

Annual Report



2003

Legal Services Department

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.

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 2003

Risk Management

**Notices of Claim filed against District January 1 – December 31, 2003
(by location):**

<u>Location</u>	<u># of claims</u>
CGC	2
GWC	1
DSSC	1
EMC	0
GCC	4
MCC	2
MSC	1
PVC	1
PC	4
RSC	6
SCC	3
SMC	0

Notices of Claim Denied in 2003 (by location)

<u>Location</u>	<u># of claims</u>
GCC	2
MSC	1
MCC	1
PVC	1
SCC	1

Notices of Claim Settled/Paid in 2003 (by location)

<u>Location</u>	<u>Number of Claims</u>	<u>Total Amount Paid</u>
DO	1	----
PC	1	202.32
RSC	2	2,690.57
SCC	1	878.07

Notices of Claim Open as of December 31, 2003: 10

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 alleged 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.

Certificates of Insurance

Obtained by Risk Management from Contractors:
Approximately 1,400

Provided to contractors doing business with District:
Approximately 520

EEO/AA – Administrative Discrimination Charges

Equal Employment Opportunity Commission

Number of charges received	15
Number of “no cause” findings	14
Number of “cause” findings	0
Number of charges settled	1
Number of cases open as of 12.31.03	0

U.S. Office for Civil Rights

Number of charges received	5
Number of “no cause” findings	2
Number of “cause” findings	2
Number of cases open as of 12.31.03	1

Arizona Civil Rights Division

Number of charges received	1
Number of “no cause” findings	1
Number of “cause” findings	0
Number of charges settled	0
Number of cases open as of 12.31.03	0

Contracts

Number of contracts received for review and approval: 1,717

MCCCD Ombuds Services
February 2003- December 2003

The Office of Ombuds Services continues to provide referral and review of complaints received at the District Office. In addition to general inquiries from students and citizens, this reporting period logged requests from administrative staff (including the Chancellor) to review and respond to specific complaints. A number of requests for public records involving all colleges were received during this reporting cycle, prompting the drafting and adoption of a new policy on Public Records Requests. The office initiated a training session on “Responding to Difficult Clients” among District Office administrative staff who work in the executive offices, and established a contact list for the proper transfer of incoming complaint calls.

Type of Issue	<i>Number Received</i>
Attendance Policy Interpretation/Student Complaint	1
Complaint about Vendor	1
Course Content/Material	1
Course Fee Complaint	1
E-mail Policy Complaint	2
Employee Conflict/(Chancellor Referral)	2
Financial Aid Processing	1
Nursing Program Complaint	4
Public Records Request	10
Refund Request	1
Residency Status	4
Student ADA Issue Accommodation	1
Student Discrimination Inquiry	2
Student Record Request	1
Student Suggestion on Service Enhancements	1
Student/Instructor Conflict	3
Treatment by college staff	2
Tuition Inquiry	1
Vendor/Purchasing Complaint	1
Website Complaint	1
Total	41

III. Notable Accomplishments In 2003

- In 2003, the Governing Board took an unprecedented action in voting to terminate the employment of its Chancellor. We devoted hundreds of hours in providing legal support for the Board in its decision. This support included time spent in investigative work, preparation for litigation, media contacts, and ultimately the execution of a settlement agreement with the former Chancellor.
- On the heels of the Board's action in terminating the Chancellor, the Board enlisted our assistance in devising a process for hiring a new Chancellor. We spent many hours assisting officials at the District office in facilitating the internal search process that the Board mandated. We also devoted much time to the execution of a contract with the new Chancellor.
- 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.
- The department processed dual enrollment agreements with 20 public school districts and approximately 12 charter or private high schools, with hundreds of attachments specifying dual enrollment classes.
- Our staff redesigned the department's Web site (<http://www.dist.maricopa.edu/legal>). The redesign included a new layout to increase usability and new search engines to facilitate quick access to information. We updated the Business Law & Contracts section to include Employee vs. Independent Contractor guidelines, worksheet, and a decision matrix. The HIPAA tutorial, Patient Privacy Guidelines, Official Function Form, Member Payment Worksheet, and other forms were also added to this section. We updated the Risk Management & Insurance section to include information on TULIP (Tenant Users Liability Insurance Program).

