

Detroit Legal News

News you cannot get anywhere else.
www.legalnews.com

Vol. CXXI, No. 215

Thursday, October 27, 2016

75 Cents

DAILY BRIEFS

Detroit Orientation Institute celebrates 25 years with reunion

The Detroit Orientation Institute (DOI) at Wayne State University will celebrate its 25th anniversary with a reunion event for its more than 3,000 alumni and friends. The event will be held from 5 to 8 p.m. on Wednesday, Nov. 16, at the Charles H. Wright Museum of African American History.

The DOI launched in 1991 to provide a historical perspective and candid look at Detroit and the surrounding region during a time when media coverage of the city was particularly narrow and inflammatory. The program provided opportunities to visit key institutions and organizations and interact directly with elected officials and community leaders.

The DOI was formed in response to recommendations in the 1987 Detroit Strategic Plan, a project of the Detroit Renaissance business organization and Mayor Coleman Young. The roster of alumni who have completed the institute's intensive three-day course is a virtual who's who of the region's media, nonprofit and business communities, including Nancy Schlichting, CEO of Henry Ford Health System; Paul Anger, former editor and publisher of the Detroit Free Press; Paul Hillegonds, former state legislator and current CEO of the Michigan Health Endowment Fund and chair of the Southeast Michigan Regional Transit Authority; and Charles Blow, former Free Press reporter and current columnist for the New York Times.

"Being new to Michigan and working in Detroit, it was important I get to know the area as soon as possible. The Detroit Orientation Institute offered the best opportunity to do that. It gave me added appreciation for the rich and diverse culture, and confirmed this area as a great place to live and work," Anger observed at the time.

Today, the institute continues to offer programming that engages business, community, media, nonprofit, political, civic and student leaders in immersive events that illuminate Detroit and foster connections.

"For 25 years, the DOI has provided a broad, rich and candid look at our city and region for corporate and nonprofit leaders and journalists, who have gone on to shape its direction," said Elaine Driker, founding director of DOI. "We look forward to reconnecting with our many alumni and charting our course for the next 25 years and beyond."

The Detroit Orientation Institute's 25th Anniversary Celebration will take place Wednesday, November 16, from 5 to 8 p.m. at the Charles H. Wright Museum of African American History, located at 315 E. Warren Avenue in Detroit. Ticket prices are \$25-250. Proceeds will underwrite scholarships and programming for the next 25 years. The evening will include a strolling dinner reception, live music and cash bar, with brief remarks from Elaine Driker, founding director of the DOI, and Robin Boyle, professor in Wayne State's Department of Urban Studies and Planning. Detroit Free Press columnist Rochelle Riley, also a DOI alum, will emcee.

The Detroit Orientation Institute at Wayne State University engages business, community, media, nonprofit, political, civic and student leaders in immersive events that illuminate Detroit and foster connections. Participants visit the city's neighborhoods and key institutions, interacting with change makers as they dig deep into the region's history and current landscape. Groups are small and participatory. For more information, visit doi.wayne.edu.



INSIDE DLN

Abandoned Car Auctions	6
Business News	2
Calendar	12
City Request for Bids	6
Classified Ads	4
Crossword	4
Legal Notices	6
Mortgages	4



Life as a lawyer in Detroit

By JASON SEARLE
Michigan Law

What does it mean to be part of the Detroit law firm community? The student organization JDs in the D hosted a panel of Detroit lawyers on Oct. 21 to explore this question and highlight the benefits of being in Detroit's legal market. The panel members had widely varying backgrounds, but they shared a feeling of confidence in the outlook for Detroit legal and business markets.

The moderator opened the session by asking the panelists how they ended up in Detroit and why they have stayed. Their experiences included Chicago litigation, foreign diplomacy, and work involving a host of legal issues in Michigan. In highlighting these experiences, the panelists were able to segue into explaining how, despite the great opportunities they have had abroad, there is nothing like the current vibrancy and opportunity of the Detroit area, and of Michigan in general.

"Over the last eight years, it's like a switch has been flipped," said Louis Gabel, of counsel at Jones Day. Tom Colis, principal and manag-

ing director at Miller Canfield, spoke about the renewed energy around Detroit's Campus Martius since 2008. Lisa Brown, commercial litigator and hiring partner for Dykema, added, "Everyone wants to be in Detroit now."

The panelists shared their experiences and observations about the benefits of practicing law in Detroit. Gabel pointed out that Detroit is a hub of the most cutting-edge aerospace, intellectual property, and military supply work. Colis added that Quicken Loans has "changed Detroit," highlighting in particular the economic stimulus and young professional influx spurred by the company. Brown spoke about varied market growth that has created easily accessible opportunities, ripe for new business. "There is a great sense of collegiality in Detroit. I have gotten referrals and business while at my kids' soccer games," Brown said. She added, "If you are looking for work-life balance, this is the place to find it."

