County Counsel often serves as the lead negotiator for County teams in the terms and conditions of a business arrangement or the resolution of disputes.

- Public Records, Public Meetings and Ethics - Advise elected officials and County staff concerning state law requirements for public meetings, public records, ethics, electioneering, and county governance.
- Real Property and Real Estate Transactions - Advise and assist county departments and officials in all aspects of real property transactions, leases and other agreements, represent Property Resources in sale and ejectment actions for county-owned property.
- Staff/Training - Train County staff on a variety of legal issues such as statutory duties, employment matters, corrections training, civil rights matters, and risk management issues.
- Tort Litigation - Defend the County in state and federal courts against actions for personal injury or property damage, most commonly related to roads, transportation, law enforcement, and custodial operations.

With respect to the second broad category, Counsel advice, County Counsel's scope of practice is diverse. Services ranging from frequent requests for a quick opinion over the telephone or email, to the drafting of detailed and complex opinions, to lengthy and detailed County ordinances are a regular part of the practice. The Office of County Counsel responds to hundreds of opinion requests each year. The County Counsel is responsible for the County Code and, in conjunction with the Board, County Administration and DTD Planning, is in the middle of a multi-year process of reviewing and updating the Code to ensure best practices and eliminating unnecessary provisions.

Other major functions include attending all meetings and hearings of the Board of County Commissioners, whether it is sitting as the County Commission or the governing body of the various service districts. Counsel staff aid the various boards and

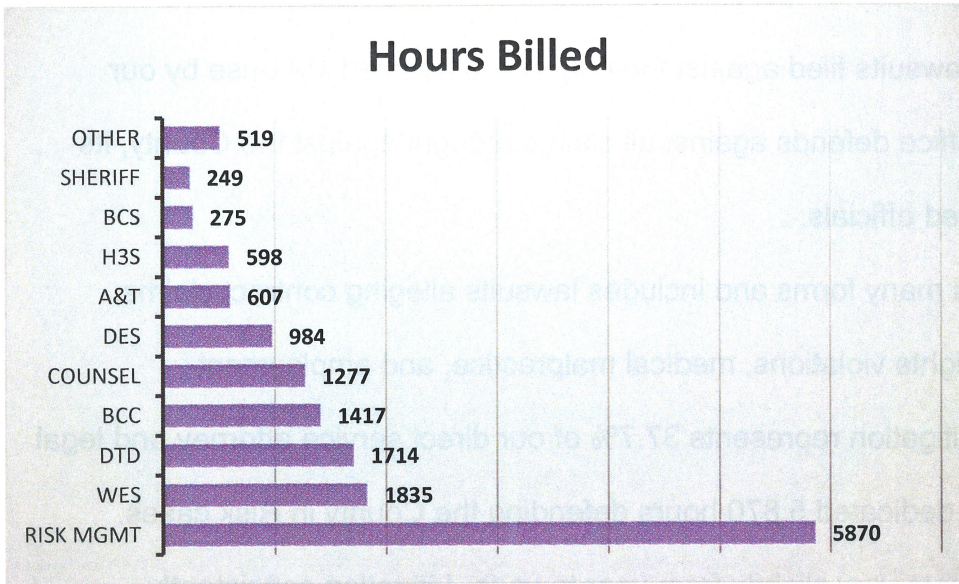
commissions with drafting orders, resolutions, ordinances, contracts, intergovernmental agreements, and reviewing contracts and other legal documents.

IV. Our Clients – Service Hours by County Department

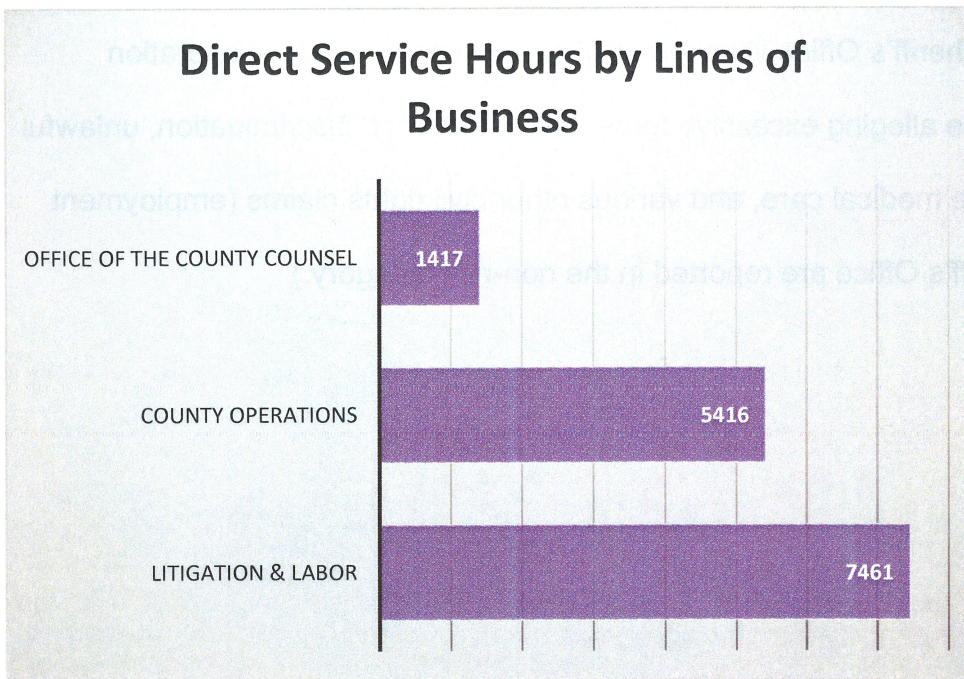
A. Direct Services.

