



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

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OFFICE OF CLACKAMAS COUNTY COUNSEL Annual Report

2013

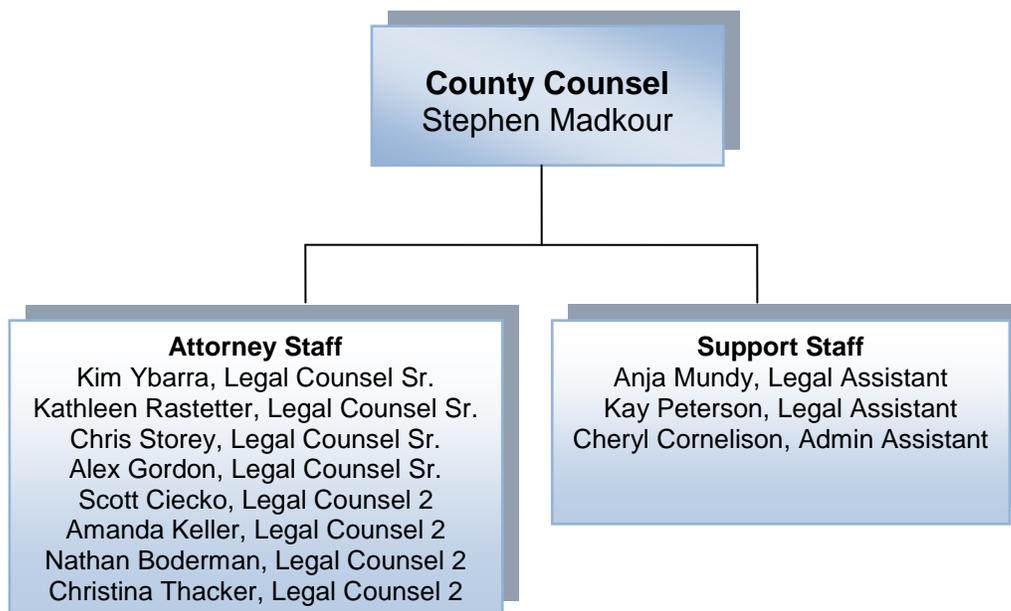
Presented to the Board of County Commissioners - June 2014

I. Introduction

The mission of the Office of Clackamas 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 services 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 9 full-time attorneys, 2 three-quarter time legal assistants and 1 administrative assistant, for an equivalent of 11.5 full time positions. The Office’s budget for fiscal year 2013-14 is \$2.1 Million.

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 a wide range 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 interests 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.

2013 saw the retirement of longtime County Counsel attorney David Anderson. Dave worked with the office for 32 years. Although he served primarily as counsel for labor and employment matters, David was well versed in all aspects of municipal law and provided a wealth of institutional knowledge. Dave also served as a friend and trusted colleague to those within the office and throughout County government.



Dave Anderson and wife Sylvia recognized by Board of County Commissioners for 32 years of dedicated service to Clackamas County.

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 in state and federal courts against actions for personal injury or property damage, most commonly related to roads, transportation, law enforcement, and custodial operations.
- Constitutional Law and Civil Rights - Defend against state and federal court suits alleging violation 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 and District Courts, arbitration proceedings and labor negotiations.
- 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 County tax foreclosure and ejectment proceedings.
- County Administration & Finance – Advise County Administration on internal and external operations; advise county audit committee, review loan documents and financing agreement.
- 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 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.
- 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.
- 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.

- 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.
- Economic Development - Provide legal support to economic development efforts, including licensure, permitting, tourism promotion, site identification, and incentives.
- Elections - Represent County Clerk in elections law and recording matters.
- Condemnation - Represent the County, Service Districts and Development Agency in condemnation claims.
- Real Property and Real Estate Transactions - Advise and assist county departments and officials in all aspects of real property transactions, leases and other agreements.
- County Service Districts - Provide general legal services for various 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.
- 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.
- 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.
- 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.
- 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.
- 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.