As they described the Detroit legal market, the panelists agreed that the city offers an interesting mix of opportunities and law-firm office

See **LAWYER**, Page 5

My Turn

TOM KIRVAN
Legal News, Editor-in-Chief

Degree helps bring journey to a fitting end

On Monday, 11 days after her beloved husband's life was cut short by a heart attack, Kristin Lavoie donned cap and gown for an academic ceremony that made everyone around her proud.



A middle school teacher in Pontiac, she can now be rightfully addressed as "Dr. Lavoie" after earning her doctorate from Wayne State University, capping a long and winding journey that she shared virtually every step of the way with her late husband, Mike Lavoie.

"I couldn't have done this without Mike," she said succinctly Monday afternoon, offering a debt of gratitude for his encouragement, input, and support.

Providing help was her husband's lifelong mission, which tragically ended October 13, just hours after the 63-year-old Butzel Long attorney completed a weekly doubles tennis match in Birmingham. For his friends and loved ones, it was a sudden and shocking end, leaving a legion of admirers reeling and at a loss for words.

Mike, as it turned out, was seldom at a "loss for words," whether in his personal or professional life. I learned as much a decade ago when I first crossed paths with the Notre Dame alum who grew up in Pontiac.

Joe Papelian, then deputy chief of litigation for Delphi Corp., suggested I write a

See **KIRVAN**, Page 5

Pro Bono Month



Photo by John Meiu

In celebration of October as Pro Bono Month, the judiciary of the Oakland County Circuit and Probate Courts hosted a continental breakfast for pro bono attorneys on Wednesday, Oct. 19, in the judicial conference room at the Oakland County Courthouse in Pontiac. Happy to show their appreciation were (seated, l-r) Circuit Court Judges Mary Ellen Brennan, Lisa Gorcyca, and Lisa Langton; Probate Court Judge Elizabeth Pezzetti; Circuit Court Chief Judge Nanci Grant; Circuit Court Judge Joan Young; Probate Court Chief Judge Linda Hallmark; and Circuit Court Judge Cheryl Matthews; (standing) Circuit Court Judges Denise Langford Morris (back row, 9th from left), Jeffery Matis (fifth from right), Hala Jarbou (fourth from right), and Shalina Kumar (far right).

ASKED AND ANSWERED

By STEVE THORPE
sthorpe@legalnews.com



Michael Lisi on the Lawsuit Over M-22 Road Sign

Matt and Keegan Myers of Traverse City have built a thriving business on the appeal of the scenic M-22 highway that winds its way through their part of the state. In fact, they claim that they own the trademark rights to the word M-22 and to a logo consisting of the M-22 road sign designed by the State of Michigan and have tried to prevent other businesses in the area from using these trademarks. In May, Michigan Attorney General Bill Schuette ruled that all road sign trademarks were improper, because "one person or company cannot claim to have produced all of the goodwill associated with the particular highway-route marker design that represents the region." Michael Lisi of Bridge IP in Royal Oak has represented clients for more than 25 years in trademark and copyright issues in the U.S. and throughout the world, with a focus on strategic counseling and the protection and enhancement of the value of IP assets through registration, licensing and enforcement.



Michael Lisi

Thorpe: American roads can have iconic value. Route 66 comes to mind. Is there a history of companies trying to trademark those symbols?

Lisi: Yes, there are number of U.S. trademark registrations for marks like ROUTE 66, including some that incorporate road sign designs. For example, there are 88 active trademark registrations and applications in the U.S. Patent and Trademark Office ("USPTO") for various ROUTE 66 trademarks, owned by many different parties, for use with a wide variety of goods and services. Thirty-five of the 88 marks incorporate the so-called U.S. Shield design that is used in the federal highway system to designate U.S. routes.

A certain federal highway regulation first puts into the public domain, and then prohibits the protection of certain identified highway and road signs ("Traffic Control Devices") under patent, trademark or copyright law. The U.S. Shield design is one of the identified Traffic Control Devices, and thus it is in the public domain. However, the same regulation mandates that it should not be protected as a trademark. Thus, it appears that private parties who have registered trademarks for marks like ROUTE 66 that incorporate the U.S. Shield design, may be in violation of this federal regulation. However, neither the Department of Transportation nor the USPTO has complained.

In this dispute, AG Schuette has asserted that the same federal regulation, as adopted by Michigan in a version that specifically incorporates the M-22 road sign design, prohibits anyone from registering Michigan's M-22 road sign as a trademark, even though the sign design is in the public domain. He has also asserted that both state and federal trademark law provisions prohibit the registration of "insignia" owned by a State as trademarks.

Thorpe: The brothers have argued that trademark law is a federal matter and has nothing to do with the state. Agree?

