



**Annual Report
of the
MCCCD
Legal Services Department
2002**



I. Responsibilities of the Legal Services Department

Legal Representation

The Office of General Counsel is counsel of record for the Maricopa County Community College District. The three lawyers in the Legal Services Department provide legal advice to Governing Board members and employees on Maricopa matters. Moreover, pursuant to Governing Board directive, all Maricopa contracts of greater than nominal value require approval by counsel prior to execution. The lawyers respond to administrative actions, such as those initiated by the Equal Employment Opportunity Commission and Office for Civil Rights; they also represent Maricopa administration in internal administrative actions (such as due process proceedings) and supervise representation by retained counsel in litigation.

Equal Employment Opportunity/Affirmative Action

Pursuant to federal mandate, we maintain Maricopa's annual Affirmative Action Plan (AAP) and respond to government requests for demographic reporting. The EEO/AA responsibility also includes monitoring recruitment activities based upon goals established by the AAP. Additionally, we investigate all formal internal complaints alleging unlawful discrimination, and monitor employment practices to ensure that those practices comply with the Governing Board's non-discrimination policy.

Trip Reduction

State law requires that Maricopa—as a major valley employer—implement and monitor a trip reduction program. The program's aim is to reduce the single occupancy vehicle rate and commuting miles to the various work sites within Maricopa. We do this by facilitating the implementation of programs that award special incentives to employees, and increasing awareness among employees of Maricopa's obligations.

Maricopa Governance

Maricopa's Governing Board adheres to a governance model that contemplates Board emphasis on "products." Specifically, Board policies address goals, executive duties and responsibilities, the governance process, and Board-staff relationships. We devote considerable administrative resources to supporting the Board in its adherence to this model. Moreover, we manage the extensive process for the adoption of administrative regulations, as well as maintain the voluminous documentation this process yields. Additionally, we provide for the preparation of the Board's Monitoring Report of the Chancellor's Executive Duties and Responsibilities.

Ombuds Services

To assist in better serving the interests of public accountability and responsiveness, ombuds services is an established resource for members of the external community to address disputes and concerns regarding the Maricopa Community Colleges. Ombuds services is aimed at the individual—rather than group—concern. We facilitate the resolution of constituent concerns not otherwise addressed at a college level, and deliver information about Maricopa's processes that would serve a constituent's needs.

Risk Management

Risk Management's mission is to reduce the exposure to fortuitous loss to Maricopa, its employees, students and visitors, to the greatest extent possible, and to eliminate the unanticipated financial impact of losses. We do this by being a resource to the District in areas of general risk management (risk identification, risk control, and risk financing), loss prevention and control, claims, insurance, and contractual transfer. Risk Management procures and manages Maricopa's property and casualty insurance program, and responds to and handles notices of claims received by the District. We also provide assistance in the areas of OSHA compliance, international education risk management, crisis management, workplace violence, and vehicle safety.

II. Statistical data for 2002

Risk Management

Notices of claim filed against District (by location):

<u>Location</u>	<u># of claims</u>
CGCC	1
DSSC	2
GCC	3
GWCC	1
EMCC	2
MCC	4
PVCC	1
PC	1
RSCC	3
SCC	2
SMCC	1

Notices of claim denied (by location):

<u>Location</u>	<u># of claims</u>
DSSC	1
MCC	1*
PC	1*
SMCC	1

*Claim filed in 2001, denied in 2002

Notices of claim on which settlements were paid (by location):

<u>Location</u>	<u># of claims</u>	<u>Total \$ paid</u>
DSSC	1	5,000.00
GCC	3	4,819.03
GWCC	1	1,543.12
EMCC	1	347.78
MCC	4*	57,800.00
PC	2*	4,545.00
PVCC	1	54.05
RSCC	2	64,800.00
SCC	2**	10,001.58

*Includes one claim filed in 2001, settled in 2002

**Includes one claim filed in 2001, settled in 2002, and one claim filed in 2000, settled in 2002

Notices of claim open as of 12-31-02: 5

A "notice of claim" is a demand for compensation (pursuant to statutory requirement) for injuries to person or property of a third party due to negligence by an employee or agent of Maricopa. Settlement of a claim indicates a determination, after investigation, of sufficient potential of a finding of responsibility to justify payment of a sum to a claimant. Denial of a claim indicates a determination, after investigation, of no wrongdoing to justify payment of a sum. Following denial of a claim, the claimant may commence a lawsuit against Maricopa.

Number of certificates of insurance obtained by Risk Management from contractors doing business with Maricopa: 940

Number of certificates of insurance provided by Risk Management upon request of contractors doing business with Maricopa: 420.