- Our staff maintains the Maricopa Governing Board's Web site (<http://www.dist.maricopa.edu/gvbd>). A search engine was added to the site to facilitate quick access to information, including searching several years of Governing Board minutes. The Motions database is now operational and users can search motions from 1995-present
- Professionals in the Office of General Counsel worked extensively with members of the District's Employee and Organizational Development department to develop a comprehensive training program to promote staff development throughout the District. As a result of our efforts, the EOD department now offers training programs in such areas as employment, stewardship of funds, public records, and other governance issues. In addition to developing the curriculum and participant materials, members of our department provide the actual training at these programs
- The federal Health Insurance Portability and Accountability Act of 1996 posed some legal and practical issues for both the District's Compensation Department and the colleges' clinical programs because of the complex set of regulations adopted under that law to implement patient privacy mandates. The deadline to comply with the law's procedures and safeguards was April 16, 2003. To ensure that the District's employee health benefits and flexible spending programs comply with those legal mandates, Legal Services worked with the Director of Compensation to develop staff implementation guidelines and required authorization forms and annual notices. Legal Services and the Department conducted training for about 35 staff to assist them in understanding the new procedures and in answering employee questions.
- On the clinical side, the Legal Services Department worked with the Health Care Integrated Educational System and a committee of nursing and allied health faculty from the colleges to devise guidelines and forms to implement HIPAA in that setting. The resulting faculty/staff/student confidentiality agreement and patient privacy guidelines are easily available on the web, along with a tutorial that Legal Services and HCIES prepared to permit training on-line. Legal Services conducted 8 in-person training sessions for health-care faculty, with about 300 attendees. The ASU Nursing School is using MCCCDD forms to implement HIPAA in its clinical program

- Colleges sometimes struggle in understanding when they should ask for insurance certificates from outside parties, and the instances in which those parties need to add the District as an additional insured to their policies. To assist them, Legal Services drafted a decision matrix along with a grid listing some common types of activities or contracts and the types of insurance documents needed for those activities or contracts. The District's insurance carrier, United Educators, reviewed and supported the idea of the matrix. Legal Services has distributed the matrix to the District's fiscal officers, and to attendees at a risk management workshop. It intends to place the matrix on its website in the near future to permit easy access to it.
- Legal Services and the Business Services Department saw a significant increase in the number of questions directed to them about the appropriate type of relationship the District should enter into when it needs someone to provide services – that is, whether the person should be an employee, or an independent contractor. The correct choice is driven primarily by Internal Revenue Service laws and criteria, and depends on factors such as the amount of control that the District will have over the person. Legal Services, the Business Services Department and EOLT developed some on-line tools to help District employees make the right choice. They include a tool through which “yes” or “no” answers to questions will move the employee toward the correct decision
- In February 2003, the District received a favorable ruling from the Internal Revenue Service relating to the agreement between the District and Cox Communications to supply a digital television channel for Maricopa Colleges Television. The relationship had raised potential tax issues. The ruling approved the relationship and provided guidelines for the type of programming and services that the District may offer through MCTV. While outside counsel bore the primary responsibility of drafting the ruling request and coordinating with the IRS, Legal Services worked closely with counsel and with MCTV staff to collect all the necessary information and identify the appropriate issues.
- During 2003, we successfully prosecuted the administrative action regarding termination of two district employees

- 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
- During 2003 we successfully defended two procurement protests. The first protest came from a vendor who did not receive a contract to provide an integrated library system for the District's ten colleges. Because the procurement of a library system involved learning the specifics of several different software programs, and review of hundreds of documents, preparation for the administrative hearing involved a significant amount of our resources. The second protest came from a vendor who did not receive a contract to provide a software-based security system at MCC, Red Mountain Campus. Again, because the procurement of this security system involved learning the specifics of a software program, as well as networking basics, preparation for hearing involved a significant amount of our resources.
- During 2003, we settled two "reverse discrimination" cases when the EEOC found "cause" to believe that two minority candidates had been preferred over Caucasian candidates in hiring. In addition to a monetary settlement, the settlements required us to provide training to all college administrators and faculty chairpersons regarding employment law.
- We have continued to pursue an initiative to increase awareness of liability exposure in our programs that involve children. Specifically, we have spearheaded work through the Risk Management Advisory Committee to develop self-assessment tools and research available resources to support such programs, especially those in which our colleges serve in a custodial relationship with children. Working with officials from various colleges, we expect this initiative to continue throughout the next few years

- Our department provides membership and administrative support for key academic committees in the District. We have continued the tradition of service to such long-standing committees as the Residency Appeals committee and the Course Substitution committee for accommodating students with disabilities
- In 2003, we suggested to the Vice Chancellor for Academic Affairs that the District re-visit its policy on the use of faculty-authored textbooks. The District's current policy had been adopted many years ago, and had become virtually unworkable. At our suggestion, the Vice Chancellor directed the formation of a committee comprised of the General Counsel and college instructional representatives to develop a new policy. We devoted many hours to this group's work. The draft policy developed by that group has been submitted for inclusion in the District's Residential Faculty Policy manual. We expect that the language of that draft will ultimately be approved for inclusion through the meet-and-confer process.
- 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.

