

COUNTY COUNSEL'S OFFICE

PERFORMANCE REPORT

I. DEPARTMENT MANDATES

The County Counsel's Office serves as civil legal advisor to the Board of Supervisors, the County Administrator, County elected officials, County departments, boards and commissions, and various other public agencies in the County. The duties of the Office include litigating civil and administrative cases, and providing a wide range of other legal services to the Board of Supervisors, County departments, Board-governed special districts, authorities and agencies, the Contra Costa Local Agency Formation Commission (LAFCO), and the civil Grand Jury. The County Counsel's Office is designated by the Board of Supervisors to represent the Public Guardian/ Public Conservator in conservatorship proceedings involving persons disabled by mental illness and dementia; provides legal services to the County's Assisted Outpatient Treatment program (Laura's Law); and represents the Children and Family Services Bureau in juvenile dependency matters.

By fee contract, the County Counsel's Office provides legal services to the County Superintendent of Schools, the County Board of Education, the Contra Costa County Schools Insurance Group, the Children and Family Services Commission (First Five), Contra Costa Resource Conservation District, and Delta Diablo, a sanitation district.

II. MAJOR PROGRAM DESCRIPTIONS (as of January 1, 2022)

A. GENERAL COUNTY GOVERNMENT GENERAL LAW DIVISION

This program area includes all legal services to County departments, officers and boards, and outside public clients, other than those services provided by the Juvenile Dependency/Conservatorship Division and the Tort and Civil Rights Litigation Division, described below. Legal services provided by the General Law Division include transactional services such as reviewing and preparing contracts, and general government advice and

representation including labor and employment, land use, finance, election law, property taxation, public works, construction and transportation, real property and conflict of interest. In this way, the County Counsel's Office helps the County provide cost-effective services that benefit its residents and avoid unnecessary risk of liability. The General Law Division also handles two types of litigation—administrative cases and all federal and state civil court cases, except cases where monetary damages are sought against the County. Civil cases litigated by the General Law Division include cases arising under California Environmental Quality Act (CEQA), land use cases, petitions for writs of mandate, tax refund actions, eminent domain actions, unlawful detainer cases, and Public Administrator probate actions. Administrative cases litigated by the General Law Division include employee disciplinary appeals, labor contract disputes, wrongful discrimination and sexual harassment claims, Department of Fair Employment and Housing (DFEH), Equal Employment Opportunity Commission (EEOC), and Division of Labor Standards Enforcement (DLSE) complaints, and unfair labor practice charges. The representative clients and services are described below:

- 1. Core County Departments.** The core County departments are the Board of Supervisors, County Administrator, Human Resources, Assessor, Auditor-Controller, Treasurer-Tax Collector, County Clerk-Recorder/Elections and the Merit Board.
- 2. Health, Sanitation and Community Protection.** This category encompasses the Health Services Department, including its Public Health, Environmental Health and Hazardous Materials divisions, the hospital and clinics, the Contra Costa County Health Plan, and Behavioral Health Services. This category also covers legal services to County departments, programs and agencies that protect the general public and work to preserve the environment and enhance quality of life. Representative departments include Public Works, Flood Control, the Department of Conservation and Development, the

Contra Costa County Fire Protection District, Animal Services, and Agriculture.

3. **Public Protection.** This category involves legal services to the County's justice system, including the Sheriff, Public Defender, District Attorney, and the Probation Department.
4. **Social Services and Probate.** Legal services to the Employment and Human Services Department, including the IHSS Public Authority and Community Services Bureau, and legal services to Child Support Services, Veterans Services, the Public Guardian and the Public Administrator, are included in this category.
5. **Miscellaneous County and Outside Clients.** This category includes legal services to various agencies governed by the Board of Supervisors (Libraries, Housing Authority, CATV, etc.) and to other public clients (LAFCO, Grand Jury, County Office of Education, Contra Costa County Schools Insurance Group, Delta Diablo, State Route 4 Bypass Authority, and the East Contra Costa Regional Fee and Financing Authority (ECCRFFA)).

