



OFFICE OF
COUNTY COUNSEL
2019-20 Annual Report

Stephen L. Madkour, County Counsel



I. Introduction

The Mission of the Office of County Counsel is to provide comprehensive legal services easily accessible to Clackamas County, and its elected officials, departments and special districts, so they can effectively implement their policy objectives, achieve success for their operations, and minimize risk and adverse results. This report covers legal services provided for the 2019-20 fiscal year.

II. The Office of County Counsel

The Office of County Counsel was formed pursuant to ORS 203.145. The position and the Office of County Counsel were established by the Board of County Commissioners through the Board's adoption of Chapter 2.12 of the Clackamas County Code, which governs the work of 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. The office provides daily general counsel; transactional and advisory legal services countywide; and represents the County, its officials, employees, and agents in federal, state, and tax courts, as well as labor arbitrations, land use, and administrative hearings. The office retains outside counsel only for selected areas requiring specialized expertise, such as workers compensation matters, and bond counsel.

The Office of County Counsel is comprised of ten full-time attorneys, one three-quarter time paralegal, one full-time paralegal, and one full-time administrative specialist, for an equivalent of 12.75 full-time positions. The Office also recruits volunteer law students and provides them with an introduction to public service and government law. Over the course of the last year, the County benefitted greatly by the legal services provided by law student interns Emily Peterson, Caleb Huegel, Jennifer Barrett, and Marley Grenafege.



The Office of County Counsel's budget for fiscal year 2019-20 was \$2,941,273. The attorney bios are available on the County Counsel website, as well as the organizational chart, which identifies the attorney assignments for areas of responsibility throughout the County. County Counsel offers Clackamas County the legal resources and

acumen of a boutique law firm, but at extraordinarily affordable rates. The average fully loaded hourly cost for County Counsel attorneys, as budgeted for fiscal year 2019-20, was \$104.40. The billable hourly rate of County Counsel's attorneys is \$124.00. When compared to the average Oregon State Bar reported hourly rate of \$286.00 per hour in private practice, it is clear that the Office of County Counsel provides quality legal services at significantly lower rates.

The affordability of these in-house legal services allow the County to evaluate and defend claims against it 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. Lines of Business

The Office of County Counsel has aligned its operations, consistent with the Performance Clackamas Strategic Plan, into three lines of business: (1) Legal Support; (2) Litigation & Labor; and (3) Office of County Counsel. Attorneys and staff are identified under the line of business with which they are primarily associated. It should be noted, however, that there is substantial crossover of personnel between lines of business, which allows the Office of County Counsel to direct resources as needed and take advantage of the areas of expertise of the individual members of the office.

A. Legal Support

The Legal Support line of business consists of three programs: Advisory, Regulatory, and Transactional. These programs provide technical legal support County-wide on matters as varied as municipal taxation, complex real estate transactions and

property negotiations, contract review, drafting, and interpretation, public procurement and contracting, zoning and land use planning, and state and federal regulatory compliance.

The Performance Metrics for its Strategic Business Plan call for timelines for County Counsel to respond to inquiries and to review contract documents. The office began compiling the data necessary to achieve those metrics in early 2020. Some of the strategic results, however, have been quantified.

- **Results:** Counsel provided 17 formal legal opinions, and provided 3,117 hours of advice to all departments of the County.
- **Results:** Counsel provided 12 strategies and consultations to all departments of the County.
- **Results:** In fiscal year 2019-20, the Office of County Counsel reviewed 726 contracts and agreements.

The attorneys serving this program are County Counsel Stephen Madkour, Nate Boderman, Amanda Keller, Andrew Naylor and Kathleen Rastetter. Anja Mundy provides part-time paralegal assistance.

B. The Litigation, Labor and Employment Program

The litigation team represents the County in state, federal, bankruptcy, and tax courts, as well as providing advice to assigned departments to proactively minimize risk and prevent litigation. The attorneys also handle appeals to state and federal appellate courts. The team endeavors to resolve matters at the lowest cost level possible to preserve County resources while diligently and competently representing the County, its elected officials, and employees.

The Office of County Counsel, in conjunction with Risk Management, strives to be responsible stewards of the public's dollars. In furtherance of that objective and as set forth in the Office's strategic plan, the Office of County Counsel routinely undertakes post-settlement or post-judgment case evaluations and de-briefing with affected departments and its directors, supervisors, and managers to determine relevant corrective action and systemic reforms.