- Recently, Congress enacted amendments to federal copyright law aimed at expanding the permissible use of copyrighted materials by postsecondary institutions in their distance learning offerings. These amendments--also known as the TEACH Act--are intended to provide the same latitude of use of copyrighted materials to distance educators as is presently afforded instructors in a face-to-face setting. Accordingly, we suggested to the Vice Chancellor for Academic Affairs that she appoint a District-wide committee, comprised of instructional and technology specialists, to assess Maricopa's potential to take advantage of this new legislation. We presently co-chair this committee, and actively participate in activities aimed at ensuring our compliance with the Act's requirements and--more importantly--educating our distance education faculty as to the law's possibilities. We anticipate that this work will continue into 2004.
- The Office of General Counsel has long suggested to human resources officials that the possibility of alternative dispute resolution mechanisms for employees be explored. Consequently, we advised the Acting Vice Chancellor for Human Resources to begin real efforts in ultimately developing processes under which employees could reach constructive resolution of employment-related disputes. To this end, we facilitated the execution of a modest professional services contract with a consultant to conduct a preliminary feasibility study on the creation of an employee mediation program. We hope to foster the distribution of the results of that study next year to faculty and other groups key to implementing such a program.
- District Legal Services oversaw the production of an updated handbook for Tuition Waivers, Affidavits and Exemptions. The handbook was developed in collaboration with representatives from business services, employment, and the college fiscal offices. The handbook was produced by the Office of General Counsel and includes common terms and eligibility requirements that were adopted by the Governing Board. The handbook and updated tuition waiver forms are available on-line.
- District wide training on the tuition waiver handbook and standard procedures was provided to employees that are responsible for processing tuition waiver requests. Training was provided in collaboration with business and employee services. The governance area presented on policy.

- A new Public Records Request policy was drafted and submitted to the Governing Board for adoption. The policy establishes guidelines for the release of personnel information and also directs that the Chancellor establish administrative regulations for the processing of public records requests
- Staff from the legal department attended training on public records maintenance and retention that was sponsored by the Arizona State Library, Archives and Public Records Department. The agency establishes guidelines for the retention of public records and the training provided staff with the knowledge base to instruct other employees on the topic
- The Legal Department developed training curriculum on public records as part of the Supervisory Development module that is offered by Employee & Organizational Learning. The sessions were designed to heighten the level of awareness within Maricopa of records requests and provided an overview of public records law. Increased awareness on this topic will result in the proper handling of records requests that are received from members of the external community
- In conjunction with the Vice Chancellor for Student Development and Community Affairs, the Vice Chancellor for Academic Affairs and the Office of Institutional Effectiveness, we hosted a Roundtable on Retention at Rio Salado College. Retention was a topic previously identified by members of the Governing Board as an area of interest in need of priority for discussion and monitoring. While retention was mentioned in one of the Board's Goals on student development services, a common definition for what retention meant did not exist among the colleges. The roundtable was designed to facilitate discussion among the various deans groups, in order to enhance monitoring of the Board Goal statement. The governance office convened meetings between the vice chancellors, chairs of the dean's groups and institutional research staff in order to complete the Board's request for enhancement during the 2003 monitoring cycle

- A new special events insurance program called TULIP (Tenant Users Liability Insurance Program) became available in Fall 2003 and provides liability protection for any group or individual using a District facility or grounds who cannot meet our liability insurance requirements. Premium costs are determined by the nature of the event, the anticipated number of participants, and the number of days of the event. Premiums for this program are almost always considerably lower than for any similar policy our tenants/users could buy on the open market
- In August 2003, the Chancellor approved the enactment of an administrative regulation concerning the operation of any rented, borrowed, or leased vehicle used for college or District purposes. The regulation allows only an employee of the District to drive a college or District vehicle. The regulation introduced several major changes and our department assisted in the implementation of these changes. The first requires that a driver “has been the subject of an authorized motor vehicle record review conducted on behalf of the college.” Another major change comes in the implementation of a driver-training program. The training is an online tutorial that an employee can complete on his or her desktop at work. A further change prohibits employees from using a cellular telephone or similar communication device while operating the vehicle. Finally, the use of 15 passenger vans was discontinued in early 2003.
- The first annual OSHA Compliance Workshop was well received by the 40 employees who attended it in September 2003. Participants received an update on the District’s OSHA compliance accomplishments, and heard speakers from the Arizona Department of Occupational Safety and Health, the City of Scottsdale, and Arthur J. Gallagher and Co. Participants also viewed our web-based defensive driving training program, and took part in a roundtable discussion on hot OSHA issues.