BUDGET: \$7,711,338
FTE 27

B. JUVENILE DEPENDENCY/CONSERVATORSHIP DIVISION

The Juvenile Dependency/Conservatorship Division provides legal services to the Children and Family Services Bureau of the Employment and Human Services Department regarding juvenile dependency matters. The County Counsel's Office is designated by the Board of Supervisors to represent the Public Guardian/Public Conservator in conservatorship proceedings involving persons disabled by mental illness, and dementia. This Division also provides legal services to the County's Assisted Outpatient Treatment program (Laura's Law). Additionally, the Division represents Contra Costa

Regional Medical Center and John Muir Medical Center on writs of habeas corpus brought by patients under psychiatric holds. And the Division provides representation to Health Services (jail mental health) for involuntary medication proceedings brought under the Penal Code to assist adult in-custody defendants at the County's detention facilities.

BUDGET: \$5,450,917
 FTE: 18

C. TORT AND CIVIL RIGHTS LITIGATION DIVISION

The Tort and Civil Rights Litigation Division defends claims and lawsuits where monetary damages are sought against the County, the Contra Costa Fire Protection District, and their officers and employees. The Division defends cases involving allegations of personal injury, property damage, and medical malpractice, as well as cases concerning employment matters and civil rights.

BUDGET: \$2,732,429
 FTE: 10

D. DEPARTMENT DATA

BUDGET: \$15,894,684
 FTE: 55

CLASS	ALLOCATED POSITIONS (as of 12-31-22)
Deputy County Counsel	30
Clerical	17
Management	8

EMPLOYEE PROFILE:

	Male	Female	Total	Percent
African/American	0	7	7	13%
Caucasian	13	15	28	54%
Hispanic/Latino	1	4	5	10%
Native American	0	0	0	0%
Pacific Is/Asian	3	8	11	21%
Not Classified	0	1	1	2%
*Vacant	N/A	N/A	3	
Total	17	35	55	100%
Percent	33%	67%		

*Not included in percent total

III. DEPARTMENT ACCOMPLISHMENTS

A. PERSONAL INJURY AND CIVIL RIGHTS LITIGATION

The County Counsel’s Office aggressively defends cases through dispositive motions, trial and appeal. The Tort and Civil Rights Litigation Division’s practice of early, focused efforts to evaluate and oppose lawsuits filed against the County promotes prompt resolution of many cases and saves the County significant legal costs.

In 2022, the Office resolved 74% of assigned cases without any monetary payment, with 88% resolved for \$30,000 or under, as the chart in Section IV of this report shows.

B. JUVENILE DEPENDENCY/CONSERVATORSHIP SERVICES

The Juvenile Dependency/Conservatorship Division provides legal services to the Children and Family Services Bureau (CFS) of the Employment and Human Services Department (EHSD) in all juvenile dependency proceedings; the Public Guardian/Public Conservator Division of the Health Services Department in conservatorship matters; the Behavioral Health Services Division of the Health Services Department in Assisted Outpatient Treatment (Laura's Law) and involuntary medication matters; and Contra Costa Regional Medical Center and John Muir Medical Center on writs of habeas corpus from psychiatric holds.

In 2022, the Division opened 328 new juvenile dependency cases; filed and appeared on 919 LPS/Probate matters; and filed and appeared on eight Laura's Law petitions. The Division assisted the Public Guardian/Conservator in responding to 31 criminal court referrals, pursuant to Penal Code Section 1370, for conservatorship investigation. The Division conducted 21 court trials and 69 jury trials to establish conservatorships under the LPS Act. The Division handled 29 petitions for involuntary medication, including 16 evidentiary hearings, on behalf of the Health Services Department. The Division responded to 64 appeals on behalf of Children and Family Services and the Public Guardian.

The Division conducts periodic training for the Children and Family Services Bureau and the Health Services Conservatorship Division on various topics. The Division also provides weekly office hours, both in person and online, for Children and Family Services Bureau staff in Antioch, Pleasant Hill, and Richmond.