EEO/AA--internal discrimination charges

Total number of charges received: 27

Number of charges received (by college)

<u>Location</u>	<u># of charges</u>
CGCC	3
DSSC	1
EMCC	1
GCC	1
GWCC	1
MCC	2
MSC	1
PC	6
PVCC	5
RSCC	3
SCC	3

Number of investigations closed: 8

Number of cause findings: 2

Number of no-cause findings: 4

Number of negotiated settlements: 1

EEO/AA – Administrative Discrimination Charges

Equal Employment Opportunity Commission

Number of charges received	17
Number of “no cause” findings	8
Number of “cause” findings	2
Number of charges settled	2
Number of cases open as of 12.31.01	5

U.S. Office for Civil Rights

Number of charges received	3
Number of “no cause” findings	0
Number of “cause” findings	0
Number of cases open as of 12.31.02	3

Arizona Civil Rights Division

Number of charges received	4
Number of “no cause” findings	0
Number of “cause” findings	0
Number of charges settled	0
Number of cases open as of 12.31.02	4

Contracts

Number of contracts received for review and approval: 1,811
(includes clinical internship agreements)

III. Notable Accomplishments In 2002

- In the fall, we produced "The Blue Book." This publication is the first of its kind published in Maricopa, and purports to assemble the essential administrative regulations and policies of the Governing Board that apply to all Maricopa employees. "The Blue Book" was distributed to every full-time employee, and is available as well on the Department's website, as well as on other Maricopa sites.
- In 2002, we drafted and saw to completion an administrative regulation prescribing procedures for candidates and political groups who wish to come onto a campus for the purpose of soliciting petition signatures. Such groups enjoy rights under the First Amendment, and the new regulation provides valuable guidance to college officials in respecting those rights.
- During its 2001 session, the Arizona legislature mandated that colleges and universities enact policies against hazing activities. That year, we promoted the creation of a committee--under the auspices of the Deans of Student Services--to draft an administrative regulation which meets the legislature's requirements. In 2002, we steered that regulation through the regulation adoption process toward ultimate acceptance by the Chancellor. With this regulation (which appears now in the District's Common Pages), the colleges are in full compliance with this legislative mandate.
- The Arizona legislature in 2002 took the major step of stripping the State Board of Directors for Community Colleges of most of its powers and duties under statute. At the direction of the Chancellor and Governing Board, we devoted many hours in providing advice and counsel in connection with this effort. Following the enactment of this legislation, we devoted many more hours to facilitate the transition of powers from the State Board to the District Governing Board. Principal among these powers was the ownership of real property, which was previously vested in the State Board. Following our efforts, title to most of the real property where Maricopa facilities are located now is held by the Governing Board.

- We devised an on-line tutorial on the Family Educational Rights and Privacy Act (FERPA). The tutorial is accessible on the Office of General Counsel website, and provides valuable instruction on the essentials of this federal law that protects the confidentiality of student records. Also included in the tutorial is a registration form, which can document that a person has taken the tutorial.
- In 2002, we completed the process of registering the familiar Maricopa "M" logo with the US Patent and Trademark Office, which we began the previous year. Now, the logo which is used in connection with virtually every marketing and public awareness enterprise has full legal protection against infringement.
- The Office of General Counsel continued to provide support in 2002 to the District's council of disability resources coordinators. The council meets monthly in the Office's library, and we attend most meetings. Our service to this group includes a clearinghouse function for the ordering of books on tape for all of the colleges' coordinators. Providing this service for the entire District--rather than having each college secure its own membership--saves hundreds of dollars in both membership fees and staff time.
- In 2002, we worked with retained litigation counsel to resolve a major copyright infringement lawsuit stemming from the actions of a college instructor. The settlement amounted to a small fraction of the potential exposure (well in excess of \$1 million) over clear infringement activities.
- On the heels of the settlement of copyright litigation, we launched a major copyright awareness initiative. With the full support of the Chancellor, we caused to be prepared new Copyright Guidelines, which detail the basics in copyright law and reflect major changes to that law since the original guidelines were authored in the early 1990's. We published the Guidelines in booklet form and distributed them to each Maricopa employee. The Guidelines are also available in pdf format on the Office of General Counsel's website. Finally, we do training to faculty groups throughout the District on a regular basis on the essentials of copyright law compliance.