Advice to departments is diverse, 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. The Office of County Counsel responds to hundreds of opinion requests each year.

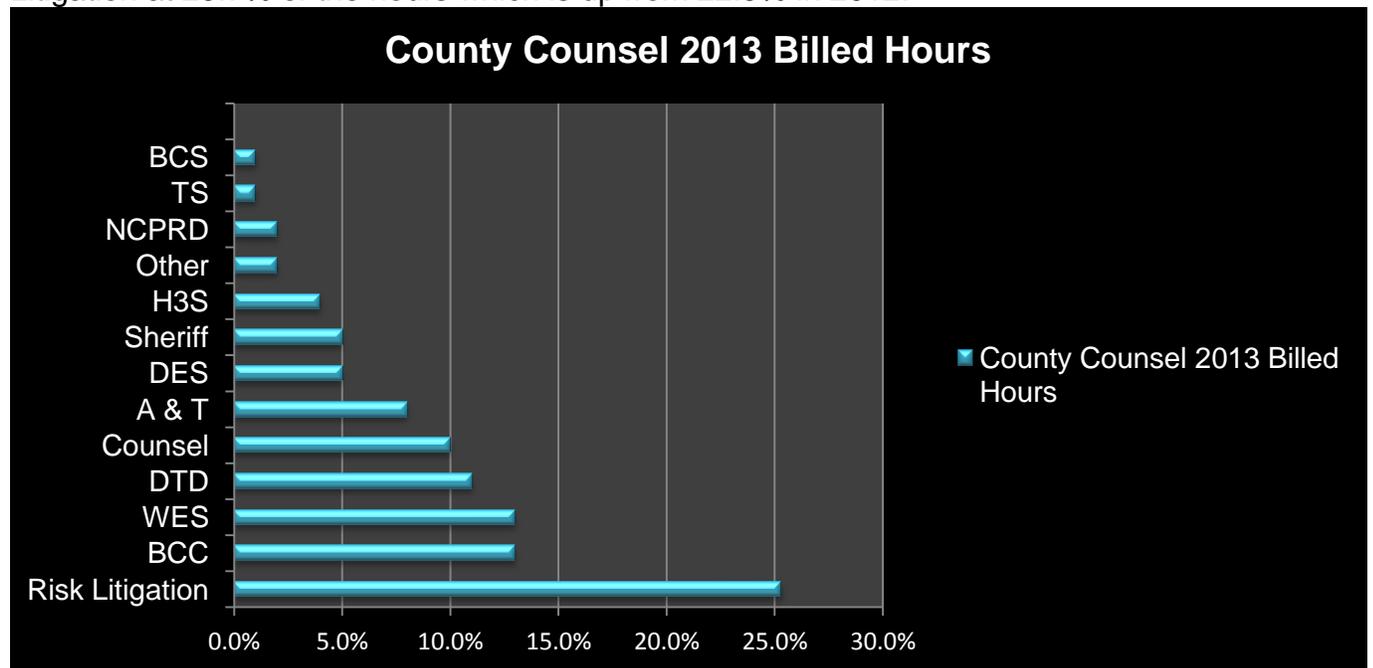
Other major functions include attending all meetings and hearings of the Board of County Commissioners, whether it is sitting as the County Commission or the governing body of the various service districts of which it acts as the governing body. Counsel staff aid the various boards and commissions with 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 13,305 hours, of which 13,264 hours, or 99% 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 25.7% of the hours which is up from 22.5% in 2012.



Department	Hours	%	Summary
Risk Litigation	3,415	25.7	All litigation where a claim for damages is alleged against the County, such as employment claims, and civil rights litigation.
WES	1,758	13.2	Service District support, opinions, environmental issues
BCC	1,688	12.7	Opinions, advice, records and research, meetings, citizen response
DTD	1,402	10.5	Development support, land use, code enforcement, trial
Counsel	1,352	10.1	Mandatory training, staff briefings, education and support, case consultations
A & T	1,019	7.6	Represent County in tax litigation cases, research and advice
Sheriff	714	5.3	Forfeiture litigation, policy review, provide training, employment issues
DES	696	5.2	Labor and employment, representation of County in BOLI actions
H3S	528	4.0	Opinions, advisory work, contract reviews, employment issues
Other	282	2.1	Opinions, reviews, contract reviews, employment issues for smaller departments
NCPRD	200	1.5	Service District support, opinions, contract reviews, research
BCS	116	.9	Opinions, contract reviews, employment issues
T S	94	.7	Opinions, mediations, research, contract reviews
	13,264	100%	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.

