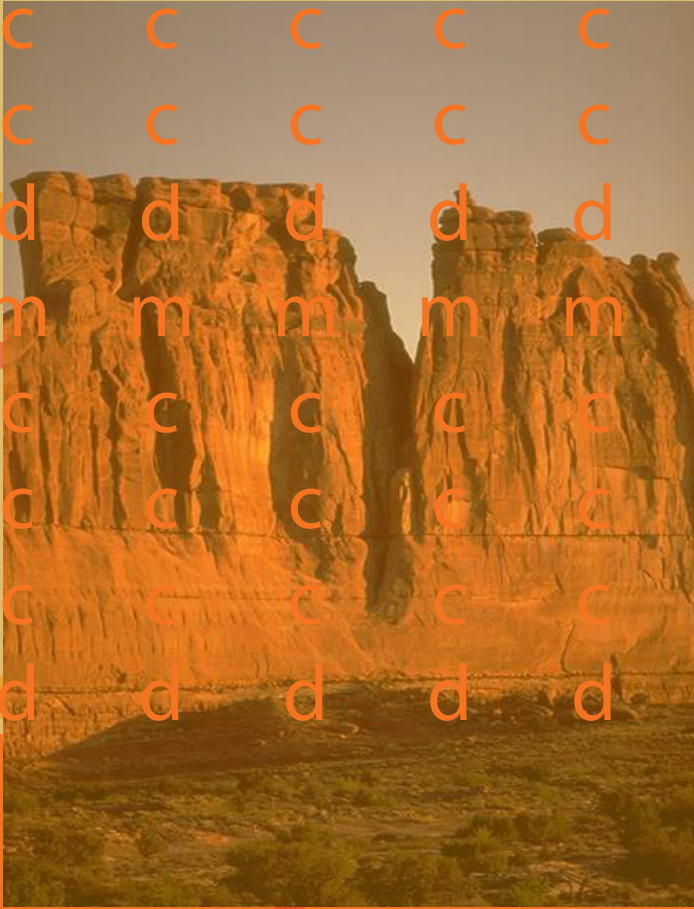


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**Legal Services Department**

*2006 Annual Report*

## **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 the 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 interest of the 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 2006

### Contracts

Total number of contracts received for review and approval: 2,140

- 1,700 Contracts & Agreements
- 47 Leases/Lease Extensions
- 102 Requests for Clinical Experience Agreements
- 36 Experiential Education Partnership Agreements
- 0 Federal Work Study Program Agreements
- 1 Maricopa Learns Through Service Agreements

### Risk Management

Notices of claim filed against District (by location):

<u>Location</u>	<u>Number of Claims</u>
CGC	5
DSSC	1
EMC	2
GWC	2
GCC	1
MSC	0
MCC	2
PVC	1
PC	5
RSC	2
SCC	4
<u>SMC</u>	<u>0</u>
Total:	25

Notices of claim denied (by location):

<u>Location</u>	<u>Number of Claims</u>
CGC	3
DSSC	0
EMC	2
GWC	1
GCC	1
MCC	1

PVC	0
PC	2
RSC	1
SCC	4
<u>SMC</u>	<u>0</u>
Total Denied:	15

Non-litigated claims settled in 2006:

<u>Location</u>	<u># of Claims</u>	<u>Settlement</u>
PVCC	1	\$561.45
PC	3	\$759.86
RSC	1	\$9,784.06
DO	1	\$3,888.78
Total Claims Settled:	6	
Total Settlements:		<u>\$14,994.15</u>

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 within Maricopa: 2,575

Number of certificates of insurance provided by Risk Management upon request of contractors doing business with Maricopa: 819

***Property Loss Claims for 2006***

Total Number of Property Loss Claims Received	46
Total Number of Claims Denied	6
Total Number of Claims Approved	21
Total Dollar Amount Requested from Completed Claims:	\$105,799.57

Total Dollar Amount Requested from Denied Claims:	\$23,747.96
Total Dollar Amount Requested from Approved Claims:	\$82,051.61
Total Dollar Amount Paid by Risk Management (less deductibles):	\$52,422.62

*Discrimination and administrative complaints*

**Equal Employment Opportunity Commission**

Number of charges received	12
Number of “No Cause” findings (includes cases open as of 1-1-06)	17
Number of “Cause” findings	0
Number of charges Mediated or Settled	1
Number of cases open as of 12.31.06	6

**U.S. Office for Civil Rights**

Number of charges received	1
Number of “No Cause” findings	0
Number of cases open as of 12.31.06	1

**Arizona Civil Rights Division**

Number of charges received	0
Number of “No Cause” findings	0
Number of cases open as of 12.31.06	0

**Arizona Department of Occupational Safety**

Number of charges received	0
“No Cause” findings	0

### **III. Notable Accomplishments In 2006**

Members of our department continue to provide administrative support to the Maricopa Women's Leadership Group (WLG) Mentoring Program. We have actively participated in the Program's creation in 1999, and continue to support all of its activities.