C. SIGNIFICANT COUNTY PROJECTS AND LITIGATION

- 1. National Opioid Litigation.** On behalf of the County, the Office participated in nationwide litigation against opioid manufacturers and distributors. In 2022, the Office coordinated with other public entities in California to receive an allocation of remediation funds for the County to address the opioid crisis.
- 2. Public Records Act.** The County has seen an increasing number of Public Records Act requests over the past several years, particularly in the areas of health care, law enforcement, and elections. In 2022, the office provided legal guidance to County departments and special districts on their responses to Public Records Act requests. The Office also provided Public Records Act trainings to several County departments, including the County Administrator's Office, the Health Services Department, and the Animal Services Department. In 2022, the Court of Appeal upheld a trial court's ruling in favor of the County, finding that the County is not required under the Public Records Act to compile information to create requested records.
- 3. County Office of Education.** The Office provided general legal guidance to the County Superintendent, County Office of Education, and Contra Costa Board of Education. In 2022, the Office guided the County Committee on School District Organization through the decennial census redistricting process to finalize the adjustment of the County Board of Education's trustee area boundaries.
- 4. Emergency Medical Services.** The Office drafted the revised Emergency Medical Services and Ambulance Ordinance, which the Board of Supervisors adopted in June 2022. The ordinance addresses changes in EMS and ambulance operations that have occurred during the last three decades; enhances patient and prehospital personnel safety by clarifying the County EMS Agency's regulatory authority and oversight; provides additional oversight of EMS, special event medical standby services, and ambulance operations; and improves the process for

permitting ambulance service providers operating in Contra Costa County. The Office also provided case support on 13 EMS license certification/revocation/discipline cases in 2022, including a multi-day license revocation hearing.

5. **Head Start.** In 2022, the Office provided significant legal advice and support to the Community Services Bureau of the Employment and Human Services Department on its obligations in administering the Head Start grant and Head Start program. The Office advised on the transition of delegate agencies to operate Head Start programs in East County and on the reorganization of the County's Head Start fiscal and legal oversight responsibilities. The Office drafted a new delegate agency agreement and reviewed several Head Start partnership contracts.
6. **Fire District Annexation and Fire Services Contract.** The Office worked in partnership with the Contra Costa County Fire Protection District ("ConFire") and the County Administrator's Office to provide legal services and advice in transitioning fire services provided by the East Contra Costa Fire Protection District ("ECCFPD") and the City of Pinole to ConFire. The transitions involved the dissolution of ECCFPD and a new fire services contract with Pinole. They needed to occur within a short period and required the coordination of various County departments as well as external agencies, such as CalPERS and organized labor. Leading up to the dissolution of ECCFPD and annexation of its territory to ConFire, this Office advised on several issues, including the transfer of revenues, employees and employee benefits to Con Fire. The Office also provided legal guidance on obtaining LAFCO's approval of the dissolution. To transition fire services from Pinole to ConFire, the Office drafted and negotiated a fire services agreement between ConFire and the City, provided advice concerning legal issues related to the agreement, and assisted in obtaining LAFCO approval of the agreement.
7. **Law Enforcement.** In 2022, the Office provided legal advice and assistance to the Sheriff's Department in response to several significant legal developments. The

Office drafted a military equipment ordinance and assisted the Sheriff's Department with its military equipment policy to implement Assembly Bill 481. The Office also continued to assist the Sheriff's Department on implementing new peace officer certification and reporting requirements under Senate Bill 2. Following the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, which changed the legal standards for approval of concealed carry permits, the Office provided legal guidance to the Sheriff's Department as it implements new concealed carry standards.

8. **PCB Litigation.** On behalf of Contra Costa County, the Office initiated litigation in 2022 against Monsanto, a producer of polychlorinated biphenyls, often referred to as PCBs. The lawsuit, filed by the County along with 17 cities and towns in the County, seeks damages against Monsanto for the contamination of the Bay and Delta from PCBs. The Office continues to work with the Public Works Department to identify the County's costs of PCB remediation.
9. **Cybersecurity.** During the past few years, the County has seen an increase in the number of cyber-attacks. In 2022, the Office advised several County departments on the County's legal obligations with respect to several incidents involving unauthorized access to certain County employee email accounts or databases of County contractors containing sensitive information. The Office also drafted communications and helped to coordinate the County's investigation of the incidents.
10. **Elections.** After a community services district sought to place a measure on the ballot for the November 8, 2022 general election asking voters to approve dissolution of the district, the Office filed a motion to keep the measure off the ballot, on the basis that the dissolution of a district is a matter within the exclusive jurisdiction of the Contra Costa Local Agency Formation Commission (LAFCO). The Office prevailed before the Court of Appeal, preventing the

unlawful measure from appearing on November 8 general election ballot.

