

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.

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 2004

Contracts

Total number of contracts received for review and approval: 1,875

- 1,725 Contracts and Agreements
- 18 Leases
- 68 Clinical Experience Agreements
- 59 Experiential Education Partnership Agreements
- 5 Federal Work Study Program Agreements

Risk Management

Notices of claim filed against District (by location):

<u>Location</u>	<u># of claims</u>
CGCC	1
DSSC	2
GCC	1
GWCC	1
EMCC	1
MCC	5
PVCC	0
PC	3
RSCC	4
SCC	0
SMCC	0

Notices of claim denied (by location):

<u>Location</u>	<u># of claims</u>
CGC	1
GCC	2

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

<u>Location</u>	<u># of claims</u>	<u>Total \$ paid</u>
GWCC	1	160,000.00
GCC	1	2,937.09
EMCC	1	1,072.29
MCC	2	2,689.65
RSCC	3	24,924.31
PC	1	1,454.75

Notices of claim open as of 12-31-04: 7

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: 1,750

Number of certificates of insurance provided by Risk Management upon request of contractors doing business with Maricopa: 590

Property Loss Claims for 2004

Total Number of Property Loss Claims Received*	35
Total Number of Claims Denied	14
Total Number of Claims Approved	18
Number of Claims Not Completed by college officials	3
Dollar Amount of Claims Not Completed	\$6,355.67
Total Dollar Amount Requested from Claims	\$240,917.52*
Total Dollar Amount Requested from Denied Claims	\$62,305.27
Total Dollar Amount Requested from Approved Claims	\$129,947.52
Total Dollar Amount Paid by Risk Management (amount less deductibles)	\$64,568.62

* During 2004, submitted claims included \$110,970 for loss of computer equipment and software by FedEx during shipment to repair location. FedEx reimbursed MCCCDCD \$3,000. Our property insurer paid \$46,090.51

Discrimination complaints

Equal Employment Opportunity Commission

Number of charges received	31
Number of “no cause” findings	14
Number of “cause” findings	17
Number of charges settled	0
Number of cases open as of 12.31.04	17

U.S. Office for Civil Rights

Number of charges received	1
Number of “no cause” findings	1
Number of “cause” findings	0
Number of cases open as of 12.31.04	0

Arizona Civil Rights Division

Number of charges received	2
Number of “no cause” findings	2
Number of “cause” findings	0
Number of charges settled	0
Number of cases open as of 12.31.04	0

**Ombuds Case Log
Jan 2004 – Dec 2004**

The Office of Ombuds Services continues to provide referral 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.

Type of Issue	Number Received
Academic Grievance	14
Advisor	1
Computer Use by student	1
Corresponded on behalf of Chancellor	1
Electronic Communications Policy	1
Expulsion	1
Faculty promoting political views	1
Financial Aid Processing	1
General Policy Information	4
Graduation Status	1
Grievance about Faculty	1
MAT Reclass	1
Nursing program acceptance	1
Nursing Program SWSC	1
Online Nursing Program	1
Biology department	1
College Signage	1
Petition signatures	1
Political Activity	1
Prerequisite for courses	1
Public Records Requests	7
Refund Policy/Policy Changes	1
Residency Status	3
College Customer Service	1
Student Admission (non-accredited)	1
Student Discrimination	3
Suspended student/Financial Aid	1
Tuition policy	1
Unnecessary Mailed catalog	1
Total	55

III. Notable Accomplishments In 2004

Our office has, over the years, developed many training materials and other resources to instruct the Maricopa community on legal basics in various areas. Among the most successful of these have been the online tutorials we developed on the topics of sexual harassment, HIPAA, and FERPA. This year, we developed an online tutorial on copyright law. The tutorial provides instruction on such essential topics as the elements of a copyright, fair use, and special provisions available to educational institutions.

Several years ago, our office suggested publishing select Board policies and administrative regulations most pertinent to Maricopa employees. The result was the "Blue Book," which has quickly become an essential handbook for persons employed throughout the District. We have published each updated version of the Blue Book and assumed complete responsibility for mailing a copy to each full time employee in Maricopa. This year, we undertook the task of obtaining receipt acknowledgements from those employees. This entailed the development of an e-mail form response for those employees to indicate receipt of their copy of the document. The acknowledgements will assist supervisors and human resources to ensure that employees subject to the policies contained in the Blue Book have indicated receipt of the handbook.

In an effort to encourage more involvement by the internal community in the development of administrative regulations, we proposed the addition of various steps to the approval process. These included establishing that proposed changes and amendments be previewed by members of the CEC and employee group leaders before administrative regulation language is submitted for broad open comment. The changes were welcomed by the various employee groups as a means of facilitating their involvement in the regulation enactment process at an early stage.