The department continued to distribute *Update!*, a periodic e-newsletter to provide subscribers with updates on the various services we provide and what's new on our website. Subscription is available upon request at:  
<http://www.dist.maricopa.edu/legal/update/subscribe.htm>.

In 2006, we created an Internet site especially for students. The site contains information on the student conduct code, residency, financial aid, complaint processes, civil rights, and other resources that would be useful to a student at any of the Maricopa Community Colleges. The address is:  
[www.maricopa.edu/legal/student](http://www.maricopa.edu/legal/student)

For many years, state statute has prohibited community college districts from using their resources for the purpose of influencing the outcome of an election. Within the last few years, the Arizona legislature added new enforcement provisions to this statute. As part of a continuing effort to ensure that the Maricopa community is informed about the do's and don't's of political activity, we--along with the Center for Civic Engagement--presented a series of programs at several colleges throughout the District for employees on the topic.

The department processed dual enrollment agreements with 21 public school districts and approximately 17 charter or private high schools, with hundreds of attachments specifying dual enrollment classes. Databases were created to track the high volume of documents received for dual enrollment. The databases for the current and prior academic year were also added to the department's website to provide more information via the web to our clients. The State of Arizona Auditor General's Office, which audits these agreements in the Legal Services Department's Office, complimented the office on the organization of the documents and the ease with which they may be retrieved.

Online databases for Leases and Long-Term Contracts were added to the department's website to provide more information via the web to our clients.

At a public forum meeting with the Governing Board early in 2006 on the topic of college safety, the Chancellor suggested that an outside consultant be retained to conduct a broad-based study of the issue. Consequently, we devoted many hours to the development of a request for proposals and the eventual selection of a consultant. We also facilitated the many meetings the consultant conducted with internal constituent groups on the topic, and oversaw the dissemination of the final report.

On the heels of the consultant's report on District college safety matters, the Chancellor also voiced an intent to suggest that the Governing Board adopt a general policy concerning college safety operations within the District. We devoted considerable resources to assist in the preparation of the proposed policy ultimately submitted to the Board.

The department initiated a project to automate the issuing and processing of Clinical Experience Agreements. The online request form has been updated to facilitate use by the client. The database has been updated with new fields to make more information available. In 2007, all signed agreements will be accessible via the department's website.

The department created an insurance matrix and placed this key tool on its website to assist the campuses in creating a process for determining when to waive the general requirement for MCCCDC to be added as an additional insured to a vendor's insurance coverage. United Educators, a large insurance company that insures many institutions of higher education, reviewed and applauded the document, and refers to the document on its website.

In light of MCCCDC's successful bond election in 2004, there was a critical need to improve the process for identifying types of activities that might impair that bonding capacity, more specifically those that might be considered "private activity" under federal tax law. The department worked with the Finance Department to create procedures for addressing these issues and vastly improved MCCCDC's ability to handle these types of matters.

Last year, the Office for Ombuds Services saw a nearly 200% increase in requests for public records from 2005. The increase stemmed largely from investigations by two local newspapers. While previous requests have sought e-mail messages, budget reports or personnel information, the range of records requested expanded greatly. Among the kinds of records requested were special service employment agreements, internal audit reports, travel requests and

reimbursement forms, climate studies, vendor contracts, and employee rosters. These requests have identified a need for attention to policy-making in this area, which would establish a fee structure for requests for records in alternative formats.

Last year, we launched an initiative to explore the feasibility of criminal background checks concerning applicants for particular employment positions within the District. In 2006, we continued those efforts by meeting with human resources personnel to develop proposed policy language and procedures for such a practice. We also provided resources that might be used in the ultimate selection by the Vice Chancellor for Human Resources of a vendor that might perform such background checks on behalf of the District.

In 2006, we continued our efforts to effect improvements to the District's Student Discipline Code. These improvements add new bases for discipline, and modify the process to make it a more valuable instructional tool. We met on various occasions with both the Vice Presidents for Student Affairs and the District Director of Student Affairs. It is anticipated that the changes that are the result of these efforts will be implemented in 2007.

