

2007 Annual Report

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 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 2007

Contracts

Number of contracts received for review and approval: 2,058

- 1,604 Contracts & Agreements
- 283 Dual Enrollment Agreements & Addenda
- 104 Requests for Clinical Experience Agreements
- 33 Leases / Lease Extensions
- 30 Experiential Education Partnership Agreements
- 0 Federal Work Study Program Agreements
- 4 Maricopa Learns Through Service Agreements

Risk Management

Notices of claim filed against District (by location):

<u>Location</u>	<u>Number of Claims</u>
CGC	1
DSSC	0
EMC	1
GWC	2
GCC	0
MSC	1
MCC	4
PVC	3
PC	4
RSC	1
SCC	2
<u>SMC</u>	<u>3</u>
Total:	22

Notices of claim denied (by location):

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

Notices of claim denied (by location):

<u>Location</u>	<u>Number of Claims</u>
PC	3
RSC	0
SCC	1
SMC	1
Total Denied:	13

Non-litigated claims settled in 2007:

<u>Location</u>	<u># of Claims</u>	<u>Settlement</u>
CGC	1	\$ 498.00
EMC	1	\$ 883.74
PC	1	\$ 108.31
RSC	1	\$3,500.00
SMC	1	\$3,000.00
Total Claims Settled:	5	
Total Settlements:		\$7,990.05

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: 2,827

Number of certificates of insurance provided by Risk Management upon request of contractors doing business with Maricopa: 808

PROPERTY LOSS CLAIMS FOR 2007

Total Number of Property Loss Claims Received	21
Total Number of Claims Denied	4
Total Number of Claims Approved	17
Total Dollar Amount Requested from Completed Claims:	\$139,780.29
Total Dollar Amount Requested from Denied Claims:	\$ 7,427.57
Total Dollar Amount Requested from Approved Claims:	\$132,352.72
Total Dollar Amount Paid by Risk Management (less deductibles):	\$ 86,967.92

DISCRIMINATION AND ADMINISTRATIVE COMPLAINTS

2007 Equal Employment Opportunity Commission

Number of cases open as of 12.31.06	5
Number of charges received in 2007	33
Number of “No Cause” findings	13
Number of “Cause” findings	1
Number of charges Mediated or Settled	1
Number of cases open as of 12.31.07	23

U.S. Office for Civil Rights

Number of charges received	0
Number of “No Cause” findings	1
Number of cases open as of 12.31.07	0

Arizona Civil Rights Division

Number of charges received	1
Number of “No Cause” findings	0
Number of cases open as of 12.31.07	1

Arizona Department of Occupational Safety

Number of charges received	0
“No Cause” findings	0

III. Notable Accomplishments in 2007

The Maricopa Integrated Risk Assessment (MIRA) project, chaired by the District Risk Manager, continues to develop and provide resources to employees in the identification, resolution, and monitoring of cross-organizational risks. Significant accomplishments of the MIRA committee for 2007 include adoption of an administrative regulation by the Governing Board, the formation of College Risk Assessment Facilitation Teams (CRAFTS), progress on risk treatments for selected best practices from the Risk Register/Best Practices statements, and promotion of the SMART (Strategic Risk Assessment Risk Tool) tool. The MIRA project also was the inaugural recipient of the 2007 URMIA (University Risk Management & Insurance Association) Innovative Risk Management Solutions Award that was presented to the District Risk Manager at the URMIA Conference in Denver, CO in September 2007.

Fielding and responding to requests for public records is an ever-increasing area for the Office of Ombuds Services. Requests from citizens are processed directly with the Office, while requests from the media are coordinated in conjunction with the Director for Media Relations. During 2007, approximately 58 media requests for college or District records were processed. Another area that appears to be increasing is that for employee requests for records. Generally, these are related to situations where employees are involved with an employment dispute (i.e., termination) that directly involves them.

The property schedule for the 2007-2008 insurance renewal period was thoroughly audited and updated to create an accurate list of District owned and leased properties. The project will help ensure that we have adequate coverage for our assets.

Support was provided to the Chancellor and the Vice Chancellor for Business Services in implementing the Community Member Blue Ribbon Panel recommendations that were adopted by the Governing Board in February. This involved providing assistance in the development of mandatory employee stewardship training, review of disclosure forms and serving on a committee to develop processes for implementing the enrollment irregularities administrative regulation.

In 2007, we served as the main internal contact for an investigation by the Maricopa County Sheriff and County Attorney. We spent hundreds of hours working with college officials throughout the District in responding to dozens of subpoenas for records. We also facilitated, to the extent possible, interviews between officials of the Sheriff's office and college and District office employees. Although, by year's end, no charges were filed or arrests made, the investigation continues, as do the Department's efforts in effecting the Chancellor's assurance of full cooperation.