As 2004 was an election year (not only for partisan elections, but for Maricopa's capital bond initiative as well), it was essential that members of the internal community be knowledgeable of the law regarding political activity, particularly the permissible and impermissible use of District resources in connection with such activity. Accordingly, we prepared and distributed to the internal community various resources on the topic. We authored and sent to each employee an edition of "CounselNotes" on the issue; an edition of our quarterly newsletter, "In Brief" featured guidance as well. Finally, we authored a detailed legal research briefing paper, and an executive summary thereof, on the law regarding the use of college and district resources for political activity. The paper and summary were sent to District leadership.

In response to community concerns regarding the appropriate use of our e-mail system and employee web pages, we spearheaded a comprehensive review of the administrative regulation for Electronic Communications and Computing (Technology) Resource Standards. We coordinated the assembly of a review committee from the legal and information technology departments, faculty and students. The intent of the changes was to address enforcement of violations as well as to establish business use of technology resources. Our work on this initiative will continue into 2005.

In August, in conjunction with Drs. Helfgot and Bustamante, we presented on the topics of risk management and academic freedom at a Governing Board Strategic Conversation. We prepared materials on the subjects, and led break-out discussions on these issues with members of both internal and external communities.

As a result of enacting an administrative regulation regarding vehicle safety in 2003, our department implemented online defensive driving training and motor vehicle record reviews in May 2004. To date, over 1500 District employees have had their motor vehicle records reviewed and taken the online defensive driving training course.

The Maricopa Integrated Risk Assessment (MIRA) project, chaired by the District Risk Manager, gained momentum in 2004. The MIRA project attempts to break down the limitations of the “silo approach” to managing risks by integrating traditional risk management and enterprise risk management (ERM). The MIRA committee adopted their charge, received facilitated training on ERM concepts, adopted a “Risk Environment, Culture, and Appetite” statement, started refining the District’s Risk Register, developed risk assessment tools, and produced an annual report.

We spearheaded in 2004 an initiative to implement an employee mediation program. While such programs are common among many employers in public and private sectors, our initiative seeks to develop one on a District-wide basis for the first time. At our urging, the Acting Vice Chancellor for Human Resources retained a consultant to develop a feasibility study. By the end of 2004, the Acting Vice Chancellor worked with the General Counsel in assembling an implementation team to develop procedures for administering a mediation program for full-time faculty. It is anticipated that such a program will be ready for implementation in the 2005-06 academic year.

The first Environmental Compliance Workshop was well received by the 35 employees who attended it in May 2004. Participants received an update on

the District's environmental compliance initiatives and heard speakers from the Environmental Protection Agency, State of Arizona, Arizona State University, and Clean Harbor.

In 2004, we added to our website a section devoted to issues under Arizona's public records laws. The new section offers additional information about public records requests and records retention, as well as pertinent Board policies and retention schedules.

To assist our colleges with their pesticide management efforts, we initiated a contract with Mike Gillispie, a Maricopa faculty member, to provide pesticide management consulting services. These services include assistance in developing a pesticide management program at each site as well as training for licensure of pesticide applicators at each site. These services will bring Maricopa in better compliance with pertinent state laws regarding the application of pesticides.

Members of our staff facilitated discussion related to fees in three areas: parking violations, rental rates, and public records. At the request of the college safety directors, fees for parking violations were submitted to the Governing Board for approval as part of the review of the parking and traffic administrative regulation. Language for a new policy on rental rate fees was submitted to the Governing Board for adoption. While an administrative regulation already existed that allowed the colleges to identify fees for the rental of facilities, the purpose of the policy was to recognize the Board as the authority to approve fees. Finally, due to the increased demand for public records, fee rates were established for the copying and faxing of public records.

Early in the year, the directors of the various child care centers at our colleges contacted our office regarding a change in enforcement by Department of Health Services officials who administer regulatory mandates affecting the centers. The change resulted in directives by that agency that prevented center personnel from taking children at the centers to various locations at their colleges on "field trips" and similar excursions. Such activities are not only valuable enrichment experiences for the children, but they are also enjoyable for the college community as well. Accordingly, we met on various occasions with DHS officials, as well as their counsel, to develop procedures under which the field trips could continue without offending agency regulations. We also devoted many hours in providing the necessary documentation to comply with the agency's directives. Ultimately, we were successful in these efforts, and the center officials were able to resume the field trip activities for the children.

A random audit by federal officials at one college resulted in some recommendations for greater accessibility for students to grievance procedures

over claims of discriminatory treatment. Accordingly, we used the recommendations as an opportunity to suggest to the Deans of Student Services changes in these procedures. We spent many hours revising the existing processes, and met with those officials on several occasions to obtain their input and eventual approval of those revisions. The result is a more user-friendly procedure that is more widely disseminated to students.