The department along with the Facilities Planning and Development Department crafted a comprehensive artist's contract. The contract is in four parts, from the consulting phase to design, production and installation of the artwork. The contract permits the campuses to contract with artists to explore integrating creative works into their campus construction projects. If the campus wishes to move forward, it may do so using the same contract.

The District Office Emergency Response Team, chaired by the District Risk Manager, conducted emergency evacuation drills and helped train more than 400 District Office employees in the safe evacuation of the District Office building.

In 2006, we successfully prosecuted, on behalf of college and District administration, a termination action against a faculty member alleged to have violated District conflict-of-interest policies, as well as displayed deficient instructional performance. Ultimately, the Governing Board adopted the recommendation of the hearing committee to terminate the instructor's employment.

In November of 2006, Arizona voters approved Proposition 300. This ballot measure requires essentially that students who are undocumented be assessed out-

of-state tuition, and that community colleges not allow state monies to be used to pay scholarship or other financial assistance to such students. Immediately following the voters' action, we spearheaded an implementation process that included representatives from college admissions and records offices, financial aid, information technology, and government relations. Initial results of these efforts included changes to enrollment processes, data collection, and student policies. This effort will continue well into 2007.

Our office filled three staff vacancies. We welcomed Ingrid Austin as the new administrative assistant in the Governance and Ombuds Services function, and Sarah Meland became the new Risk Analyst in the Risk Management function. Finally, Richard Galvan (an attorney with more than thirty years of employment law experience, and formerly a partner with the firm of Carson Messinger Elliot Laughlin & Ragan) joined the Department as an Assistant General Counsel.

Early in 2006, we worked with the Vice Chancellors for Academic Affairs and Student and Community Affairs to develop an approach for responding to student complaints. The approach contemplates that student complaints that require contact with college officials be directed to an appropriate Vice Chancellor, while complaints from external citizens be directed to the Office of Ombuds Services. In the course of developing this approach, we identified the need for a new administrative regulation that would allow a student to appeal a college-based issue beyond that level; this is to address occasional confusion for students who believe that a college president has failed to address complaints. Discussion on this proposal will continue with both the various vice president councils, as well as with the Chancellor's Executive Council.

A work group was established to discuss our planning efforts for dealing with a potential influenza pandemic. The work group will expand its membership to include key functional representatives. A special edition of "In Brief", the Department's quarterly newsletter, was devoted to the potential influenza pandemic and contained information about the evolution of the H5N1 virus as well as steps to preventing the flu.

In 2006, the GateWay Early College High School received a noncompliance letter from the United States Environmental Protection Agency regarding the Asbestos Hazard Emergency Response Act (AHERA). That act, among other things, requires public schools to investigate public school facilities for the presence of asbestos, and to remediate that asbestos. The original letter from EPA indicated that the high school would be assessed a hefty fine, but the department

and GWCC worked to resolve the issue. In the end, GWCC removed a small amount of asbestos and the department was able to negotiate with the EPA to eliminate the assessment of any fine.

In 2005, in the course of filling both General Counsel and (on an acting basis) Vice Chancellor for Human Resources responsibilities, we proposed modifications to the District's policy on the awarding of emeritus status. These modifications were in response to concerns voiced by the Chancellor's Executive Council; our proposed changes were delivered to the Vice Chancellor for Human Resources in the fall of 2005. Last year, we assisted the Vice Chancellor in his efforts to effect adoption of the revised policy, and devoted considerable effort to realizing changes suggested by both CEC and the Governing Board.

Over the last few years, we have supported efforts by outside counsel to challenge the usage of college names (and variations thereon) in various unauthorized Internet URL addresses. As a result of this, counsel suggested that the District consider devoting financial resources to registering the name of each community college within the Maricopa District as a trademark protected under federal law. Consequently, we successfully petitioned officials within Business Services to provide the resources for this effort. We anticipate that the registration initiative will be completed in 2007.

In 2006, the Manager of Governance and Ombuds Services, assumed a special assignment to work with the District Human Resources Division and provide assistance to the Vice Chancellor for Human Resources on matters related to policies and procedures. She also specifically examined the internal discrimination complaint process, outlining standards of practice and making recommendations to the Vice Chancellor.