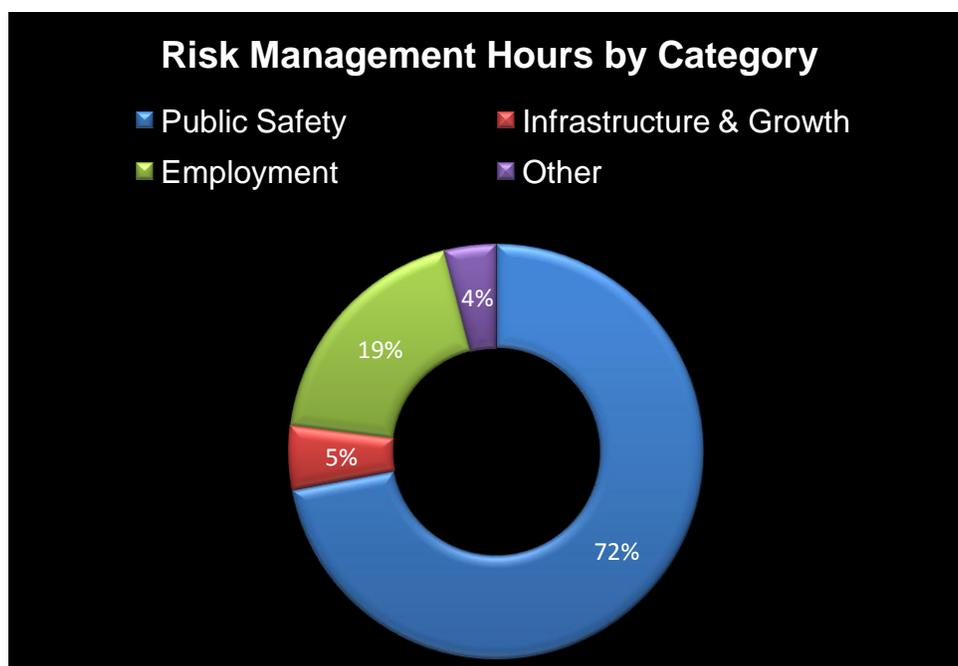
We represent the County in all aspects of litigation and in all venues. Our office regularly appears in the state and federal courts in Oregon. Moreover, our office appears in Tax Court, the Land Use Board of Appeals (LUBA), Oregon Court of Appeals, Oregon Supreme Court, and the Court of Appeals for 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. Litigation represents 25.7% of our direct service attorney and legal assistant hours.

Staff dedicated over 3,415 hours defending the County. Naturally, these numbers vary slightly from year to year. However, litigation consistently represents the bulk of attorney time.

