TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: February 24, 2009
SUBJECT: Kocenda v. Troy et. al.

David Kocenda has filed a delayed application for leave to appeal the dismissal of the lawsuit he filed in August 2007. This latest filing is another of Kocenda's several attempts seeking money from the City. In his initial lawsuit, he named the City of Troy, Troy Police Chief Charles Craft, Captain Edward Murphy, Captain Colleen Mott, Lieutenant Richard Hay, Lieutenant Charles Pappas, and Lieutenant Robert Rossman as defendants. He alleged that these Troy defendants provided false information about him to a prospective employer during a background investigation. He unsuccessfully argued that the Troy defendants' alleged release of this information was defamation (Count I) and an intentional infliction of emotional distress (Count II). The Troy defendants filed a Motion for Summary Disposition, arguing that the defamation claim was barred by the applicable statute of limitation, and also that Kocenda's intentional infliction of emotional distress claims were barred by governmental immunity. After receiving Troy's motion for dismissal, Kocenda filed a motion asking to amend his complaint to add an additional claim based on an alleged tortious interference with an advantageous business relationship (interference with his possible employment with the Palm Beach Gardens Florida police department).

Oakland County Circuit Court Judge Fred Mester denied the motion to add the additional claim, and dismissed the entire lawsuit against the Troy defendants on February 13, 2008. Kocenda then filed an untimely Motion for Reconsideration on April 10, 2008. Judge Mester denied this Motion on May 19, 2008. Thereafter, Kocenda filed an untimely claim of appeal with the Michigan Court of Appeals. Although we asked Plaintiff to voluntarily dismiss this appeal, Kocenda refused to do so, and we were required to file a motion to dismiss the untimely appeal. The Court of Appeals dismissed Kocenda's appeal on August 27, 2008, and also ordered Kocenda to pay the City's costs in filing the motion. Kocenda then filed a Motion for Relief from Order in the Oakland County Circuit Court, alleging the case should be re-opened on the basis of "newly discovered evidence." This "newly discovered evidence" was information from a retired City employee and associate in Kocenda's private business venture. This information was given in another case that was filed by Kocenda against his former business partners. (That case has also been subsequently dismissed). The motion to re-open the case, based on this alleged "newly discovered evidence" was denied by Judge Mester on November 19, 2008.

On the day before the filing deadline, Kocenda filed his delayed application for leave to appeal (February 13, 2009). There is no appeal of right, but the Court of Appeals, in its discretion, can grant a delayed application if the panel decides that the case is worthy of consideration. Appeals are allowed generally only where a case presents unique issues or where there was a clear abuse of discretion in granting of the Motion for Summary Disposition. The application also requires a satisfactory explanation for the delay in filing. Kocenda has also filed a Motion to Expand the Record on Appeal. According to this motion, Kocenda is asking the Court of Appeals to consider evidence that was not introduced in the circuit court. We have filed a response to that motion. We will also timely respond to the delayed application for leave to appeal (due March 5, 2009).

Please let us know if you have any questions.