- Members of our department continued to provide administrative support to the Maricopa Women's Leadership Group (WLG) Mentoring Program. We actively participated in the Program's creation in 1999, and have continued to support its activities ever since. This support not only entails administrative and fiscal duties, but also includes presentations on legal issues at Mentor Program functions. Our staff also continues to develop and maintain the WLG's website.
- In 2002, we continued our efforts to increase awareness of Maricopa's responsibilities to preserve and make available public records. Through the office of Ombuds Services, we delivered training programs to various college and District officials, and worked with various groups in an effort to enact a District-wide policy regarding public records. We expect that such a policy will be enacted in 200
- During the summer of 2002, we successfully prosecuted the administrative action regarding termination of a MCC maintenance and operations employee. We obtained from the hearing committee in the matter a unanimous recommendation that the administration's action be upheld. The Governing Board ultimately followed the recommendation. During this period of time we also drafted charges against and successfully negotiated resignation of a GWCC maintenance and operations employee and a RSC professional staff employee.
- During 2002, the Arizona Civil Rights Division and the Office of Civil Rights of the U.S. Department of Education investigated PVCC and the Maricopa Skills Center regarding seven separate student accommodation complaints. Responding to each charge involved a significant amount of our resources. The charges involved complaints from learning disabled, hearing, sight and physically disabled students. Five charges are currently pending and two were dismissed.
- In 2001, we commenced the process of drafting proposed regulations governing the hiring and monitoring of sign language interpreters. This year we worked with the disability services coordinators and the deans of student services to revise the proposed regulations and obtain approval of the proposed regulations. The Chancellor's Executive Council has approved the regulations and we will commence the administrative regulation process.

- We voiced concern in 2002 to District human resources officials over the adequacy of the District's current policy prohibiting nepotism in employment. Consequently, we have drafted and submitted to the administration a proposed employee nepotism policy. Following full review, we will suggest adoption of a new policy by the Governing Board.
- In conjunction with an investigation by the Office of Civil Rights of the U.S. Department of Education, we agreed to update all disability services web sites, student handbooks and other publications to clearly identify a coordinator under Section 504 of the Rehabilitation Act and to notify students of the availability of accommodations under the ADA and Section 504. We are currently working with disability coordinators to update web sites and publications to include this information.
- We worked with business services officials in 2002 to develop a distance learning protocol. Because many distance learning instructors live outside Arizona, this protocol will help us determine when instructors are independent contractors vs. employees and how to withhold payroll taxes from distance learning instructor's wages. This effort will ensure compliance with the myriad regulations regarding compensation of contractors and employees.
- In 2002, we processed dual enrollment agreements with 18 public school districts, four private schools, and three charter schools, with hundreds of attachments specifying dual enrollment classes. We did all this in record time and well in advance of the Fall 2002 semester. As contemplated under Arizona statute, we recorded all intergovernmental agreements with the public school districts with the office of the Maricopa County Recorder.
- Pursuant to Governing Board mandate, the District Safety Committee coordinates the functions of the college safety departments at the ten colleges. In 2002, we continued to provide administrative support for the Committee's functions (as we have since the Committee was created). Our staff administers the Committee's budget and handles numerous administrative responsibilities for the benefit of the safety operations throughout Maricopa.

- We concluded in 2002 our efforts to revise Maricopa's property loan administrative regulation, which we had begun the previous year. We continued to engage the active participation of representatives from various colleges, as well as business services. The Chancellor signed the new regulation into effect in 2002.
- We also concluded in 2002 efforts begun the previous year to enact a new administrative regulation regarding official functions. Official functions have long been of particular concern for state oversight officials. The new regulation (which the Chancellor approved in 2002) will provide much-needed direction for Maricopa employees, as well as evidence good faith efforts by college and District officials to comply with state directives.
- The Office of General Counsel significantly revised its website (www.dist.maricopa.edu/legal) in 2002. The new site features an ADA-compliant, text-only version. We incorporated a new search engine that searches for information on the site to better assist users. Several new forms were added to the Business Law and Contracts section, along with two new searchable databases for tracking Experiential Education Partnership Agreements and Federal Work Study Program agreements.
- We successfully completed our initiative in 2002 for a Public Access Defibrillation program. Our original proposal, which we submitted to the Vice Chancellor for Business Services, was approved by the Chancellor's Executive Council in January 2002. The AED committee, which was established and chaired by our department, reviewed proposals from vendors, and 97 AEDs were purchased in April 2002. Installation of the AEDs at 29 District facilities began in May 2002 and is now complete.
- In an effort to encourage more fiscal responsibility in safeguarding campus assets, we worked with business services officials to revise the District's property claims process. Self-insured property claims must now be submitted on a Property Claim Form to the District Risk Manager. The college representative submitting the claim must document what proactive measures were taken to protect the asset and provide several

items of documentation to substantiate their claim. A \$1,000 deductible per claim is also applied.