The litigation, labor and employment program consumes the majority of resources of the Office. The attorneys serving this program include County Counsel, Scott Ciecko, Shawn Lillegren, Jeffrey Munns, Sarah Foreman, Kathleen Rastetter, and Andrew Narus. Silke Brunning and Anja Mundy provide paralegal assistance to the litigators.

In addition to representing the County in lawsuits, the Office of County Counsel evaluates new liability claims, usually in the form of a tort claim notice, on intake. The attorneys work closely with the County's Risk Management Division, and the County's third-party administrator, Sedgwick, to review and develop strategies for minimizing risk, pursue prompt resolutions, or undertake additional investigation. The Office of County Counsel manages its cases by working closely with the affected departments throughout the case and in consultation with Risk Management, County Administration, and the Board of County Commissioners. This process has proven to be a valuable effort in implementing risk avoidance procedures.

In fiscal year 2019-20, Clackamas County received 125 tort claim notices and accident reports; not all notices of tort claims result in a lawsuit filed against the County.

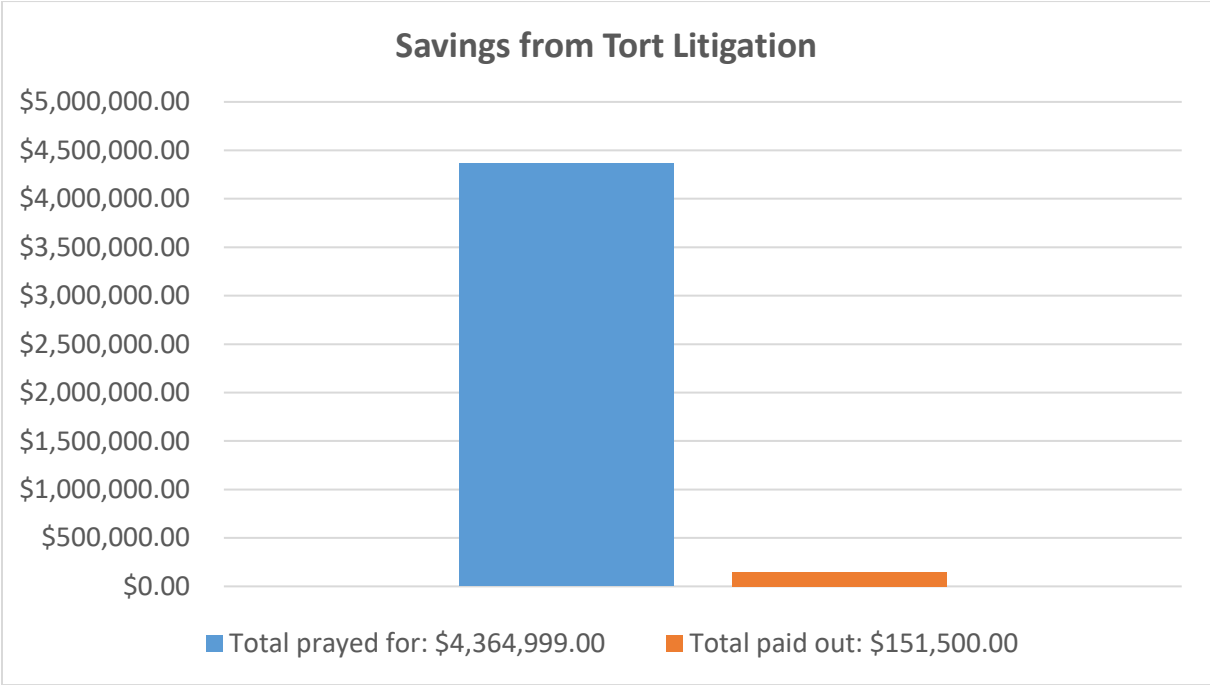
In 2019, 14 new lawsuits were filed in which a claim for damages was brought against the County.

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.

The Litigation Performance Metrics are:

- Percentage of matters resolved through early resolution.
 - **Results:** Over 90% of cases are resolved before the commencement of trial.

For tort litigation, the total paid out for resolution was far less than the amount of money sought by plaintiffs in their complaints.