The Maricopa Integrated Risk Assessment (MIRA) project, chaired by the District Risk Manager, continued to gain momentum in 2006. 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). In 2006, the MIRA committee selected and risk mapped eight risks to mitigate, developed and piloted the SMART (Strategic Maricopa Assessment Risk Tool) tool, developed a risk assessment tools training course, finalized a draft of an administrative regulation, produced an annual report, and conducted training.

In the summer of 2006, reporters from both the Arizona Republic and East Valley Tribune submitted the first of numerous requests for public records. By the

end of the year, these requests had sought voluminous records on such topics as employee travel, internal audits, and various academic offerings. Each request was processed through the Office of General Counsel. By years end, our staff had devoted hundreds of hours to not only assembling the records and preparing them for dissemination, but also support to other departments and units within the District in support of responding to both the original requests and reaction to reports published in the media.

Pursuant to Governing Board mandate, the District Safety Committee coordinates the functions of the college safety departments at the ten colleges. In 2006, 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.

#### **IV. Training Responsibilities**

In 2006, we continued to offer training for Maricopa employees on a variety of issues. Among the more notable internal training programs in 2006 were the following:

In February, Pete Kushibab presented on the topic of employee mediation at a workshop for senior-level administrators at Scottsdale Community College.

Pete spoke to faculty and student affairs employees in June at Rio Salado College regarding the Family Educational Rights and Privacy Act.

In September, Pete and Teresa Toney delivered a presentation on public sector employment (offered under the auspices of Employee and Organizational Development) at Mesa Community College. Also that month, Pete co-presented (with Alberto Olivas of MCC's Center for Civic Engagement) training programs at Glendale Community College, Scottsdale Community College, and Phoenix College concerning the use of community college district resources for the purpose of influencing the outcomes of elections. Pete also presented in September at the District's annual Student Success conference.

In October, Pete presented an all-day session on student affairs law at the Student Services Institute at Phoenix 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.

In November, Teresa Toney served as a presenter to the Women's Leadership Group on the topic of Maricopa Governance.

Additionally, in March, Teresa spoke on the topic of Maricopa Governance for the District Student Services Institute.

Throughout the year, Ruth Unks delivered training on various occasions regarding the Maricopa Integrated Risk Assessment (MIRA) project, OSHA compliance, and traditional risk management. This training included a presentation at the District's Student Services Institute.

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 the First Amendment at the annual Stetson Law and Higher Education Conference in Clearwater, Florida.

Pete served as a member of the faculty for an institute for new senior student affairs officers in Arlington, Virginia for the National Association of Student Personnel Administrators (NASPA) in October.

In November, Pete presented before the western regional conference of the National Committee for Black American Affairs in Las Vegas, Nevada.

At a national conference for student affairs officials offered in Las Vegas by NASPA in December, Pete spoke on community college issues.

Ruth Unks spoke in March at the PRIMA/URMIA Regional Seminar in Chandler.

In June, Ruth co-presented on the topic of risk management at the Public Risk Management Association (PRIMA) Conference in Las Vegas, Nevada.

In October, Ruth delivered a presentation on "Introduction to Risk Management" at the PRIMA Institute in Grapevine, Texas.

Maggie McConnell spoke on privatizing public procurement at the annual meeting of the National Purchasing Institute, which was held at Tucson in July.

In December, Maggie co-chaired a series of state public lawyers' discussion groups on public procurement at the annual conference in Las Vegas of the Western States Contracting Alliance.

## 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. Pete also serves on the advisory committee for the *College of University Law Advisor*, a periodic newsletter published by the Civic Research Institute. 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 Past-President of PRIMA in 2006, where she also chaired the Leadership Development Committee and the Education Committee. Ruth served as co-chair of the PRIMA/URMIA Regional Seminar in Chandler, Arizona. She also serves on the Maricopa County Pandemic Preparedness Coordinating Committee. Ruth previously was a member of the United Educators Risk Management Advisory Committee. She continues to be a guest lecturer on risk management for graduate students at Arizona State University and Northern Arizona University.

Maggie McConnell served and continues to serve as Chair of the Advocacy Subcommittee of the State of Arizona's Statewide Cardiovascular Disease Steering Committee, administered through the State of Arizona's Department of Health Services. The Committee is responsible for assisting the State with implementing a cohesive plan in Arizona for reducing deaths and the effects of heart disease and stroke. As part of her subcommittee responsibilities, she spoke about advocacy at the first state conference convene to discuss the plan.

Teresa Toney served as co-chair of the first MCBA Black Tie Scholarship fundraiser. The event raised over \$3,000 in student scholarships.