- The Workplace Violence Prevention Committee, established and chaired by the District's Risk Manager, submitted a proposed policy regarding workplace violence prevention to the Governing Board. The Governing Board adopted this policy on March 26, 2002. This policy reiterates the Board's commitment to employees' efforts to preserve a work environment free of violence and disruptive behavior. As a result of this policy, our department has worked with the District's EOLT department to develop and deliver workplace violence prevention training.
- After our extensive review of the District's vehicle safety program, recommendations were made to the Chancellor's Executive Council to revise our vehicle safety program. Components of this program include discontinuing the usage of 15 passenger vans, reviewing motor vehicle records of all employees who drive District vehicles, no student driving, no cell phone usage while driving a District vehicle, and defensive driver training for all District drivers. The CEC approved these recommendations in November 2002, and our department is assisting with the implementation of these recommendations.
- The terrorist attacks of September 11, 2001 raised concerns among Americans about the safety of their cities, communities, and workplaces, as well as the ability to respond swiftly and effectively in the face of a crisis. As a result, we spearheaded the creation of crisis management committee called "MEND" (Maricopa Emergency 'n Disaster"). Members of MEND participated in a Governing Board Strategic Conversation regarding crisis management planning on March 12, 2002. MEND's goal is to develop a crisis management template that will be used at every MCCCDC facility.
- Our Affirmative Action responsibilities included active participation in a variety of college and District programs, including the Diversity Advisory Council, the District Office Diversity Committee, and the Faculty Recruitment Commission. We also made a concerted effort to build bridges and working relationships with various workplace constituency groups.

- We served as a presence at numerous community and statewide activities to evidence Maricopa's commitment to affirmative action and equal opportunity. We attended (among other functions) the NAACP Freedom Fund dinner and the Black Family & Child Services Community Recognition group.
- The Department's Manager of EEO/AA represented Maricopa's interests at various national events as well. We networked for Maricopa faculty employment openings at the California Community Colleges Affirmative Action Recruitment Fair in Oakland, California. We also attended the National Conference on Race and Equality, which was held in New Orleans and sponsored by the University of Oklahoma.
- Substantial department resources were devoted to ensuring our continued compliance with county Trip Reduction mandates. In conducting our annual Trip Reduction Program survey, we processed over 23,000 employee and student questionnaires. We also provided over \$17,000 in bus subsidies to Maricopa students and employees.
- In 2002, the Chancellor directed the creation of Maricopa's Faculty In Progress Program, a "grow-your-own" measure aimed at mentoring employees who wish to enter the faculty ranks. The EEO/AA Manager provided counsel and guidance to the program to encourage creation of faculty opportunities for disciplines where minority representation is under-represented under the District's affirmative action plan.
- We posted the Maricopa 2001-02 Affirmative Action plan on the Office of General Counsel website. For the first time, the entirety of the District's plan is available to any person with Internet access. Not only did this effort make the document more accessible, but it also serves to reduce printing and distribution expense.

- The annual monitoring report was presented to the Governing Board at the November 2002 Work Session. Follow-up efforts are taking place regarding the requests for data that the Governing Board would like to see in the next report. Efforts are being coordinated with the Vice Chancellor for Academic Affairs, the Vice Chancellor for Student Development and Community Affairs, the Office of Institutional Effectiveness and the various deans' councils related to retention and Board goal monitoring improvements for 2003.
- A committee has been established to review existing language and procedures related to tuition waivers. A new manual is being written in order to bring consistent application in processing tuition waivers for employees and non-employees throughout the district. The manual is expected to be completed in the spring.
- After several years of disputing claims and delays on five MCCCCD construction projects, a team of the Department and the Facilities Planning and Development Department finally reached a settlement of MCCCCD's disagreements with Cohen Contracting, Inc. and its bonding company, Federal Insurance, Inc. The settlement resulted in Federal paying MCCCCD \$1.2 million for damages MCCCCD incurred due to Cohen's performance under the project contracts.
- The Department began the task of directing and coordinating MCCCCD's efforts to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 passed by the U.S. Congress. Among other things, HIPAA mandates that MCCCCD establish certain procedures and take specific steps to assure the privacy of certain individual health care data. We continue to work with various teams to put appropriate safeguards in place by the April 14, 2003 deadline.

IV. Training Responsibilities

In 2002, we continued to offer training for Maricopa employees on a variety of issues. We appeared before various small gatherings from various employee groups to address such issues as student records, copyright, and workplace safety.