The litigation, labor and employment attorney, provides advice and representation on labor and employment matters, including before the Bureau of Labor and Industries and the Employee Relations Board, and assists the Department of Human Resources with employee relations, including grievances and disciplinary

matters, as well as compliance with state and federal employment laws. The attorneys serving this program are County Counsel and Andrew Narus.

The Labor and Employment Performance Metrics are:

- Favorable outcomes for cases, as evidenced by:
 - Percentage of grievance arbitrations found in the County's favor.
 - **Results:** 100% of the grievance arbitrations were found in the County's favor.
- Number of trainings on emerging labor and employment issues.
 - **Results:** EMT was trained on lessons learned from labor grievance arbitrations, and Andrew Narus presented changes in employment laws for 2020 at a Quarterly Management Meeting.

C. The Office of County Counsel Program

The Office of County Counsel Program includes County Counsel, and Echo Madrid, Administrative Assistant. However, the entire office will provide advice and services within this program area. This line of business provides general legal advice to the Board of County Commissioners, other county elected officials, and department directors. Areas of practice include all aspects of general municipal law, including general governance, public meetings, public records, and elections. Ms. Madrid assists with the budget, all accounting and Performance Clackamas tracking functions, and serves as backup to the paralegals.

This program's Performance Metrics are:

- The Board of County Commissioners and County Administration receive information about County Counsel's key result performance measures on a quarterly basis.

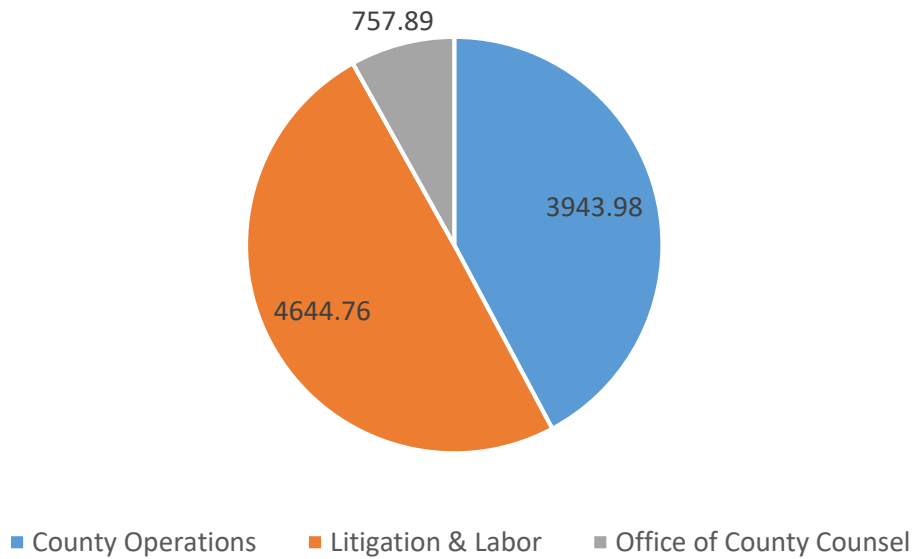
- Percentage of Strategic and Operational Results for the Office of County Counsel achieved.

- **Results:** The Office provided county-wide training on contract signing authority, and on Oregon’s public records law. In addition, counsel provided trainings on HIPAA for the District Attorneys, on public meetings with the Benefits Review Committee, the Economic Development Commission, NCPRD, and the Deferred Compensation Committee; on public records to Human Resources and Dog Services. Lastly, Counsel arranged for state ethics training by the state ethics commission, and political activity training with the Secretary of State’s Office.
- **Results:** Numerous formal and informal opinions were provided throughout the year to the County Administrator, the BCC, other elected officials, and the various departments.
 - 80% of County Counsel staff will attend educational programs on emerging legal issues. (Strategic Result #2)
- **Results:** All staff attended educational programs on a wide range of legal issues. On average, each attorney received 17 hours of continuing legal education.