During 2007, the self-insurance claims process was formalized. The processes established standardize how claims are received, reviewed and approved. Included in the standardization of claims processing is the institution of accounting controls. Based on the settlement amount, different levels of administrative review and approval are needed. The new processes align with the Blue Ribbon Panel's directives on public stewardship of funds.

Members of our department continue 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 all of its activities ever since.

The department processed dual enrollment agreements with 23 public school Districts and approximately 18 charter or private high schools, with hundreds of attachments specifying dual enrollment classes. Databases are available on the department's website to provide more information via the web to our clients. These databases were updated to include course listings to make it easier for the clients to verify their documents were submitted.

During 2007, subrogation efforts recaptured \$94,313.32 in property insurance paid. Of this amount, \$45,798.41 was the result of pursuing restitution through the criminal justice system for an incident at Glendale Community College.

The department completed a project to automate the issuing and processing of Clinical Experience Agreements. In cooperation with the Healthcare Education department, the database was updated to automate the issuing of new agreements. This includes exporting prepared agreements in pdf format and the creation of customized reports to follow-up on the status

with one-click. All agreements have been integrated into the database and can be quickly created. All signed agreements are now accessible via the department's website. Approximately 643 agreements have been scanned to pdf and made available for download. Due to the increasing number of requests to provide copies of agreements, we initiated this project so that our clients could access and print agreements instantly. We received many compliments from faculty and staff regarding this new feature.

The District has implemented various measures over the past several years that were aimed at informing and encouraging employees to exercise good stewardship when using the email system, particularly when posting to the Districtwide network. As violations continued to occur, electronic standards of practice were drafted at the request of the Chancellor in order to establish a consistent level of review for messages that are posted Districtwide and considered to be college or District business. Feedback on the standards was sought from various administrative, staff and faculty representatives. At present, over 8,500 parties have the ability to post messages at will to the entire system. This self-governing method operates primarily on the good faith that employees will not violate the electronic communications and technology resource standards. Upon adoption of the standards, which also prescribe that each college identify authorized designees that may post college or District business related messages, the standards will result in a proactive approach to electronic messaging. The language, titled "Acceptable Standards for District-wide Message Posting" serves to complement existing administrative regulations and was forwarded to the Chancellor for approval. Approval and implementation are expected to occur in 2008.

In August of 2007, the District launched the services of two new tools whereby employees could anonymously bring concerns about the institution forward. Global Compliance is a national organization that hosts a toll-free number and website where employees can report concerns on a 24/7 basis. Elizabeth Karabatsos is an independent third party ombudsman hired by the District to maintain a communications channel to employees. The types of concerns that employees are encouraged to bring forward include allegations of fraud, theft, misuse of public resources, threat of danger to a person or the institution, policy non-compliance, enrollment irregularities and conflict of interest. During the first 5 months of implementation 24 cases were submitted to the 24/7 hotline and the ombudsperson worked with 36 clients.

With both vehicles, the common type of concerns related to workplace climate and employee relations matters.

In its continuing active oversight of community colleges' dual enrollment programs, the legislature mandated in 2007 that the community colleges use a single, uniform agreement with the participating high schools. The Legal Services Department served as one of two lead counsels on the project. The final draft of the uniform agreement was submitted on time to the Joint Legislative Budget Committee in December 2007, by the deadline that the law required.

In Brief received a new makeover that added full color and playful designs to its pages, updating its look to a more current style. The Legal Services Department has been providing the *In Brief* newsletter to students, employees and friends of Maricopa Community Colleges since 1996. Each issue contains articles that reflect existing concerns and/or subjects that arise within the Legal Services Department.

The Office of Governance and Ombuds Services customized three retention schedules for the following areas: Child Care, Testing/Assessment, and Legal Services. Prior retention schedules specifying the records in the individual areas did not exist and therefore, each schedule took a considerable amount of time to create and included several meetings to discuss the individual needs of each area. Due to the specific needs of the various documents, each area had to be carefully examined and reexamined to ensure that all records would be maintained until no longer needed. We held hosted discussions with the State Library and met with the authorized designees from each area to discuss and identify the value of each record. Once a formal schedule was drafted we obtained final approval from the State Library.

Assistance was provided to the human resources division in formulating an administration titled Voluntary Payroll Deduction. The regulation provides guidance and a formal process as to how MCCCCD will review requests by external organizations that seek payroll deductions for charitable purposes. The regulation also allows for deductions to be made to employee associations and other MCCCCD programs. Prior to the adoption of this regulation, sound procedures and guidelines for employee participation in payroll deduction did not exist.

In 2007, we successfully prosecuted, on behalf of college and District administration, two termination actions against two groundskeepers alleged to have violated District vehicle usage policy. Ultimately, the Governing Board adopted the recommendation of the hearing committees to terminate employment.