Lisi: Yes, except that this case also involves some state law claims. The State of Michigan has admitted that the federal court has original jurisdiction over most claims in the case, and supplemental jurisdiction over certain state law claims. The questions posed by the brothers and the State of Michi-

gan in this dispute are mostly federal questions that should best be adjudicated by a federal court, and not a state court. For example, can a work that was once subject to copyright protection but is now in the public domain be re-purposed and protected as a trademark? Can federal highway regulations prohibit federal registration of a trademark in the USPTO if the mark would otherwise be registrable under the Lanham Act, the federal trademark law? Does the trademark registration prohibition in the federal highway regulation (as adopted by the State of Michigan) apply only to governmental entities or agencies, or does it also apply to private persons and legal entities? Do the federal highway regulations, as adopted by Michigan, even apply to the M-22 signs designed by the State of Michigan?

Thorpe: Their legal team managed to get the lawsuit moved from Ingham County Circuit Court to the U.S. District Court of Appeals in Grand Rapids on Aug. 31. Big victory?

Lisi: Yes, this was a victory, especially if one subscribes to the notions that a federal judge will be better equipped to apply federal law and decide federal questions, and conversely, if AG Schuette and the State of Michigan have a "home court" advantage anywhere, it was probably in the Ingham County Circuit Court.

Thorpe: The brothers don't claim to have created the sign, but they want to prevent others from using it commercially. Is that unusual?

Lisi: No, not really. On the surface, some may wonder how the brothers can take what appears to be a public road sign, turn it into a trademark, and exclude others from also using the sign as a trademark. Given the origin of the sign, why can't everyone else do the same thing? However, these questions confuse copyright and trademark law concepts. "Creation" is a concept used in copyright law to determine ownership of a given work. Copyrights arise upon creation - copyrights exist when someone authors or creates a work that qualifies for copyright protection. In general, the owner of the copyright is the one who created the work. In contrast, trademark rights arise from use or registration of a word, name, symbol or device to distinguish one's goods or services from the goods or services of another. Merely creating a trademark does not give rise to any rights. Most trademarks, especially word trademarks, are comprised of elements that the trademark owner did not "create" - for example, BURGER KING.

The more puzzling question in my mind is why the brothers are not content to limit their assertion of exclusive trademark rights to the word mark M-22 and the M-22 road sign mark. The State of Michigan alleges that the brothers (or their company) have also tried to stop third parties from using trademarks that feature the state road designations M-25, M-26, M-28, M-37 and M-119 in the State-design diamond road sign on the

basis that "... the State road sign as used by each user was identical" to the brothers' trademarks.

Thorpe: AG Schuette claims that a private company can't lawfully control the M-22 road sign design as intellectual property because the State of Michigan created it. Does that origin have any bearing on trademark law?

Lisi: In this case, the State of Michigan became the owner of any applicable copyrights when it created the M-22 road sign design. However, the State of Michigan abandoned these rights, and put the M-22 road sign and other state signs into the public domain when it adopted a version of the federal highway regulations and identified the applicable sign designs. "Public domain" is a copyright concept that means that although the underlying work may once have been subject to copyright protection, it no longer enjoys such protection, and anyone is free to exploit any of the bundle of exclusive rights making up the copyright (e.g., the right to copy, the right to make derivative works, etc.). In other words, being in the "public domain" means that there are no copyright limits on exploitation of the work.

However, the same regulations go on to prohibit the protection of the applicable "Traffic Control Devices" under patent, copyright and trademark law. There have been a number of trademark decisions by the courts responding to the question of whether or not a work that was once subject to copyright protection but is now in the public domain can be protected as a trademark. AG Schuette has cited the decisions that in effect answer the question with a "no."

Thorpe: If you'll pardon the pun, this has been a long road already. In an opinion he wrote in 2012, Schuette indicated that state road signs are in the public domain and not protected under trademark law. The State of Michigan filed a cancellation proceeding with the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board ("TTAB") in 2013 seeking to cancel two of the brothers' five U.S. trademark registrations - the two for the M-22 road sign. How long might this dispute continue?

Lisi: This dispute, if not settled, could continue for perhaps another year or two in federal court in Grand Rapids. The declaratory judgment lawsuit filed by the State of Michigan in Ingham County Circuit Court on August 23, 2016 was removed to the federal court on August 31, 2016. The cancellation proceeding was suspended pending the outcome of the federal court lawsuit on September 27, 2016. "Suspended" means that everything is put on hold in the cancellation proceeding, including discovery. Before the suspension occurred, the TTAB denied the State of Michigan's Motion of Summary Disposition on the basis that material issues of fact exist as to whether: (a) the M-22 road sign is an insignia of the State of Michigan such that its registration is prohibited under Section 2(b) of the Lanham Act as "other insignia" of a state, and (b) under Section 2(a) of the Lanham Act, the M-22 road sign mark falsely suggests a connection with the State of Michigan. In an unusual step, the TTAB also prohibited the State of Michigan from filing any further motions for summary judgment in the cancellation proceeding.