IV. Hours for Lines of Business

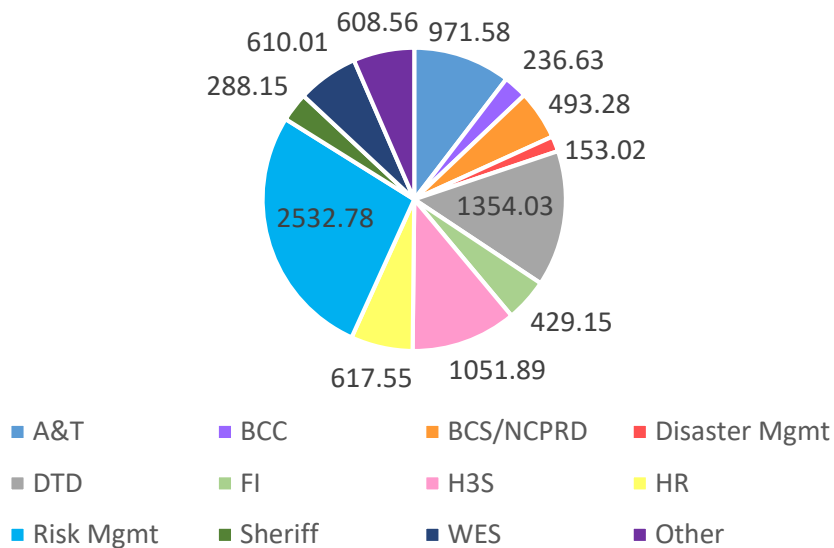
The hours devoted to the lines of business are set out below:

Total hours by Lines of Business



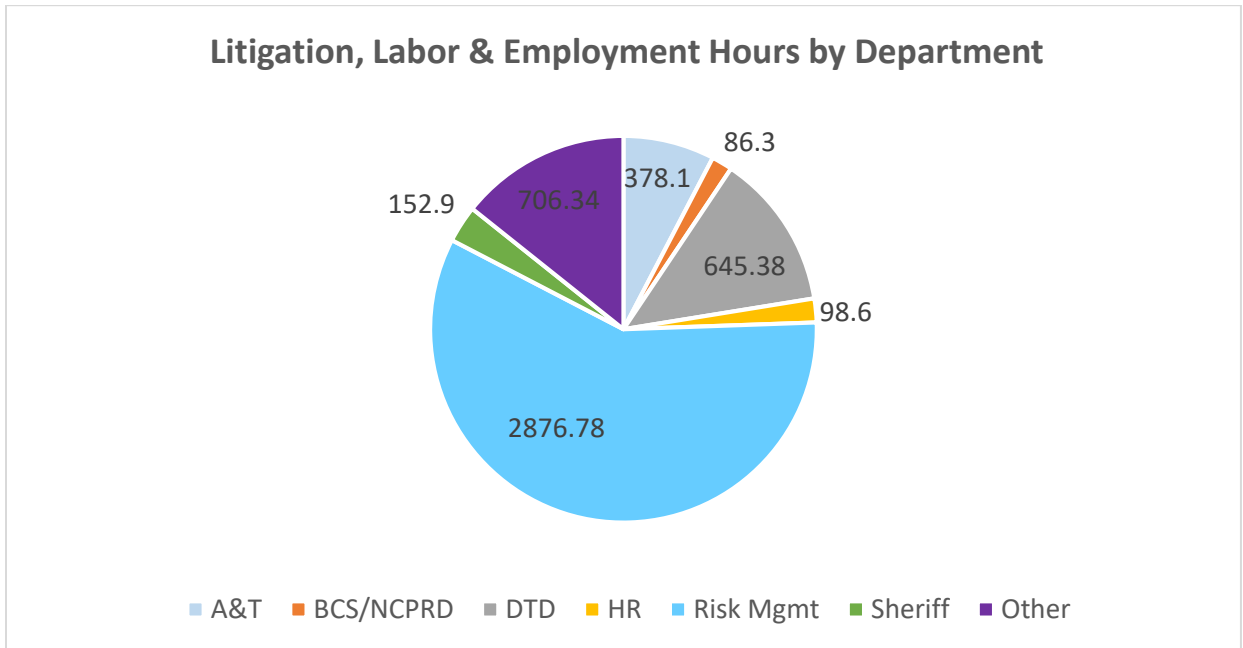
Across all three lines of business, County Counsel’s overall work is divided by department as follows:

Total Hours by Department

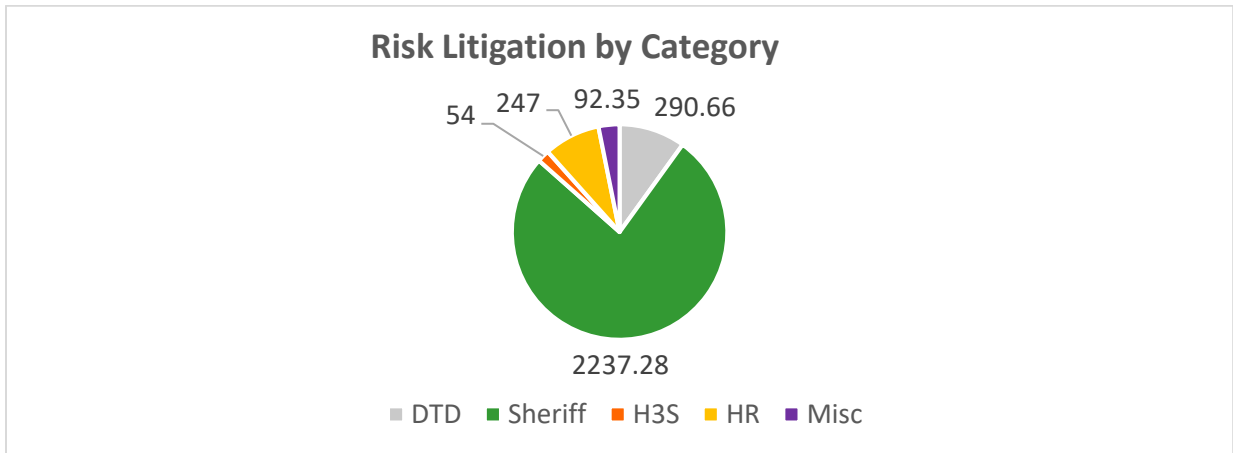


The hours devoted to the Litigation, Labor & Employment program are 50% of

the hours billed by the office. These hours are further broken down by department as follows:



Risk Management litigation¹ accounts for the majority of litigation filed against the County. In 2019, staff hours on risk management matters generally fell into the following four categories:



¹ Risk Management refers to cases assigned to the Risk Management Fund, from which litigation costs including settlement are paid.

Non-risk management litigation comprised 43% of the hours. The vast majority of these hours relate to assessment/taxation and general human resources matters.

V. County Counsel Accomplishments for 2019-20

The Office of County Counsel was directly involved and contributed to major accomplishments achieved by Clackamas County. The following highlights some of the office's accomplishments as well as our response to Covid-19.

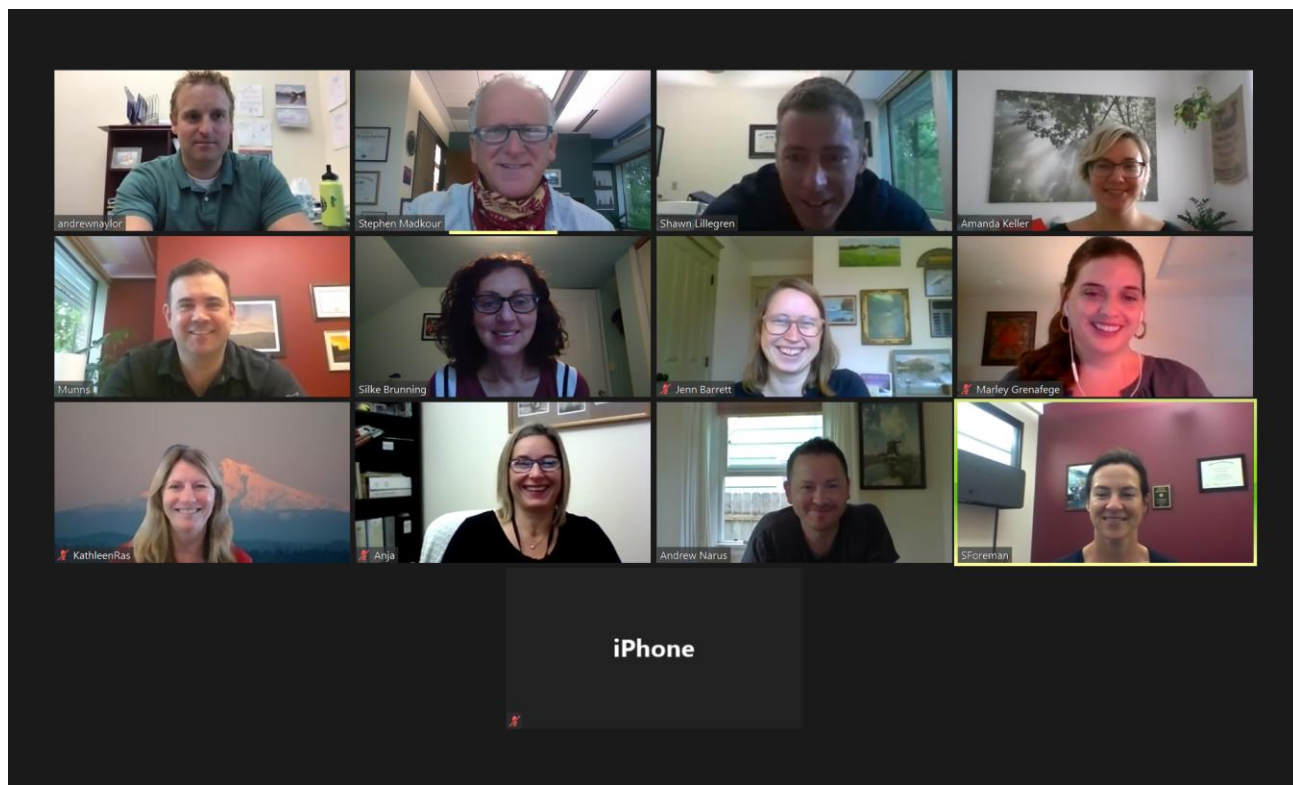
As discussed previously, the office handles the majority of the County's and special district's litigation. The office continues to maintain a successful track record in the manner in which it approaches litigation. This past year we have had a string of successes both pre-trial and at trial.