- 11. Taxation.** The Office represented the County in a challenge to the County's policy concerning the distribution of monies resulting from the tax sale of a property. The Office obtained favorable decisions from the trial court and Court of Appeal, which both found that the County's policy is lawful and that the Tax Collector properly distributed tax sale monies pursuant to that policy. The California Supreme Court subsequently denied a petition for review.
- 12. Old Jail.** The Office successfully defended two lawsuits opposed to the demolition of the Old Jail in downtown Martinez, allowing the jail demolition to proceed and the construction of a new office building and plaza to continue. The new three-story building is being constructed at the site of the old 12-story County Administration building. The new building will include parking and a café on the ground floor, office space and a law library on the second floor, and offices on the third floor. Across the street from the new office building, adjacent to the Finance Building, a plaza will be constructed at the site of the demolished Old Jail.

D. BUSINESS TRANSACTIONS AND CONTRACTS

Attorneys in the General Law Division assist County departments in reviewing, negotiating and drafting contracts for services, real estate acquisitions, leases, joint exercise of powers agreements, construction documents, and other matters where a formal agreement is needed. A few examples of these diverse and complex business transactions are outlined below.

- 1. COVID-19 Transactions.** The Office prepared and reviewed legal documents necessary for the County – in particular the Health Services Department – to continue its response to the COVID-19 pandemic. The Office drafted several amendments to contracts with private and public entities, including mutual aid agreements to use parking lots as COVID-19 testing and vaccination sites. The Office

also prepared a series of health orders unwinding previous health orders.

2. **Jail Management System.** The Office worked with the Sheriff's Office to negotiate an amendment to the County's jail management system and inmate technology services contract. The amendments were necessary to conform with Federal Communications Commission and California Public Utilities Commission regulations on inmate calling charges.
 3. **Prosecution Case Data.** The Office worked with the District Attorney's Office and County Administrator's Office in negotiating a contract to establish a prosecution case data dashboard. The application will allow the District Attorney and law enforcement agencies to view prosecution data.
- E. SELECTED ORDINANCES ADOPTED BY THE BOARD OF SUPERVISORS**

In 2022, the County Counsel's Office assisted in the drafting, review and adoption of several significant County and Fire District ordinances:

Sidewalk Obstructions. In January, the Board adopted an ordinance requiring property owners to keep sidewalks adjacent to their property free of obstructions.

E-Commerce Fulfillment Centers. In January and December, the Board extended a temporary moratorium on the establishment and expansion of e-commerce fulfillment centers, parcel hubs, and parcel sorting facilities in the North Richmond area. The moratorium lasts through November 2023.

Signs. In May, the Board adopted a comprehensive sign ordinance, establishing new provisions to regulate the construction, placement, display and maintenance of signs in the unincorporated area of the County.

Election Campaigns. In February, the Board adopted an amendment to the County's Election Campaign Ordinance to revise the limits on individual campaign contributions to supervisory and non-supervisory candidates.

Inclusionary Housing. In February, the Board adopted an amendment to the County's Inclusionary Housing Ordinance revising and increasing fees for fire safety inspections, fire permits, and plan review services for development located in the Contra Costa County Fire Protection District.

Water Efficient Landscapes. In March, the Board adopted an ordinance establishing regulations for water efficient landscapes in new developments.

Ambulance Fees. In March, the Board adopted an ordinance authorizing the Contra Costa County Fire Protection District to increase its emergency ambulance service fees.

Residential Development. In March, the Board adopted an ordinance to authorize and regulate the development of up to two residential units on a parcel located in a single-family residential zone, and authorize the ministerial approval of a parcel map for a subdivision of an existing lot in a single-family residential zone into no more than two new parcels.

Administrative Fines. In April, the Board adopted an ordinance to increase fines and administrative penalties for violations of building and safety codes, and for violations of the County's temporary events and short-term rental ordinances.