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 15,571 hours (figures are based on calendar year 2016 unless otherwise noted), of which 14,294 hours, or 92% of County Counsel hours were dedicated to the direct service of County departments. Our data allows us to identify the client base served by the Office of County Counsel. The following chart indicates that the most hours were devoted to Risk Litigation, at 37.7% of the hours, up from 25.7% in 2013 (the last reported period.)



“Other” in this chart includes smaller departments or those with less need for legal services, such as Finance, C-COM, Disaster Management, TS, and PGA. In accordance with our Performance Clackamas strategic plan, Counsel is divided into three lines of business: County Operations Legal Support, Litigation and Labor, and Office of the County Counsel. Below is a chart breaking up our direct service hours by lines of business.

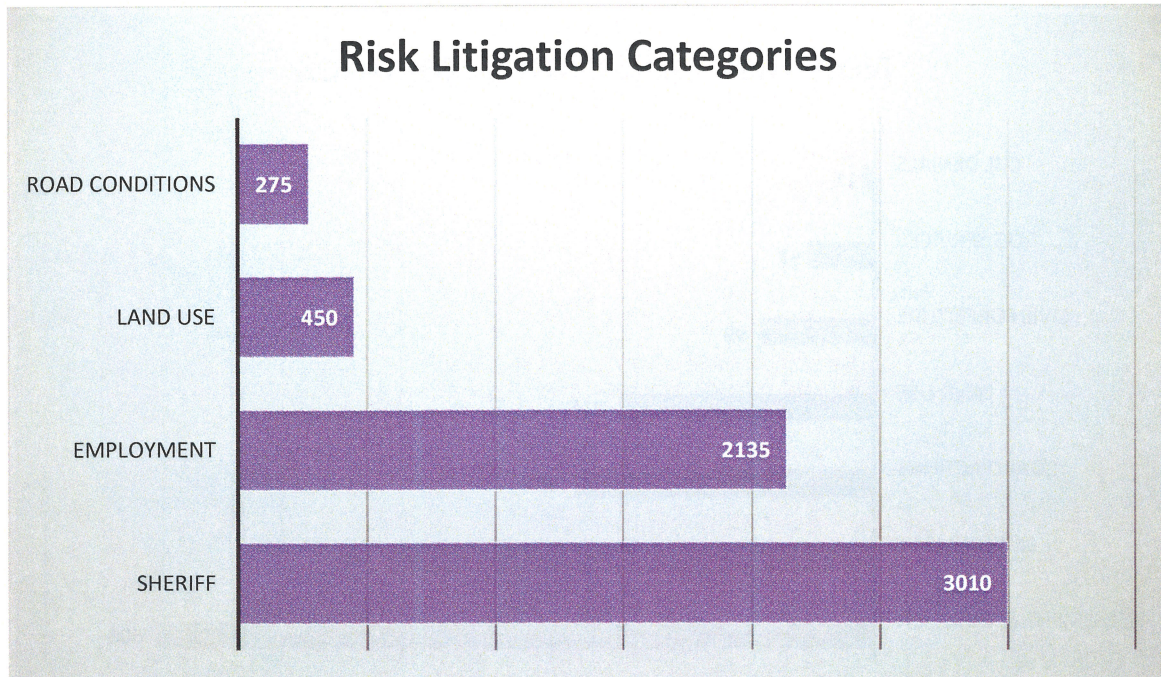


B. Litigation.

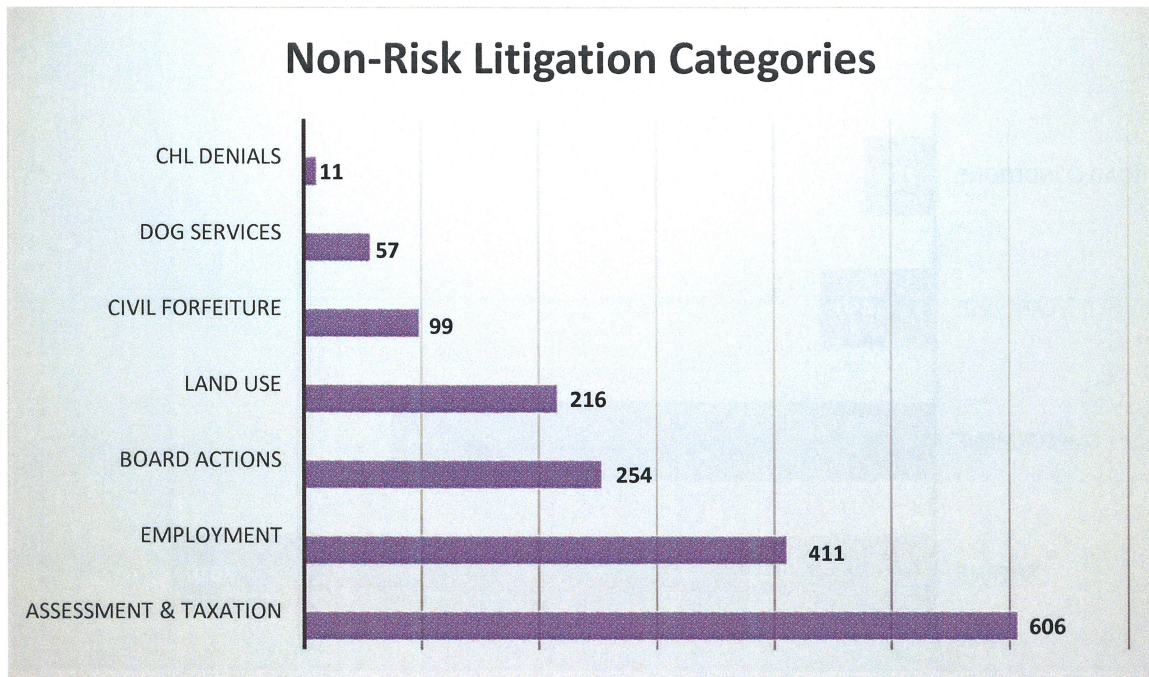
The majority of lawsuits filed against the county are handled in-house by our litigation team. Our office defends against all claims brought against the County, its employees, and elected officials.

Litigation takes many forms and includes lawsuits alleging contract claims, personal injury, civil rights violations, medical malpractice, and employment discrimination. Risk Litigation represents 37.7% of our direct service attorney and legal assistant hours. Staff dedicated 5,870 hours defending the County in Risk cases. Naturally, these numbers vary slightly from year to year. Litigation consistently represents the bulk of attorney time.

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



In addition to those cases that have been assigned to Risk Management, Counsel devoted an additional 1,654 hours (10.6% of total billed time) in 2016 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 board actions, tax and assessment claims, land use matters, special districts, labor and employment, building and zoning code enforcement actions, bankruptcies, election issues, concealed handgun denials, Dog Services disputes, and civil forfeiture actions.



V. 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 \$9 million dollars, and is self-insured beyond \$9 million dollars.