Among the more notable internal training programs in 2002 were the following:

- Gerry Bradshaw actively participated in the planning and presentation of the Town Hall sponsored by the Maricopa Council on Black American Affairs.
- Gerry also presented a talk on the Impact of Affirmative Action in Education before students enrolled in Mesa Community College's "Introduction to Multiculturalism."
- Pete Kushibab spoke at the annual Success Conference in October regarding legal issues in student services.
- Ruth Unks delivered a presentation at the Service Learning Summer Institutes at Mesa Community College regarding legal and risk management issues for service learning programs.
- Ruth also worked with representatives from Business Services in a presentation at Rio Salado Community College regarding the Maricopa Integrated Risk Assessment program.
- At the Information Technology Security Day at Paradise Valley Community College, Ruth talked on risk management and information technology security.

We also delivered speeches and presentations before state and national organizations:

- Maggie McConnell served as a panelist at Governing Magazine's annual Government Technology Forum in San Diego.

- Gerry Bradshaw conducted a workshop for employees of MAXIMUS Corporation on the "Overview of EEO Responsibilities and Building Relationships with Clientele" in Phoenix. (MAXIMUS is the delivery contractor for Arizona's welfare-to-work program.)
- In February 2002, Pete Kushibab spoke on legal issues and risk management for the Public Risk Management Association (PRIMA) Government Risk Management Seminar at Orlando, Florida. He also presented on legal issues in student services at the annual NASPA conference in Boston. Finally, Pete spoke on K-12 teacher certification issues at the annual law conference of the Arizona School Boards Association.
- Ruth Unks delivered instruction on the "History of Risk Management" and "Future Trends in Risk Management," and facilitated the Educational Professionals Track at the PRIMA Government Risk Management Seminar in Orlando, Florida. She spoke on the public risk management core competencies at the PRIMA California workshop, and higher education issues and fifteen-passenger van safety at the PRIMA National Annual Conference in San Antonio, Texas. She served as a guest presenter at the Arthur J. Gallagher Public Entity Division's sales meeting in Oak Brook, Illinois, and spoke on risk management before graduate classes offered by Arizona State and Northern Arizona Universities.

At the request of Dr. Glasper, Maggie McConnell facilitated a session with District Office staff to obtain their input on MCCC'D's initiative to develop a code of ethics. She also conducted training for the following groups:

- 15th Annual National Network of Health Career Programs in Two-Year Colleges on the Health Insurance Portability and Accountability Act of 1996 as it relates to clinical programs
- 57th Annual Forum and Products Exposition of the National Institute of Governmental Purchasing on the American Bar Association's Model Procurement Code Project
- Presentation on Ethics to the Copper State Chapter of the National Institute of Governmental Purchasing
- Presentation on Bid Protests to the Annual Conference of the Arizona Association of School Business Officials

- The “Marketing to States Annual Conference” of the National Association of State Procurement Officials on Ethics
- A Lorman Educational Services seminar on Public Contract Code and Competitive Public Bidding in Arizona
- The Diversity Conference for the Arizona Department of Administration, State Procurement Office, and the Arizona Department of Commerce

V. Outside activities

- Gerry Bradshaw continues to pursue her Masters Degree in Education Leadership through Northern Arizona University. She also obtained her certification as an Affirmative Action Professional by the American Association for Affirmative Action.
- Ruth Unks continued to serve on the Board of Directors for the Public Risk Management Association (PRIMA). She also chaired PRIMA's Western Regional Conference in Tempe.
- Pete Kushibab serves as an adjunct professor for Northern Arizona University, and teaches classes on legal issues in both K-12 and higher education for that institution's programs in education leadership. He also chairs the Professional Practices Advisory Committee for the Arizona State Board of Education; the Committee conducts professional discipline hearings for K-12 teachers in Arizona.
- Maggie McConnell chaired the board of the Desert Mountain Affiliate of the American Heart Association, during which she led the board to agree to a merger increasing the affiliate from four states to 10 states. She also served as a member of the Joint Operating Community establishing the organization and policies of the new affiliate, and chaired the Governance Subcommittee that recommended the volunteer structure of the new affiliate. She participated in the AHA's annual lobby day in Washington, D.C. The Chief Executive Officer of the AHA, Cass Wheeler, awarded her a Time, Feeling and Focus Award for her volunteer efforts. Maggie currently serves as a board member of the new AHA Pacific Mountain Affiliate. She remains active in the National Institute of Governmental Purchasing and the National Association of State Procurement Officials.