

ANALYSIS

Department of Justice Litigation Outsourcing

Analyst: Steve Robbins

Request: Acknowledge receipt of a report on reducing civil litigation outsourcing to private law firms.

Analysis: The Department of Justice (DOJ) has submitted a report pursuant to a budget note approved in the budget report for SB 5514 (2023):

The Department of Justice - Trial Division is instructed to report to the 2025 Legislature on the outcome, by client agency, case-type, and estimated savings, due to reduced outsourcing of legal costs to state client agencies by private law firms through the insourcing of Civil Litigation Section cases by the Trial Division.

The budget note was approved in relation to a policy option package, which included the addition of two Senior Attorneys General, one Paralegal, and one Legal Secretary for the Special Litigation and the Civil Litigation sections of the Trial Division. The goal of adding positions was to insource cases that were currently outsourced to private firms, with overall savings to the Trial Division. These savings would, in turn, lower the legal services rate charged to client agencies. All other variables remaining constant, the cost savings anticipated by moving outsourced work at \$400/hour to insourced work at \$275/hour was an estimated \$3.1 million.

DOJ reports that the utilization of the two Senior Attorney General positions saved \$531,900 but does not specify the savings by case-type or client agency.

Both the Civil Litigation Section and Special Litigation sections had anticipated overall caseloads to return to pre-pandemic levels when initial cost savings estimates were made. That has not happened in either case, so while the new positions approved in SB 5514 provided savings, they did not prevent the growth of continued outsourcing to cover the increased caseloads.

Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.

Department of Justice Chase

Request: Report on the outsourcing of legal services to private law firms by the Department of Justice Trial Division.

Recommendation: Acknowledge receipt of the report.

Discussion: Pursuant to a budget note in the budget report for Senate Bill 5514 (2023), the Department of Justice Trial Division was instructed to report to the 2025 Legislature the outcome of reduced outsourcing of legal costs to state agencies by private law firms through the in-sourcing of Civil Litigation Section cases by the Trial Division.

During the 2023 Legislative Session, Package 400 was approved, which included the addition of four permanent full-time positions to handle tort litigation, employment disputes, commercial litigation, prisoner civil rights suits, condemnation, defending agency orders, professional certifications of police and public safety officers, state Habeas Corpus cases, and defense of district attorneys in civil lawsuits. The expansion of in-house litigation staff was intended to reduce the need for outsourced legal counsel based on projected caseload levels – savings which would be realized by lower costs charged to state agencies.

The addition of two lawyer positions, one paralegal position, and one legal secretary position resulted in state agencies paying \$531,900 less for legal services that would've been outsourced to private law firms without the addition of in-house litigation staff (assumes an average private law firm rate of \$400/hour).

Unfortunately, due to the increase in cases and their complexity, the Trial Division was required to continue sending cases to outside counsel. When the 2023-25 Trial Division staff increase was estimated, caseloads were anticipated to return to pre-pandemic levels. As of 2024, the general litigation and corrections team had almost 1,000 more pending cases than in 2019. The caseload volume makes it difficult to determine which client agencies benefited from the staff additions; however, the four positions supported clients from eight state agencies including the Department of Corrections, Oregon Department of Human Services, and Bureau of Labor and Industries.

Based on the Department's caseload projections, an additional 33 Trial Division positions are needed to further reduce the outsourcing of legal services to private law firms - these positions were recommended in the 2025-27 Governor's Recommended Budget.



DEPARTMENT OF JUSTICE

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February 14, 2025

Senator Kate Lieber, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs Lieber and Sanchez:

Nature of the Request

The Oregon Department of Justice requests that the committee acknowledge receipt of this written report on DOJ's Trial Division's outsourcing of litigation to private law firms.

Agency Action

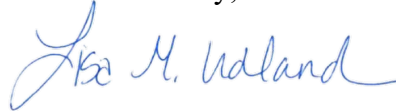
The Oregon Department of Justice is responding to its requirement to report to the 2025 legislature on the outcome, by client agency, case-type, and estimated savings, due to reduced outsourcing of legal costs to state client agencies by private law firms through the in-sourcing of Civil Litigation Section cases by the Trial Division.