Some years ago, 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 are known as the TEACH Act. In 2003, we suggested to the Vice Chancellor for Academic Affairs that she appoint a District-wide committee to assess Maricopa's potential to take advantage of this new legislation. We worked with this committee throughout that year and 2004 to develop materials to assist educators in Maricopa regarding the parameters of the TEACH Act. In 2004, the committee completed its charge, and delivered a report on these resources to the Vice Chancellor. The report was ultimately delivered to Maricopa's MCLI division for its reference.

Educating the Maricopa community on the law in Arizona regarding public records was a major initiative for our department in 2004. We developed and conducted training sessions at the District Office, Mesa Community College, Glendale Community College, and Phoenix College. The trainings were held in conjunction with the District media relations department on September 30 and October 1. The training targeted employees who were either responsible for maintaining official documents and records or for reviewing documents prior to their release to an external party. A handbook that included a list of definitions, a process for responding to complaints, as well as our various internal policies on records was distributed to the participants. A total of 135 participants from the various colleges attended the four sessions.

In 2004, we continued to present training at new employee orientations and other training sessions organized by the Employee Organizational Learning and Training (EOLT) department. Much of this training was part of that department's curriculum on Supervisory Development. Training on legal issues included Employment Law Essentials, Stewardship of Public Resources, Public Employment and Risk Assessment for Supervisors. Members of our staff presented at 30 training sessions in 2004.

One feature of the various online tutorials we have developed for the internal community has allowed any person taking a tutorial to complete a registration process. This feature provides documentation that the named individual did indeed complete the tutorial. In recognition of the value of our FERPA tutorial, various Directors of Admissions and Records requested the

capability of being able to document at their respective colleges that students and staff at those institutions had been required to complete the tutorial. Accordingly, we devoted considerable efforts to reconfiguring the registration feature of the FERPA tutorial in response to this request. Now, a designated college official can readily access records maintained in connection with the tutorial to determine which individuals at the respective college utilized this teaching tool.

Acknowledging the growing percentage of students whose principal language is Spanish, we initiated contracts with expert translators to translate into that language five of the resources we offer students: Copyright Law--What Students Should Know, Civil Rights--Rights of Students with Disabilities, Sexual Harassment On Campus, Process for Discrimination Complaint Procedures for Students, and Computing Resource Standards. The documents were then formatted into brochures and distributed to officials at each college. The translations are also available on the department's website. We anticipate translations into Spanish of other resources in 2005.

We introduced "Update!", a periodic e-newsletter to provide subscribers with updates on various services we provide and what's new on our website. We have received many favorable responses to this service, principally from administrative service personnel and officials with fiscal responsibilities. Subscription is available to any member of the Maricopa community upon request at: <http://www.maricopa.edu/legal/update/subscribe.htm>.

In 2004, we worked with the District Finance Department to resolve an issue relating to the deduction of out-of-state income taxes from an MCCCCD employee working and residing in another state. The resolution of the issue eliminated a roadblock to a creative partnership between a MCCCCD college and a health care facility in which MCCCCD would provide instruction at the facility's site.

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 in accommodating students with disabilities.

During 2004, we successfully prosecuted the administrative action regarding termination of two District employees. Additionally, we worked with members of Employee Relations to obtain resignations of several other employees who otherwise would have been terminated for cause.

Pursuant to Governing Board mandate, the District Safety Committee coordinates the functions of the college safety departments at the ten colleges. In

2004, 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 worked in conjunction with Purchasing and Facilities Planning and Development to streamline and update administrative regulations and procedures for the Capital Development Advisory Council. The processes were outdated, and did not accurately reflect, for instance, the authorities and responsibilities of the colleges and the District office.

Late in 2004, and on the heels of the county election over Maricopa's capital bond initiative, a local newspaper published various articles which, in effect, accused Maricopa employees of misusing college and district resources in violation of laws that prohibit such use for the purpose of influencing the outcome of an election. Immediately after such reports surfaced, we suggested to the Chancellor that a retired state judge be retained to conduct an independent review of these allegations. We further urged that the review be wholly independent, that the investigator have complete access to Maricopa documents and personnel, and that the results be available to the public. The Chancellor agreed and, at his direction, we sought out the services of a qualified retired jurist to conduct the inquiry. We successfully enlisted the services of the Hon. Thomas Kleinschmidt (Ret.), who served in Maricopa County as a Judge of the Superior Court, as well as on the Arizona Court of Appeals. The Manager of Governance and Ombuds Services provided administrative support to Judge Kleinschmidt in his inquiry. His report was slated for completion in 2005.