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 Division, and the County's third-party administrator, Vericclaim, to review and develop strategies during the evaluation, pursue prompt resolutions, or undertake additional investigation. The Office of County Counsel also works 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 2016 calendar year, Clackamas County received 101 tort claim notices and accident reports. 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. In 2016, 24 new lawsuits were filed in which a claim for damages was brought against the county.

VI. 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 review responsibilities include reviewing the documents for proper language, appropriateness, legality, and form, as well as compliance with public contracting laws. County contracts can range from one page to hundreds of pages. The Office of County Counsel formally reviewed approximately 950 contracts, MOUs, IGAs, Letters of Understanding, and other general contract-related documents in 2016, and was asked to opine informally on many more.

VII. County Client Trainings

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

VIII. Accomplishments

The Office of County Counsel advises and counsels the County's 24 departments, which employ more than 2,000 full and part-time employees. The office provides a wide range of legal services in a timely, efficient, and effective manner.

County Counsel moved to new offices on the second floor which promotes better collaboration among the attorneys, and provides the room and resources to grow as needed to better serve the County. In particular, it allowed two attorneys who were housed elsewhere in the County to join in with their colleagues, and provided an office for an attorney who was housed in Counsel's library space.

Counsel operates a volunteer law clerk program which trains law students in the practical aspects of practicing law and provides them with opportunities to engage in public service and experience local governance. This has been a very successful program, which included a law student from China studying in Oregon. Counsel currently has two law clerks for the summer months and will typically support and mentor three to four clerks per year.