Senator Kate Lieber, Co-Chair
Representative Tawna Sanchez, Co-Chair
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Action Requested

The Oregon Department of Justice requests that the Joint Committee on Ways and Means acknowledge receipt of the report.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

Attachment

cc: Dan Rayfield, Attorney General
Sheila Potter, Trial Division
Sarah Roth, Administrative Service Division
Steve Robbins, LFO
Stacey Chase, DAS-CFO

#098111934

Department of Justice
Report in Response to Budget Note Regarding Trial Division

- Budget Note, SB 5514 (2023), Pkg 400
 - The Department of Justice -Trial Division is instructed to report to the 2025 Legislature on the outcome, by client agency, case-type, and estimated savings, due to reduced outsourcing of legal costs to state client agencies by private law firms through the in-sourcing of Civil Litigation Section cases by the Trial Division.

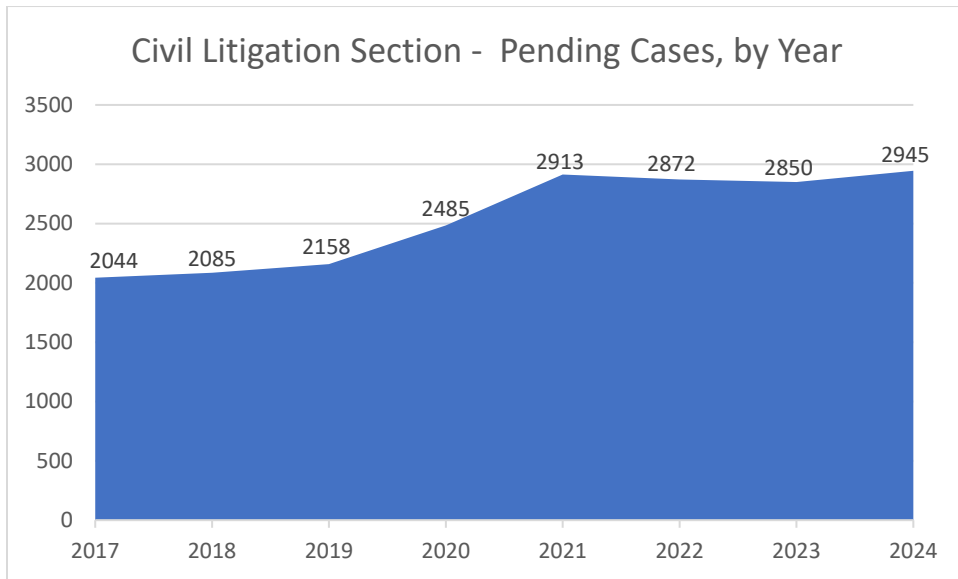
Response:

The addition of two lawyer positions, one paralegal position, and one legal secretary position increased the Division's ability to handle more litigation internally than it could have done without those positions. Each of the new positions was hired and was quickly brought to capacity. The Special Litigation Unit (SLU) attorney was quickly onboarded and has billed about 2400 hours since his start date; at DOJ's rate, this is about \$669,900 billed to clients, rather than the \$975,000 more likely at an average rate of \$400 in the Portland community. In addition to those savings, the addition of one more lawyer into multiple case teams allowed DOJ to handle multiple cases that would otherwise have gone to outside counsel in their entirety. The true savings, then, result from not only the savings associated with *one* DOJ lawyer's salary but from the hours billed by multiple DOJ lawyers on cases that SLU was able to handle internally.