At considerable expense each year, the District must hire outside attorneys to defend it in claims commenced against it in state and federal courts. Our department monitors the progress of this litigation and approves payments to outside attorneys. In an effort to effectively monitor litigation and limit litigation expenses, we developed guidelines for outside counsel. The guidelines require outside attorneys to coordinate litigation with members of our staff. The guidelines also limit legal expenses by several methods including setting specific amounts for administrative expenses, limiting the number of attorneys assigned to a case and requiring the approval of a member of our staff before time consuming legal research or motions are undertaken. We will incorporate these guidelines in our solicitation for legal services in 2005. The effect of this will be to require that any firm representing Maricopa in litigation comply with these guidelines, beginning July 1, 2005.

We continue to maintain the Maricopa Governing Board's website (<http://www.maricopa.edu/gvbd>). A search engine on the site facilitates quick

access to information, including searching several years of Governing Board minutes. The Motions database allows users to search motions from 1995 to the present.

In 2004, we developed some additional forms and placed them on our website to assist the colleges with intellectual property matters. Specifically, we created a License to Use Film, Video, Photos or Other Images that the colleges may use to obtain proper authorization to use images in marketing or other tangible materials they produce. Additionally, we created a License for Student Project form, which the colleges may use to clarify student ownership of works prepared for class, and to assure that the students have obtained proper authorizations to use any proprietary materials in their works.

The Office of General Counsel continued to provide support in 2004 to the District's council of disability resources coordinators. The council meets monthly in the Office's library, and we attend many of the 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.

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.

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 and governance issues at Mentor Program functions. Our staff also continues to develop and maintain the WLG's website.

IV. Training Responsibilities

In 2004, 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 public records, copyright, and workplace safety. Among the more notable internal training programs in 2004 were the following:

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 spoke to faculty in January at GateWay Community College regarding faculty rights and responsibilities under copyright law.

In March, Pete spoke to undergraduate students at ASU participating in that institution's "Emerging Leaders" program on leadership.

In April, 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. Also in April, Pete spoke to faculty at Rio Salado College regarding student rights and responsibilities under the student discipline and academic misconduct codes.

In September, Pete spoke to department chairs at Phoenix College regarding the discipline code and disruptive students.

At the District Success Conference in October, Pete spoke to attendees regarding the discipline code. Also that month, Pete spoke to students participating in the Student Public Policy Forum at Central Arizona College on the landmark U.S. Supreme Court case, *Brown v. Board of Education*.

For the Women's Leadership Group's Mentor Program, Pete spoke in November to participants in that program on laws relating to community college governance.

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.

Throughout the year, Ruth Unks delivered training on various occasions regarding the Maricopa Integrated Risk Assessment (MIRA) project, OSHA compliance, and traditional risk management.

Ruth participated in an Occupational Health & Safety/Wellness panel discussion at Rio Salado College in June.

Additionally, each month, members of the Office of General Counsel provide training on discrimination and sexual harassment at the District's New Employee Orientation.

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

In February, Pete Kushibab spoke on public accountability laws and governance issues at the annual Stetson Law and Higher Education Conference in Clearwater, Florida.

In September, Teresa Toney, in conjunction with Dr. Glasper and Mrs. Rosenthal, presented a session at the 2004 ACCT Annual Community College Leadership Congress in New Orleans. The presentation was entitled, "Strategic Conversations: A Fresh Approach to Leadership," and outlined for attendees how to conduct a strategic conversation within their own organizations.

In April, Ruth Unks provided training on enterprise risk management to two different groups. Ruth presented this information to a group of risk managers from Colorado public entities and to several employees of Arthur J. Gallagher & Co at the Gallagher offices in Denver, Colorado. Ruth also provided this training to the members of the United Educator's Risk Management Advisory Committee in Chevy Chase, Maryland.

Ruth co-presented on ERM at the PRIMA/URMIA (University Risk Management Association) Seminar in Anaheim, California. Ruth also co-presented a virtual seminar on enterprise risk management for the Public Risk Management Association (PRIMA) in July. She spoke on "Introduction to Risk Management" and vehicle safety at the PRIMA Government Risk Management Seminar in Anaheim, California, and presented a seminar on vehicle safety at the PRIMA Western Regional Seminar in Copper Mountain, Colorado, too. Ruth also spoke about public risk management in the United States at the Association of Local Authority Risk Managers (ALARM) conference in Manchester, England.

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.

Ruth Unks served as National President and Past-President of the Public Risk Management Association (PRIMA) in 2004. Ruth represented PRIMA at the annual Risk and Insurance Management Society (RIMS) Conference in San Diego, California. In June, Ruth was the master of ceremonies for PRIMA's annual conference in Fort Lauderdale, Florida, and she represented PRIMA at the ALARM conference in Manchester, England. Ruth also was the co-chair of the PRIMA/URMIA Seminar in Anaheim, California. Ruth is a member of the United Educators Risk Management Advisory Committee. She continues to be a guest lecturer on risk management for graduate classes at Arizona State University and Northern Arizona University.