Counsel has also worked to update the county's policy for the Health Insurance Portability and Accountability Act (HIPAA) through a collaboration with an attorney-expert from Multnomah County. These efforts will ensure the confidentiality of protected health information for our citizens.

IX. 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 services. Rather, the billing is used as a Performance Clackamas metric measure of resource demand and to track effort. Separately budgeted component units, such as service districts, reimburse Counsel's general fund-supported budget for legal support at the above rate.

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, Milwaukie, Oregon City, Lake Oswego and West Linn.

The average fully-loaded hourly cost for county counsel attorneys as budgeted for fiscal year 2017-2018 is \$96.79. For comparison, the most recent Oregon State Bar Attorney Salary survey (done in 2012) shows a civil litigator in private practice in the Portland area bills an average rate of \$242.00 per hour, which includes solo practitioners. With a billable hourly rate of \$124.00, County Counsel continues to provide quality legal services at a law firm level at a significantly lower rate than those charged by private sector attorneys or law firms.

X. County Counsel Staff

Stephen L. Madkour, County Counsel: BA Johnson State College, JD Thomas M. Cooley Law School. Stephen has been practicing law since 1994 and has served as County Counsel since 2011. He is the primary advisor to the Board of County Commissioners and County Administrator, and oversees all staff work.

Kathleen Rastetter, Legal Counsel, Senior: BS Purdue University, JD Rutgers University. Kathleen has been practicing law since 1990 and has worked for the

County since 2004. A trial attorney, she advises Assessment & Taxation, H3S, Business and Community Services, and the Treasurer, and handles litigation and transactional matters county-wide.

Chris Storey, Legal Counsel, Senior: BS Willamette University, JD New York University. Chris has practiced law since 1999 and has worked for the County since 2006. He leads the transactional team and advises BCS, Disaster Management, Finance, H3S, and Technology Services departments, service districts and boundary items, and is generally responsible for complex transactions county-wide.

Scott C. Ciecko, Legal Counsel, Senior: BA University of Colorado, JD Willamette University. Scott has been practicing law since 2004 and has worked for the County since 2008. A trial attorney, he advises the Sheriff's Office, and handles litigation and transactional matters county-wide.

Alexander Gordon, Legal Counsel, Senior: BA Tufts University, JD University of Virginia. Alex has been practicing law since 1982 and has worked for the County since 2011. He serves as a trial attorney in diverse Risk Management litigation county-wide.

Amanda Keller, Legal Counsel 2: BA University of Oregon, MBA & JD Willamette University. Amanda has been practicing since 2010 and has worked for the County since 2013. As part of our transactional team, she is lead advisor to Water Environment Services.

Nathan K. Boderman, Legal Counsel 2: BS Cascade College, JD Willamette University. Nate has been practicing law since 2007 and has worked for the

County since 2013. He advises the Department of Transportation and Development on transactional matters and represents the County in land use cases.

Christina Thacker, Legal Counsel, Senior: BA Wake Forest University, JD University of Michigan. Christina has been practicing law since 2001 and has worked for the County since 2013. She serves as lead advisor to the Human Resources department and handles employment issues county-wide.

Shawn Lillegren, Legal Counsel, Senior: BA Pacific University, JD University of the Pacific. Shawn has been practicing law since 2003 and has worked for the County since February of 2016. He serves as a trial attorney in diverse Risk Management litigation county-wide.

Jeffrey D. Munns, Legal Counsel, Senior: BA University of Minnesota-Duluth, JD Lewis and Clark College. Jeff has been practicing law since 1998 and has worked for the County since July of 2016. He handles transactional and litigation matters county-wide.

Anja Mundy, Legal Assistant: BA University of Oregon. Anja has worked for the County since 2001. She supports our attorneys in both transactional and litigation matters, including civil forfeiture, code enforcement, and land use.

Kay Peterson, Legal Assistant: BA University of Illinois, MA Northern Illinois University, Certificate in Paralegal Studies University of San Diego. Kay has worked for the County since 2012. She supports our attorneys with diverse Risk Management litigation and trial preparation.

Mandy Gordon, Administrative Assistant: BA Portland State University, MA Western Oregon University. Mandy has worked for the County since 2014. She manages all office administrative tasks and serves as backup to our legal assistants.

XI. 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 and timely legal advice to decrease claims, ensure appropriate contract language to reduce liability, and remain strong legal advocates in our roles both as advisors and litigators. As problem-solvers, our attorneys work to help the County accomplish its objectives in a legal and effective manner. Our mission is to provide comprehensive legal services easily accessible to Clackamas County (and its special districts) through its elected officials and departments so that they can effectively implement their policy objectives,

achieve success for their operations, and minimize risk and adverse results. We believe we are performing that mission well, and thank the Board for their continued support for our office.