Emergency Medical Services. In June, the Board adopted an ordinance establishing new and updated provisions to regulate the operation of ambulances in Contra Costa County and to regulate prehospital personnel.

Temporary Events. In June, the Board adopted an urgency ordinance to prohibit unpermitted commercial temporary events and to establish new enforcement mechanisms to address violations of the County's Temporary Events Ordinance. In July, the Board extended the urgency ordinance through June 2023.

Military Equipment Use. In August, the Board adopted an ordinance establishing a military equipment use policy for the Sheriff's Office, pursuant to Assembly Bill 481, which allows law enforcement agencies to acquire and use certain military equipment only if a policy is approved by the agency's governing body.

Fire Code. In November, the Board passed an ordinance adopting the California fire code for the Contra Costa County and Crockett-Carquinez fire districts with amendments necessary for local conditions.

Building Standard Codes. In November, the Board passed an ordinance adopting the California building codes for Contra Costa County with amendments necessary for local conditions.

Area of Benefit Fees. In December, the Board adopted an ordinance updating mitigation fees to fund transportation improvements needed to alleviate the impacts of new development in the Tri-Valley area.

F. LABOR RELATIONS

The Office provides extensive legal advice and support on labor relations matters, including compliance with collective bargaining laws and procedures, to the Labor Relations Division of the County Administrator's Office, the Human Resources Department, and other departments. In 2022, the Office advised on labor negotiations and factfinding, and represented the County in grievance arbitrations and cases before the Public Employment Relations Board. The Office also provided legal assistance to the Labor Relations Division on the County's labor negotiations for twelve

successor memoranda of understanding with the County’s labor organizations, including legal review and advice on approximately 250 bargaining proposals.

G. TRAINING

To reduce litigation exposure and educate clients, the Office provides training and instruction on a variety of topics, including conflicts of interest, the Brown Act, the Public Records Act, and other substantive legal issues affecting various departments. Below is a chart showing training presented in 2022.

Training Presented for Clients in 2022

DATE	FOR	SUBJECT
January 13, 2022	Contra Costa County Counsel Professional Development Training	Implicit Bias
March 2022	Children and Family Services (New Social Worker Training)	Petition Writing
March 2022	Children and Family Services (New Social Worker Training)	Parentage
March 2022	Children and Family Services (New Social Worker Training)	Testimony/Court
March 2022	California County Counsels Association, Probate and Mental Health Conference	Conservatorship of A.B.: Attorney’s Fees in Conservatorship Matters
March 3, 2022	Contra Costa County Office of Education	Brown Act Training
March 31, 2022	Health Services Department	Brown Act and Public Records Act Training
April 2022 (Two Sessions)	Children and Family Services	Statutory Updates Training
June 21, 2022	Contra Costa County Grand Jury	Grand Jury Orientation
July 2022	Children and Family Services (New Social Worker Training)	Petition Writing
July 2022	Children and Family Services (New Social Worker Training)	Testimony/Court
July 2022	Children and Family Services (New Social Worker Training)	Parentage
July 13, 2022	Health Services Department	Brown Act and Public Records Act Training

July 28, 2022	Contra Costa County Grand Jury	Brown Act Training
July 28, 2022	Contra Cost County Counsel Professional Development Training	Welfare & Institutions Code §827 Legal Background & Petitions Process
August 2022	Children and Family Services – Law Enforcement Summit	Exigent Circumstances and protective custody warrant for youth at risk for abuse and neglect
August 5, 2022	Contra Cost County Office of Education	Brown Act Training
September 22, 2022	Animal Services	Public Records Act Training
October 2022	California County Counsels Association, Child Welfare Conference	Exigent Circumstances / Warrants: Removal and Interview
November 2022	Conservatorship Program	Preparing for and conducting conservatorship trial
November 2022	Children and Family Services (New Social Worker Training)	Parentage
November 2022	Children and Family Services (New Social Worker Training)	Petition Writing
December 2022	Children and Family Services	Testimony / Court

H. SERVICE HOURS

In 2022, the total revenues received and expended by the County Counsel’s Office were \$12,609,688. The Office provided 108,518 hours of legal services to our public clients, which includes thousands of hours of uncompensated overtime worked by County Counsel attorneys. If all of these hours could have been charged out, they would have generated \$16,607,807 in revenue. The difference of \$3,998,119 represents a considerable value to the County, and in our view is a significant accomplishment.