We also successfully negotiated discipline less than termination for three faculty members. Suspensions resulted for one for alleged violations of District anti-discrimination policies and the second for alleged violations of both adjunct hiring policies and residential faculty instructional improvement policies. The third faculty member agreed to reduced access to District email for alleged violations anti-discrimination policies

A settlement agreement and release culminating in the voluntary resignation of a faculty member related to alleged violations of District sexual harassment policies and the alcoholic beverage usage regulation was effectively negotiated.

In addition, a manager withdrew from a scheduled due process hearing that was to consider allegations of unsatisfactory work performance, unsatisfactory attendance record and violations of District Management, Administrative & Technological teaching assignment policies. The manager subsequently resigned.

A three-member hearing committee determined that a faculty member should not be terminated for alleged violations of residential faculty intellectual property rights policies, enrollment fraud and property mismanagement. A settlement agreement and release was successfully negotiated resulting in the voluntary resignation of the faculty member.

Amidst allegations of reimbursement and payroll irregularities, among other issues, a faculty member waived her due process right to a hearing and retired.

After consideration of the hearing committee's recommendation to rescind the termination of a certified college safety officer for alleged violations related to college safety absence-from-duty-without-authorization policies, the Governing Board approved by a 3-2 vote, the hearing

committee's recommendation to suspend the officer. The certified college safety officer was suspended without pay for a period of 45 working days.

Members of our office took the initiative to propose the adoption of a regulation on gifts, gratuities and unrelated compensation. We met with officials from Business Services to prepare a proposed regulation addressing such areas as acceptance of gifts, receipt of payment for expenses stemming from non-business travel, door prizes and similar awards from conferences, and other matters that employees commonly face. The language of the proposed regulation has been forwarded to the vice-chancellor for business services.

The Legal Services Division worked with complaining MSC employees to clarify the issues that concerned them. Group meetings with the employees were held as well as one-on-one meetings. The end product was a concise list of grievances which formed the focus of subsequent investigations and reports by third-party experts.

As in years past, we devoted considerable resources in 2007 to college safety. We served as a resource in connection with the proposed creation of a District college safety coordinator, and served as a clearinghouse of information for college safety directors throughout the District.

In 2006, Arizona voters approved Proposition 300, which effectively required that persons not lawfully present in the United States be required to pay out-of-state tuition at public colleges and universities. It also precludes such students from receiving state-based financial assistance. We initiated the District's compliance program the day following the election, and continued to devote many hours to that effort in 2007. The ad hoc group of officers from college financial aid and admissions and records continued to meet and amend processes to ensure that Maricopa meets the letter and spirit of the law. We authored and disseminated (via printed means and the Internet) FAQ's and other resources to educate both internal and external constituencies. We also worked with attorneys representing other community colleges statewide to ensure (to the extent possible) consistency among those institutions. In the end, Maricopa's compliance with Proposition 300 served as a model for other Arizona institutions to follow.

Because of the number of questions that the Legal Services Department received about the propriety of asking outside parties, including commercial vendors, to be sponsors at MCCCCD events, the Department created a set of guideline to seeking and accepting those sponsorships. They describe the manner in which District personnel should seek partnership to assure that the process is above-board. They also define the types of activities for which it is inappropriate to seek sponsorships, such as to engage in activities through an outside party that are otherwise outside of the District's policies and regulations. Finally, the guidelines include a sponsorship form that describes the sponsored event and the dollar amount of the sponsorship, and sets forth sponsorship terms. Both the guidelines and the form are available on the Legal Services Department's website.

As part of the Blue Ribbon Committee's work, the Legal Services Department was tasked with assisting the Committee on its facilities use recommendations. Based on the Committee's final report, the department revised the facilities use administrative regulation and its accompanying appendix containing guidelines.

Our efforts to encourage human resources officials to implement a system of background checks for new employees continued to fruition in 2007. The initiative, which we began the previous year through a submission of data to the vice-chancellor for human resources, resulted in the creation of a request for proposals and process by which a national firm was selected to perform professional backgrounds investigations for prospective employees. As a result of our efforts, Maricopa will be better able to ensure that new hires are unencumbered by criminal convictions or other characteristics that, absent a system of background review, would go undetected.

To provide standards and processes for the use of the District's intellectual property, such as its name and logo, the Legal Services Department researched other policies at institutions of higher education, and drafted an administrative regulation. It will start through the administrative regulation review process in 2008.

In April, 2007, the federal Environmental Protection Agency notified one of the District's charter schools that it had not complied with certain provisions of the federal Asbestos Hazard Emergency Response Act. The

EPA proposed a fine of \$11,700. The college at which the charter school is located took steps to comply with the law, including the removal of asbestos in two very small areas. The Legal Services Department was able to negotiate with the EPA and the college did not have to pay the fine.