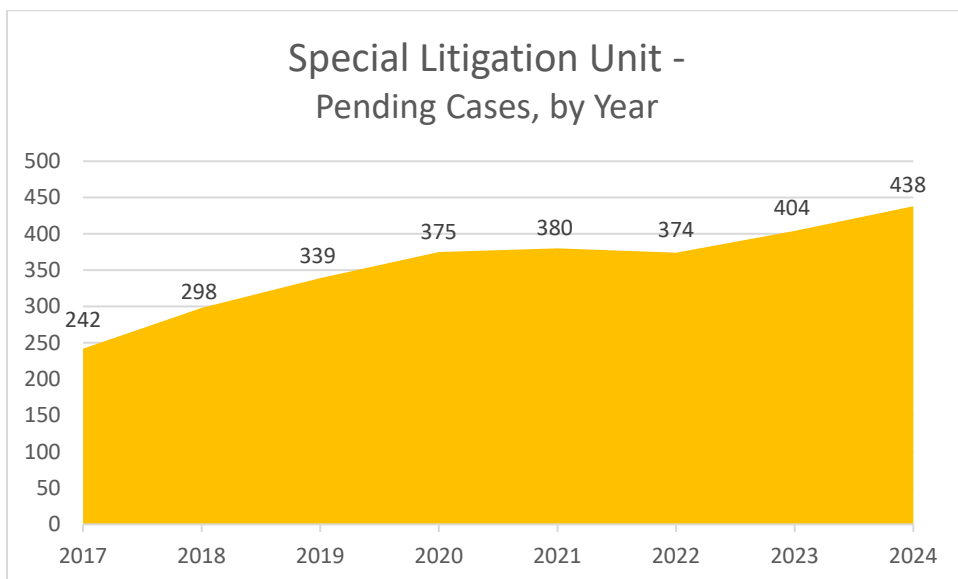
The Civil Litigation Section lawyer was largely dedicated to work for the Oregon Department of Corrections, although she also performed work for the Oregon State Police, the Oregon Department of Human Services, and worked on suits naming the State of Oregon as a whole. Between December 2023 and November 2024, that lawyer billed almost half a million dollars at the DOJ rate (\$498,960), which would have cost the State \$725,760 if an associate-rate SAAG at \$400 per hour had done the same work, assuming that the SAAG were able to achieve the efficiencies that an AAG in-house can perform. This is an estimated savings of \$226,800, and again that number does not capture the savings from this new addition allowing case teams to work on cases internally.

Unfortunately, due to the incoming cases continuing to increase in number and complexity, the Division was required to continue sending cases to outside counsel simply to manage the incoming flow, especially in the Civil Litigation Section. The FY23-25 request was intended to be conservative, as we anticipated and hoped that the spike in caseloads during the pandemic would yield a corresponding drop in case

numbers as courts and cases returned to pre-pandemic levels. But, as the chart below shows, our anticipation has been proved decisively wrong. The cases have never returned to pre-2020 numbers. In 2024, our general litigation team and our corrections team had almost 1,000 cases more than the pending cases as of 2019. We have seen nothing to indicate that a drop is on the way.



The Special Litigation Unit has likewise seen an increase in pending cases, with about 100 more pending cases in 2024 than in 2019, and year-over-year increases of 30 or more cases since 2022. The addition of one lawyer, as a result, has helped to keep some cases in-house, but it has not been enough to allow the Special Litigation to handle everything internally:



Due to the continued caseload numbers, it is not possible to determine exactly which client agencies benefited from these staff additions. The funded positions represented clients that included the Department of Corrections, the State Police, the Water Resources Department, the Department of Human Services, the Department of Consumer and Business Services, the Bureau of Labor & Industries, the Department of Environmental Quality, and the Department of Fish & Wildlife. It is not possible to determine precisely which cases would have had to be outsourced in the absence of those lawyers.

In the last session, the Division based the budget ask on the anticipated caseload decrease, and did not ask for more permanent positions than we were confident we could sustain over the long term. But we have concluded that the increase that began in 2021 was not a "spike" but a continuing influx of new cases across many case types. We have prepared a new estimate of the positions needed to handle the numbers and types of new civil cases that we have seen continue to flood into the Division. This estimate is POP 410 and is a part of the agency's budget request for the 2025-2027 session.