IV. PERFORMANCE INDICATORS

A. TORT and CIVIL RIGHTS LITIGATION WORKLOAD REPORT

Files Opened

Litigation Division Files Opened	Year 2022
Civil Rights Cases	16
Employment Cases	7
Medical Malpractice Cases	2
Dangerous Condition Cases	11
Other Cases* (incl. seven revived sexual abuse cases)	19
Total Files Opened	55

Files Resolved/Closed

Litigation Division Files Resolved/Closed	Year 2022
Files Resolved for \$0	37
Files Resolved for under \$10k	1
Files Resolved between \$10k and \$50k	6
Files Resolved between \$51k and \$100k	1
Files Resolved for over \$100k	4
Files Resolved for over \$1m	1
Total Files Resolved/Closed	50

B. GENERAL LAW WORKLOAD REPORT

General Law Division – Civil and Administrative Litigation	Year 2022
New Court Cases Opened	46
New Administrative Cases Opened	34

General Law Division Advisory Services	Year 2022
Standard Form Contracts Reviewed	1460
Responses to Written Requests for Complex Transactional and Advisory Services	736

C. JUVENILE DEPENDENCY/CONSERVATORSHIP WORKLOAD REPORT

Juvenile Dependency/Conservatorship Services	Year 2022
New Dependency Cases Opened	328
Contests - Dependency	828
Briefs and Appeals – Dependency	34
Briefs and Appeals – Conservatorship	30
Appearances – LPS/Probate/IVM	919

D. LITIGATION PERFORMANCE MEASURES

1. Tort and Civil Rights Litigation Division, Assigned Cases.

- (a) Resolve 90% of cases with a “remote chance” of liability by dismissal or judgment within estimated cost-of-defense liability targets.

Outcome for 2022: 100% of cases resolved within this standard.

- (b) Resolve 90% of cases with a “reasonable possibility” of liability at a cost equal to or less than 75% of amount administratively reported at risk and within liability targets.

Outcome for 2022: 100% of cases resolved within this standard.

- (c) Resolve 90% of cases with a “probability” of liability at a cost equal to or less than the amount administratively reported at risk and within liability targets.

Outcome for 2022: 100% of cases resolved within this standard.

- (d) No liability in 80% of assigned civil rights cases.

Outcome for 2022: 100% of civil rights cases were resolved with no liability findings and no adverse verdicts or judgments against the County. Out of 22 civil rights cases, 17 (77%) were resolved without any payment to the Plaintiff, and 3 (14%) were resolved for \$30,000 or under.

2. Civil and Administrative Litigation – General Law Division.

- (a) Resolve with a favorable outcome at least 75% of civil cases litigated by the General Law Division.

Outcome for 2022: Of the 63 civil cases resolved by the General Law Division in 2022, 97% resulted in an outcome favorable to the client.

- (b) Resolve with a favorable outcome at least 80% of administrative cases litigated by the General Law Division.

Outcome for 2022: Of the 11 administrative labor and employment cases resolved by the General Law Division in 2022, 100% resulted in an outcome favorable to the client.

- (c) Uphold at least 75% of County department personnel decisions and actions in administrative proceedings (Merit Board, arbitration, PERB etc.).

Outcome for 2022: 77% of County department personnel decisions that were referred to hearing in administrative proceedings such as arbitration, Merit Board, etc., were upheld.

E. ADVISORY PERFORMANCE MEASURES

1. Respond to 90% of written requests for services requiring drafting or legal analysis within 30 days or negotiated time targets, including extensions.

Outcome for 2022: Of the 768 written requests for advisory services that the

General Law Division responded to in 2022, 95% were responded to within 30 days or negotiated time targets, including extensions.

2. Respond to 90% of requests for approval as to form of County standard form contracts within seven working days after receipt of request.

Outcome for 2022: The Office responded to 1460 requests for contract review. Ninety-eight percent of requests for approval as to form of County standard form contracts were responded to within seven working days after receipt of request.