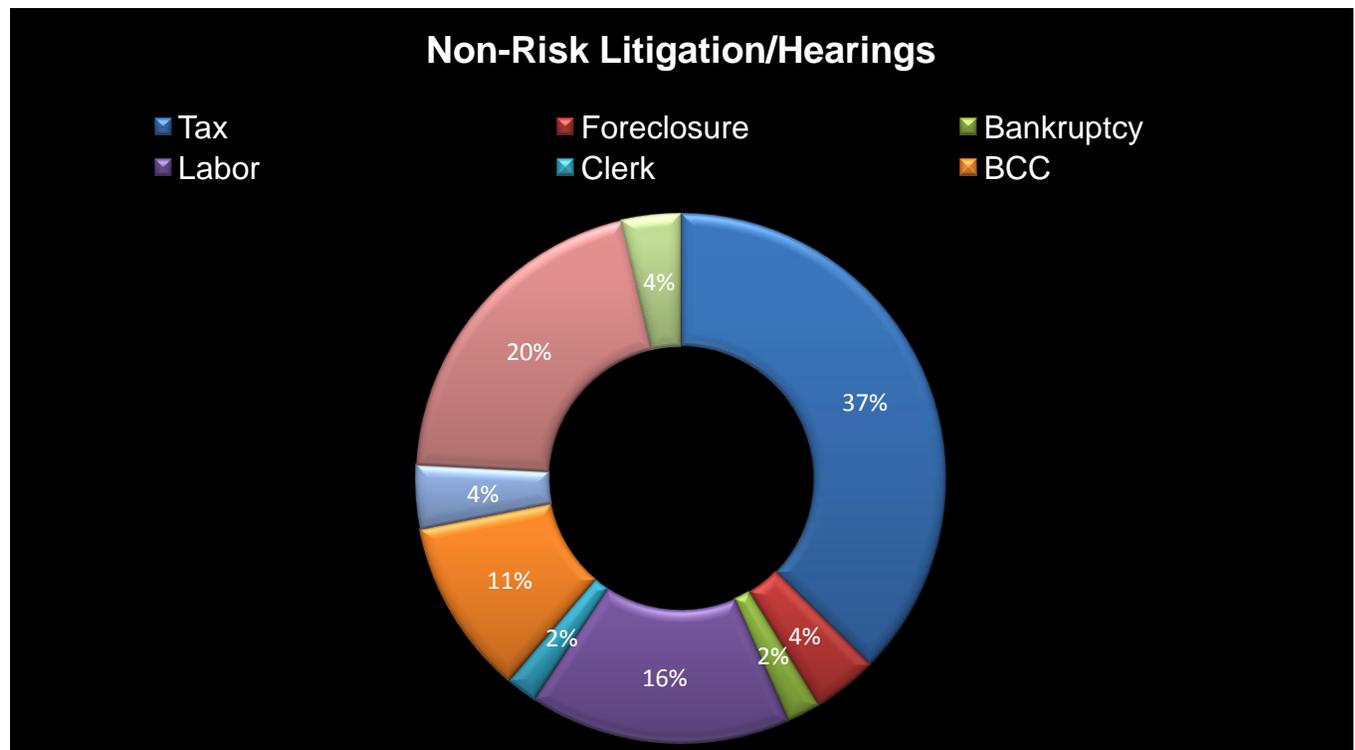
VI. Litigation Hours by Risk Category

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 those alleging 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 2309 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 board actions, tax and assessment claims, land use matters, special districts, labor and employment, building and zoning code enforcement actions, bankruptcies, election issues, 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 \$8 million, and is self-insured beyond \$8 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 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 2013 calendar year, Clackamas County received 104 tort claims, a decrease from the 2012 total of 133 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 2013, the Office of County Counsel defended 35 new lawsuits in which a claim for damages was alleged against the county. Additionally, during 2013 the Office of County Counsel handed 41 personnel matters, 35 tax assessment appeals, 23 civil forfeitures, 22 code enforcement cases, 12 handgun license issues, 9 labor arbitrations, 5 LUBA appeals, 2 petitions for writs of habeas corpus, 2 declaratory judgment actions, and 1 writ of mandamus.

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 over 900 contracts, MOUs, IGAs, Letters of Understanding, and other general contract related documents during 2013.

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 2,100 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. 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.

Over the past several years we have witnessed increases in the costs associated with tort litigation and settlement. In 2013, the county paid a total of \$368,327.00 in litigation settlement, attorney fees and for expert services and other litigation expenses. The county paid \$187,987.44 settling tort claims. While this is a significant amount, the Office of County 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 services. 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, Milwaukie, Oregon City, Lake Oswego and West Linn.

The average fully-loaded hourly cost for county counsel is \$91.92. 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 \$266-\$309 per hour. With a billable hourly rate of \$124.00 for 2013, 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 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. 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.