IV. Training Responsibilities

In 2003, 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 2003 were the following:

- Each month, members of the Office of General Counsel provided training on discrimination and sexual harassment at the District's New Employee Orientation.
- Pete Kushibab spoke to both full-time and adjunct faculty at most of the colleges throughout the District in the spring and fall semesters on the topic of copyright law.
- Pete also delivered a training program at South Mountain Community College in April to student services professionals on student policies and regulations.
- In March and November, Pete presented all-day sessions on student affairs law at the Student Services Institute at Scottsdale Community College. The Institute is a District-wide offering that provides staff development to both professional staff and management employees who work in student services roles at all of the Maricopa Community Colleges.
- For the Women's Leadership Group's Mentor Program, Pete spoke in October to participants in that program on laws relating to community college governance.
- At the invitation of GateWay Community College faculty, Pete spoke in November at that college on faculty's rights in the creation of intellectual property under the Residential Faculty Policy manual
- In December, Pete presented on legal aspects of diversity and affirmative action in enrollments for the Diversity Infusion committee of the District Diversity Advisory Committee.

- Ruth Unks delivered a presentation at the Study Abroad workshop at the District Office regarding legal and risk management issues for study abroad programs
- Ruth Unks presented at the Study Abroad workshop at the District Office regarding legal and risk management issues for study abroad programs. Ruth also delivered training on the Maricopa Integrated Risk Assessment (MIRA) project, TULIP, OSHA compliance, and traditional risk management

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

- In February, Pete Kushibab spoke on student's rights of free expression at the annual Stetson Law and Higher Education Conference in Clearwater, Florida. He also led a general discussion session on community colleges at the Conference.
- Also in February, Pete participated in a panel at Arizona State University on "Ethics: When Cultures Clash".
- Maggie McConnell was a presenter with attorneys from law firms at a Lorman Educational Services seminar on Public Contract Code and Competitive Public Bidding in Arizona
- Ruth also delivered instruction on automated external defibrillators (AED) and facilitated the Educational Professionals track at the PRIMA Government Risk Management Seminar in Las Vegas, NV. She spoke on enterprise risk management and 15-passenger van safety at the PRIMA National Annual Conference in Reno, Nevada. She also spoke on AEDs at the Utah PRIMA chapter in Salt Lake City, UT. She spoke about risk management in the United States at the ALARM conference in Manchester, England and at the ARIMA Conference in Cairns, New South Wales, and Australia. She continues to be a guest lecturer before graduate classes offered by Arizona State and Northern Arizona Universities

V. Outside activities

- 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 serves as an adjunct professor in the College of Education at Arizona State University, where he frequently presents to education law and policy studies classes. Additionally, he 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 served as Past Chair of the 10-state Pacific Mountain Affiliate of the American Heart Association, and as Chair of its Nominating and Awards Committee. She participated in the AHA's annual lobby day in Washington, D.C. Maggie remains active in the National Institute of Governmental Purchasing and the National Association of State Procurement Officials, where she serves on the Awards Committee. She also served as a member of a NASPO team assisting the State of North Dakota to assess its procurement laws, and to reform its procurement manual
- Maggie also served as a member of a 4-person team of attorneys who are members of the American Bar Association's Public Contract Law Section to assist the State of California in reforming its procurement laws. During 2003, the ABA team traveled to Sacramento twice to meet with California government officials regarding their reform efforts.

- Teresa Toney, in conjunction with Drs. Pat Honzay and Joe Pearson, presented a workshop on diversity at the National Conference on Race and Ethnicity (NCORE) in San Francisco, CA. The workshop, titled “Infusing Diversity Within a Shared Governance Organization” focused on the diversity initiatives in the Maricopa Community College District, and the method in which initiatives are achieved (i.e., working collaboratively within the governance structure). The manager of governance specifically presented on the Governing Board Goal for Diversity and the method of assessing diversity outcomes. She also became a member of the National Forum of Black Public Administrators and attended the national conference in Fort Lauderdale, FL. The organization consists of public, private and academic institutions and offers professional growth and development in the area of public administration. Conference workshops attended included program monitoring and assessment.
- Ruth Unks was elected as National President of the Public Risk Management Association (PRIMA) for 2003-2004, and represented PRIMA at the Association of Local Authority Risk Managers (ALARM) conference in Manchester, England and the Australian Risk and Insurance Management Association (ARIMA) conference in Cairns, New South Wales, and Australia. She continues to be a guest lecturer before graduate classes offered by Arizona State and Northern Arizona Universities.