In 2007, we saw the fruition efforts we began previously on the adoption of an administrative regulation on return of property by employees who separated from employment. The regulation, which has been adopted, is an example of proper stewardship of public resources, and ensures greater control over personal property entrusted to individuals during their tenure of employment.

The Office of General Counsel website was cited as a model college or university general counsel website at the annual meeting of the National Association of College and University Attorneys. Among the more prominent aspects recognized were the wealth of information the site contains and the various contract and risk management forms available to college and District office employees.

In 2007, we commenced a process of improvements to the District's student discrimination complaint procedures. We added language to further clarify for students the situations within--and outside--the scope of the process by which a student may seek an investigation over claims that he or she has been the victim of discrimination prohibited by Maricopa policy.

IV. Training Responsibilities

In 2007, we continued to offer training for Maricopa employees on a variety of issues. Among the more notable internal training programs in 2007 were the following:

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

In February, March and November, Pete Kushibab and Teresa Toney presented their training program on public sector employment--at Paradise Valley Community College, Phoenix College, and the District office, respectively--under the auspices of Maricopa's Employee Organizational Development department. Also in February Pete delivered a talk on current legal issues facing Maricopa to an all-employee meeting at Chandler-Gilbert Community College.

In March, Pete spoke on legal issues facing diversity in higher education to the District's Diversity Infusion project. In April, he participated in Maricopa's Student Services Institute, 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. That same month, he spoke to faculty and staff of the Legal Assisting program at Phoenix College about Maricopa's discrimination complaint process for students. In September, he presented a training program on student discipline for student services staff at Scottsdale Community College.

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

In February, Pete spoke on campus safety issues at the annual Stetson Law and Higher Education Conference in Clearwater, Florida.

Maggie McConnell spoke in March at the University Risk Management and Insurance Association (URMIA) Regional Conference in

Chandler, Arizona. That month, Ruth spoke at the PRIMA/URMIA Regional Seminar in Chandler.

In June, Ruth co-presented on the topic of ERM at the Public Risk Management Association Conference in Boston, Massachusetts. In July, Ruth facilitated a risk management tutorial for PRIMA on “Risk Management for Public Entities” in Savannah, Georgia.

Ruth visited with the Penn State University risk management staff in State College, Pennsylvania in August, and discussed ERM and the MIRA project. Also in August, Ruth spoke on reputation risks at the annual meeting of the Colorado PRIMA chapter which was held in Keystone, Colorado.

In September, Maggie presented to the URMIA Annual Conference in Denver. Ruth taught a class on Risk Financing at that same conference. Also that month, Pete and Teresa Toney presented at the annual Community College Leadership Congress held by the Association of Community College Trustees. The title of the workshop was “*Maintaining the Integrity of Your Organization – The Importance of a Comprehensive Public Records Release Strategy*”. The presentation focused on aspects that trustees should be aware of with respect to public records release such as open meeting law, disclosure and non-disclosure and state public records laws. Trustees were encouraged to inquire with their CEO as to whether college employees were trained to respond to requests and to review their internal policies and local public records laws.

In early October, Pete served on the faculty of an institute for new senior student affairs officers in Arlington, Virginia for NASPA. Later that month, he delivered a presentation on public stewardship for the Arizona Community College Association in Tucson, Arizona.

In November, Pete served as a presenter for NASPA's Student Services Institute at Ivy Technical College in Muncie, Indiana. He also presented on public stewardship to the membership of Arizona CUPA, which met in Chandler.

V. Outside Activities

Pete Kushibab serves as an adjunct professor for Northern Arizona University and Argosy University, and teaches classes on legal issues in both K-12 and higher education for those institutions' programs in education leadership. 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 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 led a break-out group at the second state conference convened to discuss the plan. She also approached each office of Arizona's Congressional delegation to obtain support letters for ADHS's application for a grant from the federal Centers for Disease Control that would provide support for implementation of the State's cardiovascular disease program. Maggie was able to get five letters of support, including one from Senator John McCain. ADHS received the grant. She also participated in the American Heart Association's Annual Lobby Day in Washington, D.C. and visited all 10 Arizona Congressional offices.

Ruth Unks participated in a Think Tank sponsored by URMIA regarding enterprise risk management and helped to draft an ERM white paper. Ruth served as co-chair of the PRIMA/URMIA Conference in Chandler, Arizona. She also served on the PRIMA ERM Task Force and the URMIA Inter-Association Alliance Committee. Late in 2007, Ruth joined the National Alliance for Insurance Education and Research as a faculty member teaching risk management courses. She continues to be a guest lecturer on risk management for undergraduate and graduate students at Arizona State University and Northern Arizona University.