On the transactional front, County Counsel has played an integral role in a number of significant real estate transactions involving the County, or County-related entities. Counsel deftly navigated the transfer of the County's Parrott Creek property to a non-profit, negotiations over the transfer of the Blue Heron lagoon property, acquisition and construction towards a new transportation maintenance facility, the final disposition of the Clackamas Industrial parcels, funding agreements with the State to provide matching funding for the Courthouse Replacement Project, and the adoption of a county-wide vehicle registration fee.

Lastly, internally, in 2019-20, the Office of County Counsel had two more members enrolled in the County's Leadership Academy, completed its Strategic Plan, and had one of the attorneys serve as coordinator for Performance Clackamas assisting each department with their strategic business plans.

VI. County Counsel's Response to the Covid-19 Pandemic

In March the Covid-19 pandemic caused the closure of County facilities to the public and to most employees. In response to that decision, the Office of County Counsel immediately implemented its Continuity of Operations (COOP) Plan and transitioned all attorneys and staff to allow working remotely. Although Covid-19 affected where we did our work, it did not impair the quality and timeliness of the office's services. With the swift and much-appreciated assistance of County Technology Services, the attorneys and staff were able to transition seamlessly and perform their critical functions remotely with little difficulty. During the transition, attorneys continued to attend hearings and meetings (albeit by recently introduced Zoom technology), file legal documents, respond to public records requests, review contracts and other documents, and provide advice on a host of other matters, to enable the County to continue its operations.



Two attorneys, Sarah Foreman and Jeff Munns, assisted Elections with their work in the May election. From its activation to the present, attorneys Andrew Naylor and Kathleen Rastetter have assisted the Emergency Operations Center with legal assistance regarding a wide variety of Covid-19 related matters, and Anja Mundy staffed the EOC. Attorney Andrew Narus provided advice on the new federally mandated paid leave programs, on issues relating to working remotely, bumping rights, layoffs, furloughs, and child care.

Although the Office of County Counsel was historically a high-functioning department, the pandemic has forced the office to further improve its services by prioritizing functions and resources, maximizing efficiencies, and streamlining operations. The office has demonstrated it can adapt and continue to provide vital services regardless of the circumstances.

VII. Conclusion

County Counsel tracks time entries and tasks in an effort to quantify the amount of legal services, the nature of the services provided, and the clients that receive those services. The data allows us to more efficiently manage, monitor, and deploy the County's legal resources.

County Counsel strives to provide efficient and effective legal services while meeting the needs 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. We also work closely with Risk Management and the departments that utilize our litigation resources to alert them to

systemic issues 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, competent, timely, and easily accessible legal services to Clackamas County, its departments, special districts, and elected officials 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.